

WSR 18-17-001
PERMANENT RULES
HARDWOODS COMMISSION

[Filed August 1, 2018, 1:48 p.m., effective September 1, 2018]

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

Purpose: To be commensurate with the effective date of new WAC 244-12-050 Assessments and collections.

Citation of Rules Affected by this Order: Amending WAC 244-12-050.

Statutory Authority for Adoption: Chapter 15.74 RCW.

Adopted under notice filed as WSR 18-13-089 on June 18, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 26, 2018.

David A. Sweitzer
 Executive Director

AMENDATORY SECTION (Amending WSR 91-14-055, filed 6/27/91, effective 7/1/91)

WAC 244-12-050 Assessments and collections. (1) ~~((The assessment shall be based upon the following schedule:~~

QUARTERLY PRODUCTION				QUARTERLY ASSESSMENT
CATEGORY	(THOUSAND TONS)			
1	5	to	7.5	\$150
2	7.5	to	15	\$300
3	15	to	25	\$600
4	25	to	35	\$900
5	35	to	45	\$1,200
6	45	to	62.5	\$1,500
7	62.5	to	82.5	\$2,250
8	82.5	to	125	\$3,000
9	125	to	175	\$4,500
10	175	to	250	\$6,000
11	250	to	350	\$9,000
12	350	to	450	\$12,000
13	450	to	625	\$15,000

QUARTERLY PRODUCTION

CATEGORY	(THOUSAND TONS)			QUARTERLY ASSESSMENT	
14	625	to	875	\$22,500	
15	875	to	1125	\$30,000	
16	over			1125	\$35,000))

To provide for permanent funding of the Washington hardwoods commission, agricultural commodity assessments shall be levied by the commission on processors of hardwoods.

An assessment is hereby levied on hardwood processors operating within the state of Washington. The assessment shall be based on the hardwood processor's production per calendar quarter. The assessment shall be four cents per ton produced effective July 1, 2018.

Beginning July 1, 2019, and every July 1st thereafter, the assessment must be adjusted to reflect the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal Department of Commerce by September 25th of the year before the assessments are payable.

(2) For purposes of determining the ~~((appropriate production category))~~ assessment, the following ~~((equivalents will))~~ definitions apply:

(a) One ton of logs, scaled by weight, input for a processor equals one ton of production; or

(b) One thousand board feet, Scribner scale, input for a processor equals 7.25 tons of production.

(3) Processors who produce less than ~~((five))~~ one thousand tons of hardwood products or ship less than one thousand tons of logs out of the state of Washington in a calendar quarter will not be assessed. However, they still must submit a quarterly report.

(4) Assessments shall be paid to the commission according to the levy schedule in subsection (1) of this section.

WSR 18-17-008
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 13-08—Filed August 1, 2018, 3:57 p.m., effective September 1, 2018]

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

Purpose: Ecology is adopting comprehensive amendments to the solid waste handling standards in chapter 173-350 WAC. Changes adopted in WAC 173-350-220, 173-350-225 and 173-350-250 are intended only for the purposes of clarification and consistency with other sections of the rule.

Experience implementing the rule and input from stakeholders identified many areas in need of improvement. Issues identified as priorities included updating definitions, clarifying criteria for inert waste classification and when earthen material/soil is a solid waste, as well as streamlining record-keeping and reporting requirements. In the preproposal statement of inquiry for this rule making, ecology announced it

would also address other issues that might result in substantive changes, as well as clarifications and corrections to language in the chapter not expected to change the overall effect of the rule. This rule making:

- Standardizes language and organization to improve usability and consistency across the rule.
- Improves user ability to identify solid wastes apart from commodities, and supports material recovery and recycling activities while protecting public health and the environment.
- Helps users more easily distinguish inert wastes from other materials requiring a higher standard of management.
- Clarifies applicability of the rule, operational requirements, and timeframes for managing solid wastes in piles.
- Distinguishes between clean and contaminated soils and dredged material, and clarifies management requirements.
- Makes other substantive as well as clarifying revisions to the rule.

Citation of Rules Affected by this Order: Amending chapter 173-350 WAC.

Statutory Authority for Adoption: Chapter 70.95 RCW, 70.95.060, 70.95.215, 70.95.218, 70.95.260(6), 70.95.300, 70.95.305, 70.95.310, 70.95.440.

Adopted under notice filed as WSR 18-03-165 on January 23, 2018.

Changes Other than Editing from Proposed to Adopted Version: Ecology made changes other than strictly editorial, from the proposed rule to the adopted rule. These changes are summarized below. For details on why the changes were made see the concise explanatory statement found here <https://fortress.wa.gov/ecy/publications/SummaryPages/1807017.html>.

WAC 173-350-020 Applicability:

We revised the rule to clarify that the exclusion for contaminated soil applies only to soil that is removed from the ground, without any alterations to its quality, and placed back at the location where it originates. The intent of the rule is to prevent the creation of new sites potentially subject to clean up under the state Model Toxics Control Act (MTCA).

We revised the exclusion for collection of pharmaceutical products. The 2018 legislature adopted new laws governing the collection of pharmaceutical products, exempting that activity from solid waste handling standards. At the time the rule was proposed, we were waiting for the new law to be codified under the Revised Code of Washington. It was necessary to reflect the new law since affected facilities are not subject to the solid waste regulations as a result of accepting pharmaceutical products. The adopted language was updated to reflect the assignment of a number under RCW.

WAC 173-350-021 Determination of solid waste:

We found the language in subsection (2)(c) to be vague on its own, and ecology believed it fit better under subsection (d), with other changes clarifying the kinds of activities that relate to solid waste handling. Commenters objected to the use of the term "solid waste" in subsection (e) because they

felt it created circular logic in a section that was intended to determine whether something was solid waste. Commenters also pointed out that many things are stored at a solid waste facility - supplies and materials necessary for operation - that are not solid waste. We inserted language regarding separation of materials back in subsection (3)(b) because stakeholders believed it was important to capture the idea that commodities (things that are not solid waste) must be separated from solid waste.

WAC 173-350-030 Effective dates:

We added an allowance for up to two, six-month permit extensions for existing facilities not previously subject to the rule. Ecology is aware that some elements of local permit processes are backlogged, including review of checklists and threshold determinations under the State Environmental Policy Act. Ecology wanted to ensure that existing facilities not previously subject to permitting would not become noncompliant for reasons beyond their control.

WAC 173-350-100 Definitions:

We revised the definition of active life to clarify the line between the active life of a facility and its closure, and the post-closure period (if applicable).

We deleted this definition of by-product because the related use of this concept in the rule was eliminated.

Changes regarding clean soil and dredged material were made to clarify that when evaluating pollutants under MTCA, current land use at the receiving site should be evaluated, not some possible future land use. We also provided examples to help clarify soils that are likely to be clean soil as defined.

We revised the definitions of contaminated soil and dredged materials to specify that the current land use is appropriate for consideration when making a determination under MTCA. Changes also clarify that contaminated soil is a solid waste and must be managed at an appropriately permitted facility. A revision also clarifies that screening or characterization requirements are based on solid waste facility acceptance policies, since the tie to MTCA criteria is based only on managing materials "on the ground," not at solid waste facilities.

This definition of domestic septage was outdated, and we replaced it with the current definition in chapter 173-308 WAC (see septage further below).

We revised the definition of drop box facility to reflect that they are designed to serve the general public, but collection vehicles are not prohibited from delivering to drop boxes.

We revised the definition of engineered soil to clarify that it does not include cured concrete or asphalt.

We replaced the definition of glass with an alternative definition that is more consistent with industry standards.

At the request of stakeholders, we inserted a definition of inert waste to support the requirements in WAC 173-350-410, which more specifically identifies the kinds of wastes that are acceptable for disposal in an inert waste landfill.

We clarified the definition of limited purpose landfills to recognize that they may have received waste in the past.

We reverted to the original definition of the lower explosive limit because it was consistent with other state and federal rules.

We revised the definition of manufactured topsoil to clarify that using solid waste, which includes yard debris, to manufacture topsoil is subject to standards in this chapter.

We added the definition for septage as found in chapter 173-308 WAC, Biosolids management.

We revised the definition of soil to clarify that incidental pieces of concrete and other solid materials (such as may occur on a construction site) do not mean that a material is not suitable for management as soil.

We added a definition for tipping floor to clarify the term as used in the rule, and to also clarify that drop boxes do not constitute a tipping floor.

We revised the definition of waste tires to clarify that waste tires include mixtures of waste tires and used tires.

We revised the definition of wood waste to remove a circular reference to solid waste (a determination to be made through referenced WAC 173-350-021). The change also clarifies that materials like sawdust may be, but are not necessarily solid waste.

WAC 173-350-210 Recycling and material recovery facilities:

A significant intent in the revision of the rule was to distinguish between commodities and solid waste, and to curb the potential for the speculative accumulation of large amounts of waste disguised as recycling. Stakeholders suggested and ecology concurs it is reasonable to recycle half of incoming material on an annual basis. We revised Table 210A to reflect that requirement, which also better aligns WAC 173-350-210 with the standards in WAC 173-350-320 for the temporary accumulation of wastes in piles. Compliance with the requirements in chapter 173-345 WAC is obligatory for applicable operations, and ecology included a reference on request.

The amount of waste residual allowable in source-separated materials is limited to five percent under the adopted rule. In Table 210A, ecology had eliminated weight as a metric, in favor of volume, but stakeholders pointed out that the metric depends on the kind of material. Ecology returned weight as an appropriate measure, in addition to volume. This standard determines whether a permit may be required, and is not a threshold for determining whether the material is a solid waste.

We revised subsections (4) and (5)(a) of WAC 173-350-210 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

In subsection (4)(g) of WAC 173-350-210 we further specified that leachate collection must extend to areas other than the tipping floor if leachate is likely to be generated. This revision is necessary to ensure compliance with state water quality rules.

We revised subsection (6) of WAC 173-350-210 to accommodate local jurisdictional health department approval of operations that may desire or need to have extended hours of operation when an attendant is not on site.

WAC 173-350-240 Energy recovery and incineration facilities:

We revised subsections (4) and (5)(a) to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

WAC 173-350-300 On-site storage, collection, and transportation standards:

We revised WAC 173-350-300 to require a separate container for nonrecyclable materials where recyclable materials are collected. This is consistent with state goals under chapter 70.95 RCW to prioritize recycling ahead of disposal, and helps reduce the potential for contamination of recyclable materials with nonrecyclable solid wastes.

WAC 173-350-310 (~~Intermediate solid waste handling~~) Transfer stations and drop box facilities:

We revised subsections (4) and (5)(a) to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

In subsection (4)(a)(vii) we further specified that leachate collection must extend to areas other than the tipping floor if leachate is likely to be generated. This revision is necessary to ensure compliance with state water quality rules.

In the case of containers that may leak, the rule was revised to recognize that placement on a tipping floor with leachate collection is a reasonable alternative to protect water quality.

We revised subsection (6) to accommodate local jurisdictional health department approval of operations that may desire or need to have extended hours of operation when an attendant is not on site.

WAC 173-350-320 Piles used for storage or treatment:

We revised subsection (2) of Table 320A to reflect that the amount of material accumulated on a site during a year is based on what can be applied to a site, not strictly the site where the material is accumulated.

We revised subsection (3) of Table 320A to specify cubic yards instead of tons, since yards are a more common metric.

We revised subsection (5) of Table 320A to clarify that the requirement is to remove the material within ninety days and not continue to use the site afterward.

We added a new exemption in subsection (6) of Table 320A to allow for unrestricted storage that is consistent with an approved construction stormwater general permit.

We revised subsections (4) and (5)(a) of WAC 173-350-320 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

We also revised the language in subsection (6) of WAC 173-350-320 regarding annual reports to reflect cubic yards.

WAC 173-350-330 Surface impoundments and tanks:

We revised subsections (4) and (5)(a) of WAC 173-350-330 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

WAC 173-350-350 Waste tire storage ((and transportation)):

We revised subsection (1) to reflect input from stakeholders who told us that used heavy equipment tires can weigh several hundred pounds or more, making the standards for typical passenger and truck tires inappropriate. We broke out a category of tires that weigh five-hundred pounds or more, allowing an accumulation of up to twenty tons, typically carried on a flatbed trailer and not in an enclosed trailer. Heavy equipment tires must be segregated from tires that weigh less than five hundred pounds to qualify for this provision. We also modified subsection (10) to reflect these respective limits as the threshold for permitting.

Changes in subsections (4) and (5)(a) reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements, or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

WAC 173-350-355 Waste tire transportation:

Ecology proposed new WAC 173-350-355, moving content related to the transportation of waste tires out of the existing WAC 173-350-350, leaving WAC 173-350-350 to address the storage of waste tires. In the proposed rule, we also added the text in subsection (1)(e) to clarify an existing reference to contractors. On further analysis, we found subsection (e) redundant with subsection (d) and consolidated the proposed language in subsection (e) with the existing subsection (d).

WAC 173-350-360 Moderate risk waste handling:

We removed references to pharmaceutical collection programs in Table 360A, following the adoption of new laws by the 2018 state legislature, exempting pharmaceutical collection programs from regulation under solid waste laws.

We revised subsections (4) and (5)(a) of WAC 173-350-360 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

WAC 173-350-400 Limited purpose landfills:

We revised subsections (4) and (5)(a) to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

We revised language pertaining to landfill gas concentrations in subsections (4)(b), (c) and (f) to specifically identify these concentration limits and points of compliance as a performance standard for limited purpose landfills generally.

The proposed rule established these standards once, as a design performance standard, and then cited it in the subsections establishing design requirements for liners and final covers in the operating requirements and the post-closure requirements. In the adopted rule, the concentration limits are identified as part of the performance standard for the liner. They are also repeated as part of the operating standards. Since other elements of landfill design and operations could also play a role in meeting these standards, ecology determined that they should not be connected only to liner design and operating standards.

WAC 173-350-410 Inert waste landfills:

In Table 410A, ecology deleted a proposed conditional exemption provision for inert waste landfills between two hundred fifty and two thousand cubic yards. This deletion was based on stakeholder feedback that a permit exemption for up to two thousand cubic yards was excessive.

We revised subsections (4) and (5)(a) of WAC 173-350-410 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

A final cost-benefit analysis is available by contacting Kyle Dorsey, Department of Ecology, Solid Waste Management Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6559, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email kyle.dorsey@ecy.wa.gov, web site <https://fortress.wa.gov/ecy/publications/SummaryPages/1807017.html>.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 2, Amended 24, Repealed 1.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 28, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 27, Repealed 1.

Date Adopted: August 1, 2018.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-010 Purpose. This chapter is adopted under the authority of chapter 70.95 RCW, Solid waste management—Reduction and recycling, to protect public health, to prevent land, air, and water pollution, and conserve the state's natural, economic, and energy resources by:

(1) Setting minimum functional performance standards for the proper handling and disposal of solid waste originating from residences, commercial, agricultural and industrial operations and other sources;

(2) Identifying those functions necessary to assure effective solid waste handling programs at both the state and local level;

(3) Following the priorities for the management of solid waste as set by the legislature in chapter 70.95 RCW, Solid waste management—Reduction and recycling((:));

(4) Describing the responsibility of persons, municipalities, regional agencies, state and local government related to solid waste;

(5) Requiring solid waste handling facilities to be located, designed, constructed, operated and closed in accordance with this chapter;

(6) Promoting regulatory consistency by establishing statewide minimum standards for solid waste handling; and

(7) Encouraging the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling.

AMENDATORY SECTION (Amending WSR 13-08-016, filed 3/25/13, effective 4/25/13)

WAC 173-350-020 Applicability. (1) This chapter applies to facilities and activities that manage solid wastes as that term is defined in WAC 173-350-100 or determined in WAC 173-350-021. Facilities handling solid waste must comply with the standards of all applicable sections of this chapter.

(2) This chapter does not apply to the following:

~~((1))~~ (a) Overburden from mining operations intended for return to the mine;

~~((2))~~ (b) Wood waste used for ornamental, animal bedding, mulch and plant bedding, or road building purposes;

~~((3))~~ (c) Wood waste directly resulting from the harvesting of timber left at the point of generation and ~~((subject to))~~ regulated under chapter 76.09 RCW, Forest practices;

~~((4))~~ (d) Land application of livestock manure((s)) and bedding, crop residue((s)), and on-farm vegetative waste at agronomic rates;

~~((5) Agricultural composting when all agricultural wastes are generated, processed, and applied on-farm at agronomic rates in accordance with accepted agricultural practices. This categorical exemption does not apply to producers subject to RCW 70.95.306, composting of bovine and equine carcasses;~~

~~((6))~~ (e) Mushroom substrate production when materials that are not solid waste (such as processed chicken manure) are used in the production;

~~((7) Home composting as defined in WAC 173-350-100;~~

~~((8))~~ (f) Single-family residences and single-family farms whose year round occupants engage in solid waste disposal regulated under WAC 173-351-700(4);

~~((9))~~ (g) Clean soil((s)) and clean dredged material as defined in WAC 173-350-100;

~~((10) Dredged material as defined in 40 C.F.R. 232.2 that is subject to:~~

~~(a) The requirements of a permit issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);~~

~~(b) The requirements of a permit issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or~~

~~(c) In the case of U.S. Army Corps of Engineers civil works projects, the administrative equivalent of the permits referred to in (a) and (b) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 C.F.R. 336.1, 336.2, and 337.6;~~

~~((11))~~ (h) The following activities when regulated under section 404 or 401 of the Clean Water Act (33 U.S.C. Sec. 1344 or 1341) or section 10 of the Rivers and Harbors Act (33 U.S.C. Sec. 403):

(i) Management of dredged material, as defined in 40 C.F.R. Sec. 232.2, prior to placement into surface water or onto land;

(ii) Placement of dredged material, as defined in 40 C.F.R. Sec. 232.2, into surface water or onto land where there will be runoff or return water to surface water.

(i) Biosolids that are managed under chapter 173-308 WAC, Biosolids management;

~~((12))~~ (j) Domestic septage taken to a sewage treatment plant permitted under chapter 90.48 RCW, Water pollution control;

~~((13))~~ (k) Liquid wastes, the discharge or potential discharge of which((:)) is regulated under federal, state or local water pollution permits;

~~((14))~~ (l) Domestic wastewater facilities and industrial wastewater facilities otherwise regulated by federal, state, or local water pollution permits;

~~((15))~~ (m) Dangerous wastes fully regulated under chapter 70.105 RCW, Hazardous waste management, and chapter 173-303 WAC, Dangerous waste regulations;

~~((16))~~ (n) Special incinerator ash regulated under chapter 173-306 WAC, Special incinerator ash management standards;

~~((17))~~ (o) PCB wastes regulated under 40 C.F.R. Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, except for:

~~((a))~~ (i) PCB household waste; and

~~((b))~~ (ii) PCB bulk product wastes identified in 40 C.F.R. Part 761.62 (b)(1) that are disposed of in limited purpose landfills;

~~((18))~~ (p) Radioactive wastes, defined by chapter 246-220 WAC, Radiation protection—General provisions, and chapter 246-232 WAC, Radioactive protection—Licensing applicability;

~~((19))~~ (q) Landfilling of municipal solid waste regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills;

~~((20) Drop boxes used solely for collecting recyclable materials;~~

~~((21))~~ (r) Intermodal facilities as defined in WAC 173-350-100; ~~((and~~

~~((22))~~

(s) Collection, transport, and sale of used goods and materials solely for the purpose of reuse as defined in WAC 173-350-100;

(t) Solid waste handling facilities that have engaged in closure and closed before the effective date of this chapter;

(u) Commercial fertilizers registered with the Washington state department of agriculture and managed in accordance with the provisions of chapter 15.54 RCW, Fertilizers, minerals, and limes, and rules adopted thereunder;

(v) Manufactured topsoil, as defined in WAC 173-350-100, composed only of clean soil and clean dredged material, composted materials, wood waste, or other commercial products (e.g., bioretention soil media, water retaining crystals, or registered commercial fertilizers or liming agents);

(w) Engineered soil, as defined in WAC 173-350-100, when reused, as defined in WAC 173-350-100, in another construction project for the same engineering properties;

(x) Management of soil or dredged material within a contaminated site as part of a removal or remedial action under chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act, chapter 90.48 RCW, Water pollution control, or 42 U.S.C. Sec. 9601 et seq., Comprehensive Environmental Response, Compensation, and Liability Act. However, the department may determine that the requirements of this chapter are relevant and appropriate to such a removal or remedial action under WAC 173-340-710;

(y) Contaminated soil, as defined in WAC 173-350-100, removed from the ground, not altered by additional contaminants, and placed or stored back at or near the location of generation within a project site. This exclusion is not meant to allow distant movement of materials within large or linearly long project sites to new locations that could potentially create new environmental impacts;

(z) Steel slag that is a primary product of production in the electric arc steel-making process, produced to specification, managed as an item of commercial value, and placed in commerce for general public consumption, if the steel slag material is not abandoned, discarded, or placed in the solid waste stream;

(aa) Organic materials, as defined in WAC 173-350-100, used for animal feed or to create animal feed;

(bb) Management of routine livestock mortalities when managed in compliance with WAC 16-25-025 (1), (4), (6), or (8), disposal of dead livestock;

(cc) Management of routine nonlivestock animal mortalities by burial, incineration in a unit with a design capacity of less than twelve tons per day, natural decomposition, or rendering, when managed in compliance with WAC 246-203-121, general sanitation;

(dd) Materials used in research and development activities intended to evaluate, develop, or demonstrate potential new or improved beneficial use, reuse, or recycling methods or technologies for solid wastes conducted by qualified persons in controlled laboratory, bench scale, or pilot study conditions at the facility at which the materials are generated, at another facility owned or operated by the generator, at an institution of higher education as defined in RCW 28B.10-.016, at a higher education institution as defined in RCW 28B.07.020, or at a public or private laboratory or other facility contracted by the waste generator or institution to conduct

such activities. These activities include the research and development operations, the separation, collection, transport, and transfer of such materials in support of those operations. Solid wastes handled in connection with such activities shall be reasonably limited to quantities needed to conduct the research and development project(s), and any excess or residual of such materials remaining after such activities and any solid waste generated by such activities shall be handled in accordance with this chapter or chapter 173-303 WAC, Dangerous waste regulations, as applicable; and

(ee) In accordance with RCW 70.95.207 an authorized collector of covered drugs regulated under chapter 69.48 RCW is not required to obtain a permit under RCW 70.95.170 unless the authorized collector is required to obtain a permit under RCW 70.95.170 as a consequence of activities that are not directly associated with the collection facility's activities under chapter 69.48 RCW.

NEW SECTION

WAC 173-350-021 Determination of solid waste. (1) Determination of solid waste - Applicability. This section must be applied when determining whether a material is a solid waste as defined in WAC 173-350-100. Some waste materials already have criteria for use, or standards to no longer be considered solid waste, in other sections of this rule. This section may not be applied to the following materials:

(a) Contaminated soil and contaminated dredged materials defined in WAC 173-350-100;

(b) Composted materials regulated under WAC 173-350-220; and

(c) Digestate regulated under WAC 173-350-250.

(2) A material is a solid waste if it meets any of the criteria in (a) through (f) of this subsection:

(a) The material has been discarded, abandoned, or disposed of;

(b) The material has been permanently placed in or on land for the purpose of disposal;

(c) The material has been collected through residential or commercial solid waste or recyclable material collection;

(d) The material has been received at a solid waste handling facility for recycling, incineration, disposal, or beneficial use as those terms are defined in WAC 173-350-100;

(e) The generator has paid for or will need to pay for removal or processing of the material for recycling, incineration, disposal, or beneficial use as those terms are defined in WAC 173-350-100; or

(f) The material has been stockpiled for recycling, reuse, or use after recycling, but no market is available and stockpiles provide vector attraction or harborage, or release pollutants into the environment in violation of other human health or environmental rules and regulations.

(3) A material that met any of the criteria in subsection (2) of this section is no longer a solid waste if it meets all of the criteria in (a) through (e) of this subsection:

(a) The material is no longer discarded or abandoned;

(b) The material has been separated from solid wastes;

(c) The material has been recycled, or is ready for reuse, as defined in WAC 173-350-100;

(d) The material has positive market value, as indicated by established markets for the material. Paying a person to remove or process the material for recycling, disposal, or incineration is not positive market value, nor is paying a discounted amount for removal or processing;

(e) The material is stored and managed to preserve its value, and is stored in a manner that presents little or no risk to human health and the environment; and

(f) The material does not contain harmful chemical, physical, biological, or radiological substances that will pose a threat to human health or the environment for its intended or likely manner of use.

(4) If a material does not meet all of the criteria of subsection (3) of this section, the person in possession of the material is still considered to be handling solid waste and is required to obtain a permit from the jurisdictional health department, or meet the requirements of a conditional permit exemption under the applicable section(s) of this chapter, or manage the material in accordance with the provisions of WAC 173-350-200 Beneficial use permit exemptions. In an action to enforce the requirements of this chapter, the generator or person in possession of the material must demonstrate that the material is no longer a solid waste.

(5) Nothing in this chapter shall impact the rights of a commercial recycler, nonprofit, or commercial generator under RCW 70.95.903, 81.77.140, 36.58.160, and 35.21.158.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-025 Owner responsibilities for solid waste. The owner, operator, or occupant of any premise, business establishment, or industry (~~(shall be)~~) is responsible for the satisfactory and legal arrangement for the solid waste handling of all solid waste generated or accumulated by them on the property.

AMENDATORY SECTION (Amending WSR 13-08-016, filed 3/25/13, effective 4/25/13)

WAC 173-350-030 Effective dates. (1) Effective dates - Facilities with new solid waste handling units. ~~((These))~~ The standards in this chapter apply to ((all facilities, except existing facilities, when updated or new sections in this chapter become effective)) new solid waste handling units, on or after the effective dates for any new or updated sections in this chapter.

(2) Effective dates - Existing facilities with a solid waste handling permit.

(a) The owner or operator of an existing ~~((facilities))~~ facility must:

(i) Meet all applicable operating, environmental monitoring, closure and post-closure planning, and financial assurance requirements ~~((of this chapter by June 30, 2014))~~ within eighteen months of the effective date associated with each solid waste handling unit at a facility; and

(ii) Meet all applicable performance and design requirements, other than location or setback requirements, ~~((by December 31, 2014))~~ within twenty-four months of the effective date associated with each solid waste handling unit at a facility.

~~(b) ((These standards apply to all new solid waste handling units at existing facilities upon the effective date of this chapter.~~

~~(c) If, as determined by the jurisdictional health department, significant changes to the operation, design, capacity, performance, or monitoring of)) If changes to a facility are needed to meet updated or new sections of this chapter, the owner or operator of existing facilities must ((initiate the)) submit a request for permit modification ((process)) as outlined in WAC 173-350-710(((4) by December 31, 2013. If a permit modification is necessary, every application for a permit modification must describe the date and methods for altering an existing facility to meet (a)(i) and (ii) of this subsection.~~

~~(d) The jurisdictional health department must determine if a new permit application is required based on the extent of the changes needed to bring the facility into compliance.~~

~~(e) All facilities must close))~~ within twelve months of the effective date associated with each solid waste handling unit at a facility. The request must demonstrate that an owner or operator will meet updated or new sections by applicable effective dates.

~~(c) An owner or operator of an existing facility that cannot meet the requirements in updated or new sections of this chapter associated with solid waste handling units at the facility must close those units in compliance with applicable requirements of this chapter.~~

(3) Effective dates - Existing facilities meeting terms and conditions for permit exemption, or existing facilities previously not regulated under this chapter.

(a) The owner or operator of an existing facility must:

(i) For facilities eligible for permit exemption, meet any revised or new terms and conditions for a permit exemption within twelve months of the effective date associated with each solid waste handling unit at a facility; and

(ii) For facilities that must obtain a permit to meet requirements in updated or new sections of this chapter, submit a complete permit application as outlined in WAC 173-350-710 and 173-350-715 within twelve months of the effective date associated with each solid waste handling unit at a facility.

(A) If obtaining other regulatory approvals necessary to complete a solid waste permit application is not possible within the twelve months of the effective date associated with each solid waste handling unit at a facility, the applicant may request a six-month extension from the health department and the department, not to exceed two requests.

(B) Any approval for an extension requires written concurrence from the department.

(b) An owner or operator of an existing facility that cannot meet the requirements in updated or new sections of this chapter associated with solid waste handling units at the facility by their effective dates must close those units in compliance with applicable requirements of this chapter.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-040 Performance standards. The owner or operator of ~~((an)) any solid waste ((facilities))~~ facility subject to this chapter ~~((shall))~~ must:

(1) Design, construct, operate, ~~((and))~~ close ~~((all facilities))~~ and provide post-closure care as applicable, at any solid waste facility in a manner that does not pose a threat to human health or the environment;

(2) ~~((Comply with chapter 90.48 RCW, Water pollution control and implementing regulations, including chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington;~~

~~((3) Conform to))~~ Not be in conflict with the approved local comprehensive solid waste management plan prepared in accordance with chapter 70.95 RCW, Solid waste management—Reduction and recycling, and/or the local hazardous waste management plan prepared in accordance with chapter 70.105 RCW, Hazardous waste management(;

~~((4) Not cause any violation of emission standards or ambient air quality standards at the property boundary of any facility and comply with chapter 70.94 RCW, Washington Clean Air Act)); and~~

~~((5))~~ (3) Comply with all other applicable local, state, and federal laws and regulations.

AMENDATORY SECTION (Amending WSR 13-08-016, filed 3/25/13, effective 4/25/13)

WAC 173-350-100 Definitions. When used in this chapter, the following terms have the meanings given below.

"Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being, are proposed to be, or have been conducted. Setbacks must not be considered part of the active area of a facility.

"Active life" means the period beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with a facility's permit requirements.

"Aerobic decomposition" means decomposition of organic materials primarily by aerobic microbes under controlled conditions.

"Agricultural composting" means composting of agricultural waste as an integral component of a system designed to improve soil health and recycle agricultural wastes. Agricultural composting is conducted on lands used for farming.

"Agricultural wastes" means wastes ~~((on))~~ from farms resulting from the raising or growing of plants and animals including, but not limited to, crop residue, livestock manure ~~((from herbivores and nonherbivores))~~, animal bedding, and carcasses of dead animals.

"Agronomic rates" means the application rate ~~((dry weight basis))~~ that will provide the amount of nitrogen or other critical nutrient required for ~~((optimum))~~ optimal growth of vegetation, and that will not result in the violation of applicable standards or requirements for the protection of ground or surface water as established under chapter 90.48 RCW, Water pollution control, and related rules including chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington, and chapter 173-201A

WAC, Water quality standards for surface waters of the state of Washington.

"Air quality standard" means a standard set for maximum allowable contamination in ambient air as ~~((set forth))~~ authorized in chapter ~~((173-400 WAC, General regulations for air pollution sources))~~ 70.94 RCW, Washington Clean Air Act.

"All-weather surface" means a road surface over which emergency vehicles and typical passenger vehicles can pass in all types of weather.

"Anaerobic digester" means a vessel that processes organic material into biogas and digestate through microbial decomposition under anaerobic (low oxygen) conditions.

"Asphaltic materials" means material produced from a mixture of petroleum asphalt and mineral aggregate and used for the construction of roads, sidewalks and similar purposes. Roofing materials containing asphalt are not considered to be asphaltic materials.

"Below ground tank" means a device meeting the definition of "tank" in this chapter where a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface of the tank that is in the ground.

"Beneficial use" means the use of solid waste as an ~~((ingredient in a manufacturing process, or as an))~~ effective substitute for natural or commercial products, or as a soil amendment, in a manner that does not pose a threat to human health or the environment~~((-))~~ when approved in accordance with section WAC 173-350-200 or 173-350-230 of this chapter. Use of solid waste as fill, or avoidance of processing or disposal cost alone, does not constitute beneficial use.

"Biofilter" means a bed or layer of material that supports beneficial microorganisms, typically a mixture of compost and wood chips, designed to filter and treat air emissions. A biofilter adsorbs and then biologically degrades odorous compounds.

"Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management. Biosolids includes a material derived from biosolids and septic tank sludge, also known as septage, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management.

"Buffer" means a permanently vegetated strip adjacent to ~~((an))~~ a land application area, the purpose of which is to filter runoff or overspray from the application area and protect an adjacent area.

"Bulking agent" means an ingredient used to improve structure and porosity, or to lower moisture content, primarily in composting. Bulking agents improve convective air flow and reduce settling and compaction. Bulking agents may include, but are not limited to, wood waste, straw, and other high-carbon materials.

"Cab card((s))" means a license carried in a vehicle that authorizes that ~~((vehicle))~~ vehicle's driver to legally pick up waste tires and haul to a permitted, licensed facility or an exempt facility for deposit.

("Capacity" means the maximum amount of material that can be contained on-site at any one time. Capacity is identified by the conditions of exemption, the permit, or the plan of operations as approved by the jurisdictional health department or the department. All material includes, but is not limited to, incoming waste, feedstocks, bulking agents, stockpiled wastes, active composting, curing piles, composted materials, and sorted recyclable materials on-site:))

"Captive insurance companies" means companies that are wholly owned subsidiaries controlled by the parent company and established to insure the parent company or its other subsidiaries.

"Cementitious material" means a material other than cured concrete containing Portland cement, fly ash, cement kiln dust, bottom ash, or other cement-like materials, used to add rigidity to soils during construction projects such as temporary retaining walls and shaft construction, or generated from construction or road maintenance projects. Cementitious materials include, but are not limited to, jet grout, controlled low strength material (CLSM), flowable fill, low density fill, k-crete, shotcrete, concrete washout, concrete road grindings, and dewatered drilling slurries containing cementitious materials.

"Channel migration zone" means the lateral extent of likely movement of a stream or river channel along a stream reach.

"Clean dredged material" means dredged material that does not contain contaminants from a release. It also includes dredged material that contains one or more contaminants from a release and when moved from one location to another for placement on or into the ground:

(a) Does not contain contaminants at concentrations that exceed a cleanup level under chapter 173-340 WAC, Model Toxics Control Act—Cleanup, that would be established for existing land use at the location where dredged material is placed; or

(b) Contains contaminants that affect pH, but pH of the dredged material is between 4.5 and 9.5 or within natural background pH limits that exist at the location where dredged material is placed.

"Clean soil(~~s and clean dredged material~~)" means soil(~~s and dredged material which are not dangerous wastes, contaminated soils, or contaminated dredged material as defined in this section~~) that does not contain contaminants from a release. It also includes soil that contains one or more contaminants from a release and when moved from one location to another for placement on or into the ground:

(a) Does not contain contaminants at concentrations that exceed a cleanup level under chapter 173-340 WAC, Model Toxics Control Act—Cleanup, that would be established for existing land use at the location where soil is placed; or

(b) Contains contaminants that affect pH, but pH of the soil is between 4.5 and 9.5 or within natural background pH limits that exist at the location where soil is placed.

Examples of potentially clean soil may include, but are not limited to, soil from undeveloped lands unlikely to have impacts from release of contaminants associated with area-wide or local industrial or historical activities. This includes similar soils over which development may have occurred but land use is unlikely to have led to a release, such as use for

residential housing, or over which development provided protection from impacts from a release, such as coverage by pavement. Soil with substances from natural background conditions, as natural background is defined in WAC 173-350-100, is clean soil under this section.

"Closure" means those actions taken by the owner or operator of a solid waste handling facility to cease disposal operations or other solid waste handling activities, to ensure that all (~~such~~) facilities are closed in conformance with applicable regulations at the time of (~~such~~) closure(~~s~~), and to prepare the site for the post-closure period if applicable.

"Closure plan" means a written plan developed by an owner or operator of a facility detailing how a facility is to close at the end of its active life.

"Collection event" means a one-time or recurrent designation of a site and areas within that site used by an operator to collect MRW from the public and to store the MRW for less than forty-eight hours.

"Commingled recyclable materials" means a mixture of several types of recyclable materials in one load or container, such as aluminum cans, paper, plastic, and cardboard in one container, or wood, concrete, and metal in one load.

"Commodity" means a material that meets widely recognized standards and specifications, such as those from ASTM International or the Institute of Scrap Recycling Industries, Inc., (for example, commodity-grade scrap metal) that is mutually interchangeable with other materials meeting the same specifications, and that has well-established markets.

"Composted material" means organic solid waste that has undergone biological degradation and transformation under controlled conditions designed to promote aerobic decomposition at a solid waste facility in compliance with the requirements of this chapter. Composting is a form of organic material recycling. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

"Composting" means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

"Conditionally exempt small quantity generator (CESQG)" means a dangerous waste generator whose dangerous wastes are (~~not subject to~~) conditionally exempt from regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated or accumulated in quantities below the threshold for regulation and meets the conditions prescribed in WAC 173-303-070 (8)(b).

"Conditionally exempt small quantity generator (CESQG) waste" means dangerous waste generated by a conditionally exempt small quantity generator.

"Container" means a portable device used for the collection, storage, and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in

the environment or that occurs at concentrations greater than natural background levels.

"Contaminate" means the release of solid waste, leachate, or gases emitted by solid waste, ~~((such))~~ so that contaminants enter the environment at concentrations that pose a threat to human health or the environment, or cause a violation of any applicable environmental regulation.

"Contaminated dredged material" means dredged material ~~((resulting from the dredging of surface waters of the state where contaminants are present in the dredged material at concentrations not suitable for open water disposal and the dredged material is not dangerous waste and is not regulated by section 404 of the Federal Clean Water Act (P.L. 95-217)))~~ containing one or more contaminants from a release and when moved from one location to another for placement on or into the ground:

(a) Contains contaminants at concentrations that exceed a cleanup level under chapter 173-340, Model Toxics Control Act—Cleanup, that would be established for existing land use at the location where dredged material is placed; or

(b) Contains contaminants that affect pH, and pH of the dredged material is below 4.5 or above 9.5 or is not within natural background pH limits that exist at the location where dredged material is placed.

Contaminated dredged material is solid waste and must be managed at a solid waste handling facility in conformance with this chapter or chapter 173-351 WAC, Criteria for municipal solid waste landfills. Characterization of material may be required based on solid waste facility acceptance standards. An example of a potentially contaminated dredged material may include, but is not limited to, dredged material from surface waters containing contaminants from a release.

"Contaminated soil(s)" means soil ~~((s—removed during the cleanup of a hazardous waste site, or a dangerous waste facility closure, corrective actions or other clean-up activities and which contain harmful substances but are not designated dangerous wastes))~~ containing one or more contaminants from a release and when moved from one location to another for placement on or into the ground:

(a) Contains contaminants at concentrations that exceed a cleanup level under chapter 173-340 WAC, Model Toxics Control Act—Cleanup, that would be established for existing land use at the location where soil is placed; or

(b) Contains contaminants that affect pH, and pH of the soil is below 4.5 or above 9.5 or is not within natural background pH limits that exist at the location where soil is placed.

Unless excluded in WAC 173-350-020, contaminated soil is solid waste and must be managed at a solid waste handling facility in conformance with this chapter or chapter 173-351 WAC, Criteria for municipal solid waste landfills. Characterization of material may be required based on solid waste facility acceptance standards. Examples of potentially contaminated soil may include, but are not limited to, street waste, petroleum contaminated soil, engineered soil, and soil likely to have contaminants from a release associated with industrial or historical activities.

"Controlled conditions" means the conditions in which facilities must be operated to meet the performance standards of WAC 173-350-040 and the applicable handling standards

of this chapter. ~~((Controlled conditions at compost facilities))~~ These may include, but are not limited to, controlling odors, run-on and runoff, moisture levels, pH levels, carbon to nitrogen ratios, temperatures, oxygen levels, particle sizes, and free air space.

"Corrosion expert" means a person certified by the National Association of Corrosion Engineers (NACE) or a registered professional engineer who has certification or licensing that includes education and experience in corrosion control.

"Crop residues" means vegetative material ~~((leftover))~~ left over from farms from ~~((the))~~ harvesting ~~((of))~~ crops, including ~~((leftover))~~ left over pieces or whole fruits or vegetables, crop leaves and stems, and unprocessed produce from storage facilities. Crop residue does not include food processing waste.

"Cured concrete" means concrete which has been produced from design mixtures specified to produce a twenty-eight-day unconfined compressive strength of no less than twelve hundred pounds per square inch and allowed to harden. Off-specification concrete which does not achieve this minimum strength value may be evaluated for consideration as a cured concrete by the solid waste permitting agency on a case-by-case basis. Cured concrete may also contain embedded steel, wood, or plastic materials used in the reinforcement or tensioning of concrete structural elements. For the purposes of solid waste handling under this chapter, other cementitious materials are not considered to be cured concrete.

"Dangerous wastes" means any solid waste designated as dangerous waste by the department under chapter 173-303 WAC, Dangerous waste regulations.

"De minimis" means present in an amount as to have negligible effect on the look, characteristics, use, or impact to human health or the environment of a material. The presence of man-made materials such as, but not limited to, paper, plastic, metal, and demolition debris that can reasonably be removed or that may become a litter problem is not de minimis.

"Department" means the Washington state department of ecology.

"Detachable containers" means reusable containers that are mechanically loaded or handled, such as a dumpster or drop box.

"Digestate" means both solid and liquid substances that remain following anaerobic digestion of organic material in an anaerobic digester.

"Disposable containers" means containers that are used once to handle solid waste, such as plastic bags, cardboard boxes and paper bags.

"Disposal" or **"deposition"** means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

~~((**"Domestic septage"** means Class I, II or III domestic septage as defined in chapter 173-308 WAC, Biosolids management.))~~

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with ~~((such))~~ industrial waste ~~((as))~~ that may be present.

"Dredged material" means material excavated or dredged from below the ordinary high water mark of surface water. Material removed from a stormwater management device such as, but not limited to, a catch basin, is not dredged material.

"Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading and turn-around areas. Drop box facilities (~~((normally serve the general public with loose loads and))~~) receive waste from off-site, require waste placement directly into a container and not a tip floor, and serve the general public.

"Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste. The recovery of energy ((in a useable form from)) may include mass burning or refuse-derived fuel incineration, ((pyrolysis)) or ((any)) other means of using the heat of combustion of solid waste that involves high temperature (above twelve hundred degrees Fahrenheit) ((processing)).

"Engineered soil" means soil that has been altered by the addition of man-made materials used to adjust soil engineering properties for construction projects, such as to alter shear strength or hydraulic conductivity of soil. Engineered soil includes, but is not limited to, soil with cementitious materials. Cured concrete and asphalt are not engineered soil.

"Existing facility" means a facility (~~((which is owned or leased, and))~~) with one or more solid waste handling units in operation, or for which facility construction has begun, on or before the effective dates ((of)) in this chapter associated with each solid waste handling unit, and the owner or operator has met terms and conditions for permit exemption or obtained permits or approvals necessary under federal, state and local statutes, regulations and ordinances.

"Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements on the land used for solid waste handling.

"Facility construction" means the continuous on-site physical act of constructing solid waste handling unit(s) or when the owner or operator of a facility has entered into contractual obligations for physical construction of the facility that cannot be canceled or modified without substantial financial loss.

"Facility structures" means constructed infrastructure such as buildings, sheds, utility lines, and piping on the facility.

"Feedstock" means a source separated waste material used as a component of composting, manufacturing, or as part of an industrial process.

"Food processing waste" means a source-separated organic material that is generated by a food processing facility licensed to process food by the United States Department of Agriculture, the United States Food and Drug Administration, the Washington state department of agriculture, or other applicable regulatory agency. Food processing wastes may include, but are not limited to, sludge from food processing water treatment plants, culls, DAF (dissolved air flotation) from a food processing facility((s)), pomace, and paunch manure, not intended for animal or human consumption.

"Garbage" means putrescible solid wastes.

"Glass" means a noncrystalline amorphous solid material of a chemical composition which is in the categories of soda-lime glass or borosilicate glass. This includes flat glass, container glass, tempered soda-lime glass, and glass-ceramics. Other noncrystalline amorphous solid materials, including lead glass, specialty glasses containing toxic constituents at concentrations greater than those typically found in soda-lime or borosilicate glasses, and soda-lime or borosilicate glass which has been tainted through exposure to chemical, physical, biological, or radiological substances are not considered to be glass for the purposes of this chapter.

"Groundwater" means that part of the subsurface water that is in the zone of saturation.

"Holocene fault" means a plane along which earthen material on one side has been displaced with respect to that on the other side and has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene to the present.

"Home composting" means composting of on-site generated wastes, and incidental materials beneficial to the composting process, by the owner or person in control of a single-family residence, or for a dwelling that houses two to five families, such as a duplex or clustered dwellings.

"Household hazardous waste((s))" means any waste (~~((which))~~) that exhibits any of the properties of dangerous wastes ((that)) but is exempt from regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated by households. Household hazardous waste can also include other solid waste identified in the local hazardous waste management plan prepared pursuant to chapter 70.105 RCW, Hazardous waste management.

"Hydrostratigraphic unit" means any water-bearing geologic unit or units hydraulically connected or grouped together on the basis of similar hydraulic conductivity which can be reasonably monitored; several geologic formations or part of a geologic formation may be grouped into a single hydrostratigraphic unit; perched sand lenses may be considered a hydrostratigraphic unit or part of a hydrostratigraphic unit, for example.

"Incineration" means a process of reducing the volume of solid wastes operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

"Incompatible waste" means a waste that is unsuitable for mixing with another waste or material because the mixture might produce excessive heat or pressure, fire or explosion, violent reaction, toxic dust, fumes, mists, or gases, or flammable fumes or gases.

"Indoor storage" means a structure with a roof and walls that protect solid waste from precipitation.

"Industrial solid wastes" means solid waste generated from manufacturing operations, food processing, or other industrial processes.

"Industrial wastewater facility" means all structures, equipment, or processes required to collect, ~~((carry away))~~ convey, treat, reclaim, or dispose of industrial wastewater.

"Inert waste" means ~~((solid wastes that meet the criteria for inert waste in WAC 173-350-990.~~

~~"Inert waste landfill" means a landfill that receives only inert wastes.~~

~~"Intermediate solid waste handling facility" means any intermediate use or processing site engaged in solid waste handling which is not the final site of disposal. This includes material recovery facilities, transfer stations, drop boxes, baling and compaction sites) waste that is allowed to be received at an inert waste landfill as described in WAC 173-350-410.~~

"Intermodal facility" means any facility operated for the purpose of transporting closed containers of waste ~~(and)~~, when the containers are not opened for further treatment, processing or consolidation of the waste.

"Jurisdictional health department" means city, county, city-county or district public health department.

"Land application site" means ~~((a contiguous))~~ an area or areas of land under the same ownership or operational control on which solid wastes are beneficially ((utilized for their agronomic or soil-amending capability)) used through application at an agronomic rate, as a soil amendment, or for land reclamation.

"Land reclamation" means using solid waste to restore ~~((drastically))~~ disturbed lands including, but not limited to, construction sites and surface mines. Using solid waste as a component of fill is not land reclamation.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

"Leachate" means water or other liquid within a solid waste handling unit that has been ~~((contaminated by dissolved or suspended materials due to contact with solid waste or gases))~~ in contact with solid waste or has been contaminated due to contact with landfill gas.

"Limited moderate risk waste" means waste batteries, waste oil, and waste antifreeze generated from households.

"Limited moderate risk waste facility" means a facility that collects, stores, and consolidates only limited moderate risk waste. Limited moderate risk waste facility does not include retailers and distributors operating as product take-back centers.

"Limited purpose landfill" means a landfill ~~((which))~~ that is not ((regulated or permitted by other state or federal environmental regulations that)) an inert waste landfill and receives or has received only solid wastes ((limited by type or source)) designated as nonhazardous and are not municipal solid wastes. Limited purpose landfills include, but are not limited to, landfills that receive or have received segregated industrial solid waste, construction, demolition and ~~((land-clearing))~~ land clearing debris, wood waste, ash (other than special incinerator ash), contaminated soil and contaminated dredged material. Limited purpose landfills do not include inert waste landfills, municipal solid waste landfills regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills, landfills disposing of special incinerator ash regulated under chapter 173-306 WAC, Special incinerator ash management standards, landfills regulated under chapter 173-303 WAC, Dangerous waste regulations, or chemical waste landfills used for the disposal of polychlorinated biphenyls (PCBs) regulated under Title 40 C.F.R. Part 761, Poly-

chlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

"Liquid" means a substance that flows readily and assumes the form of its container but retains its independent volume.

"Liquid waste" means any solid waste ~~((which is))~~ deemed to contain free liquids as determined by the Paint Filter Liquids Test, Method 9095, in "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*," EPA Publication SW-846.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete or asphalt, or unconsolidated earth materials, soil or regolith lying at or near the earth's surface.

"Local fire control agency" means a public or private agency or corporation providing fire protection such as a local fire department, the department of natural resources or the United States Forest Service.

"Lower explosive limit(s)" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at twenty-five degrees centigrade and atmospheric pressure.

"Manufactured organics" means source separated solid wastes, such as nonplastic coated paper plates, cups, compostable bags, and other items designed to decompose through composting, anaerobic digestion, or through other organic materials recycling processes. Manufactured organics do not include physical contaminants such as plastics and coated paper products that will not readily decompose under typical composting conditions, or wood derived fuel or wood waste as defined in this ~~((section))~~ chapter.

"Manufactured topsoil" means soil or dredged material mixed with materials that improve the quality of the soil or dredged material for establishing vegetation and/or for water quality treatment purposes. If used as fill, material is not manufactured topsoil. Manufactured topsoil containing solid waste such as, but not limited to, yard debris, laminate, plastic, or asphalt shingles, not otherwise excluded from this chapter, is subject to management under this chapter.

"Manure and bedding" means manure (feces) and bedding from ~~((herbivorous animals such as))~~ livestock and zoo animals including, but not limited to, horses, cows, chickens, sheep, and goats, and includes wash water from cleanup of such manure and bedding.

"Material recovery facility" means any facility that ~~((collects))~~ receives, compacts, repackages, or sorts((or processes for transport)) source separated solid waste for the purpose of recycling.

"Mobile systems ~~((and collection events))~~" means activities ~~((conducted at a temporary location))~~ using a vehicle (such as a truck or trailer) to collect moderate risk waste from the public prior to transporting the material to an MRW facility, collection event, or permitted hazardous waste facility.

"Moderate risk waste (MRW)" means solid waste that is limited to conditionally exempt small quantity generator

(CESQG) waste and household hazardous waste (HHW) as defined in this chapter.

"MRW facility" means a solid waste handling unit that is used to collect, treat, recycle, exchange, store, consolidate, and/or transfer moderate risk waste. This does not include mobile systems ~~((and))~~, collection events ~~((or))~~, limited MRW facilities, or product take-back centers that meet the applicable terms and conditions of WAC 173-350-360(2) ~~((or (3)))~~.

"Municipal solid waste (MSW)" means a subset of solid waste which includes unsegregated garbage, refuse and similar solid waste material discarded from residential, commercial, institutional and industrial sources and community activities, including residue after recyclables have been separated. Solid waste that has been segregated by source and characteristic may qualify for management as a non-MSW solid waste, at a facility designed and operated to address the waste's characteristics and potential environmental impacts. The term MSW does not include:

~~((a))~~ (a) Dangerous wastes other than wastes excluded from the requirements of chapter 173-303 WAC, Dangerous waste regulations, in WAC 173-303-071 such as household hazardous wastes;

~~((b))~~ (b) Any solid waste, including contaminated soil and debris, resulting from response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601), chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act, chapter 173-340 WAC, ~~((the))~~ Model Toxics Control Act—Cleanup ~~((regulation))~~, or a remedial action taken under those statutes and rules; nor

~~((c))~~ (c) Mixed or segregated recyclable material that has been source-separated from garbage, refuse and similar solid waste. The residual from source separated recyclables is MSW.

"Natural background" means the concentration of chemical, physical, biological, or radiological substances consistently present in the environment that has not been influenced by regional or localized human activities. Metals at concentrations naturally occurring in bedrock, sediments and soils due solely to the geologic processes that formed the materials are natural background. In addition, low concentrations of other persistent substances due solely to the global use or formation of these substances are natural background.

"New solid waste handling unit" means a solid waste handling unit that begins operation or ~~((facility))~~ construction after effective dates in this chapter associated with each solid waste handling unit, and an existing solid waste handling unit that begins significant modifications ((to existing solid waste handling units,)) after the effective dates ~~((of))~~ in this chapter associated with each solid waste handling unit.

"Nuisance odor" means any odor which is ~~((found))~~ offensive or may unreasonably interfere with any person's health, comfort, or enjoyment beyond the property boundary of a facility.

"On-farm" means activities taking place on any agricultural land under the control of the same entity including parcels that are not geographically contiguous but managed by the same entity for agricultural production.

"On-farm vegetative waste" means plant-based wastes produced on-farm from raising, growing, or processing plants and animals.

"One hundred-year flood plain" means any land area that is subject to one percent or greater chance of flooding in any given year from any source.

"Open burning" means the burning of solid waste materials in an open fire or an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

"Organic feedstocks" means source separated organic materials including bulking agents suitable for vermicomposting, composting, anaerobic digestion, and other processes that transform organic materials into usable or marketable materials.

"Organic materials" means any solid waste that is a biological substance of plant or animal origin capable of microbial degradation. Organic materials include, but are not limited to, manure, yard debris, food waste, food processing wastes, wood waste, and garden wastes.

"Other conversion technologies" means processes that transform organic feedstocks into useable or marketable materials, but does not include composting, vermicomposting, or anaerobic digestion.

"Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

~~((Permeability))~~ means the ease with which a porous material allows liquid or gaseous fluids to flow through it. For water, this is usually expressed in units of centimeters per second and termed hydraulic conductivity.)

"Permit" means an authorization issued by the jurisdictional health department ~~((which))~~ that allows a person to perform solid waste activities at a specific location and ~~((which))~~ includes specific conditions for ~~((such))~~ facility operations.

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

"Petroleum contaminated soil" means soil that contains petroleum materials from a release more substantial than releases expected during routine operations of vehicles. Releases may include, but are not limited to, releases from leaking storage tanks or vehicular accidents. Petroleum materials include, but are not limited to, gasoline, diesel fuel, and fuel oil.

"Physical contaminants" as they relate to incoming feedstocks and compost quality means inorganic and organic constituents that are not readily decomposed during the composting process including, but not limited to, plastics, glass, textiles, rubber, leather, metal, ceramics, polystyrene, and wood pieces containing paint, laminates, bonding agents or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

"Pile" means the storage or treatment of any noncontainerized accumulation of solid waste ~~((that is used for treatment or storage)).~~

"Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

"Point of compliance" means a ~~((point established in the groundwater by the jurisdictional health department as near a possible source of release))~~ location at which a monitored parameter can be measured and evaluated for compliance with established standards or permit conditions. For groundwater compliance monitoring, the point of compliance will be located as near to the downgradient edge of the solid waste handling activity as technically, hydrogeologically and geographically feasible. Other points of compliance in other media may be established by the solid waste permitting agency for solid waste handling facilities permitted under this chapter.

"Post-closure care" means ~~((the requirements placed upon disposal facilities after closure to ensure their environmental safety for at least a twenty-year period or until the site becomes stabilized (i.e., little or no settlement, gas production, or leachate generation))~~ those actions taken by an owner or operator of a limited purpose landfill after closure, and until the landfill is determined by the solid waste permitting authority to be functionally stable.

"Post-closure plan" means a written plan developed by an owner or operator of a facility detailing how a facility is to meet the post-closure requirements for the facility.

"Post-consumer food waste" means source separated organic materials originally intended for human consumption including, but not limited to, vegetables, fruits, grains, meats and dairy products resulting from serving food. Post-consumer food waste is typically collected from cafeterias, homes, and restaurants.

"Preconsumer animal-based wastes" means source separated organic materials from animals such as meat, fat, dairy, or eggs that are a result of food preparation for human consumption or are products that did not reach the intended consumer. Preconsumer animal-based wastes are typically collected from food processing facilities and grocery stores.

"Preconsumer vegetative waste" means source separated organic materials from vegetables, such as pits, peels, and pomace from human food preparation, or vegetable products that did not reach the consumer. Preconsumer vegetative wastes are typically collected from food processing facilities and grocery stores.

"Premises" means a tract or parcel of land with or without habitable buildings.

"Private facility" means a privately owned facility maintained on private property solely for the purpose of managing waste generated by the entity owning the site.

"Processing" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal.

"Processing capacity" means the amount of incoming materials in tons or cubic yards that a solid waste facility can process in a given amount of time, such as a calendar year. Processing capacity is identified by the conditions of exemption, the permit, or the plan of operations as approved by the jurisdictional health department or the department.

"Product take-back center" means a retail outlet or distributor that accepts household hazardous waste of comparable types as the products offered for sale or distributed at that outlet.

"Public facility" means a publicly or privately owned facility that accepts solid waste generated by other persons~~(s)~~, or a publicly owned facility maintained on publicly owned property solely for the purpose of managing waste generated by the public entity owning the facility.

"Putrescible waste" means solid waste which contains material capable of being readily decomposed by microorganisms and which is likely to produce offensive odors.

~~((**"Pyrolysis"** means the process in which solid wastes are heated in an enclosed device in the absence of oxygen to vaporization, producing a hydrocarbon-rich gas capable of being burned for recovery of energy.))~~

"Recyclable materials" means those solid wastes that are separated for recycling or reuse, including, but not limited to, papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling ~~((does not include collection, compacting, repackaging, and sorting for the purpose of transport))~~ includes processing waste materials to produce tangible commodities.

"Release" means any intentional or unintentional entry of a contaminant into the environment at more than de minimis amounts and includes, but is not limited to, spilling, leaking, pouring, emitting, emptying, discharging, adding, applying, amending, injecting, pumping, escaping, leaching, dumping, or disposing of any contaminant.

"Representative sample" means a sample that can be expected to exhibit the average properties of the sample source.

~~((**"Reserved"** means a section having no requirements and which is set aside for future possible rule making as a note to the regulated community.))~~

"Reusable containers" means containers that are used more than once to handle solid waste, such as garbage cans.

"Reuse" means using an object or material again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material. Reuse is not solid waste handling, but separating materials from other solid wastes for reuse is solid waste handling. Use of solid waste as fill or alternative daily cover is not reuse.

"Runoff" means any rainwater, leachate or other liquid that drains over land from any part of the facility.

"Run-on" means any rainwater or other liquid that drains over land onto any part of a facility.

"Scavenging" means the removal of materials at a ~~((disposal))~~ facility, ~~((or intermediate solid waste handling facility.))~~ without the approval of the owner or operator and the jurisdictional health department.

"Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

"Septage" or "domestic septage" means a liquid or solid material removed from septic tanks, cess pools, portable toilets, type III marine sanitation devices, vault toilets, pit toilets, RV holding tanks, or similar systems that receive only domestic sewage. Septage may also include commercial or

industrial septage mixed with domestic septage if approved in accordance with the provisions in WAC 173-308-020 (3)(g).

"Setback" means that part of a facility that lies between the active area and the property boundary.

"Sewage sludge" means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Site capacity" means the maximum amount of all material that can be contained on-site at any one time. Site capacity is identified by the conditions of exemption, the permit, or the plan of operations as approved by the jurisdictional health department or the department. All materials include, but are not limited to, incoming waste, feedstocks, bulking agents, stockpiled wastes, active composting, curing piles, composted materials, and sorted recyclable materials on-site.

"Soil" means material overlying bedrock consisting primarily of clay, silt, sand, or gravel size particles, and soil biota, that may contain de minimis amounts of other solid materials, such as incidental pieces of concrete or wood. Soil does not include dredged material. Cured concrete and asphalt are not soil.

"Soil amendment" means any substance that is intended to improve the physical characteristics of soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW, Municipal sewage sludge—Biosolids, and wastewater, as regulated in chapter 90.48 RCW, Water pollution control.

"Solid waste," "waste materials," or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials. See WAC 173-350-021 to determine if a material is solid waste.

"Solid waste handling" means the management, storage, collection, transportation, treatment, use, processing or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from ((such)) wastes or the conversion of the energy in ((such)) wastes to more useful forms or combinations thereof.

"Solid waste handling unit" means discrete areas of land, sealed surfaces, liner systems, excavations, facility structures, or other appurtenances within a facility used for solid waste handling.

"Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

"Specified risk material" means the skull, brain, trigeminal ganglia (nerves attached to brain and close to the skull exterior), eyes, spinal cord, distal ileum (a part of the small intestine), and the dorsal root ganglia (nerves attached to the spinal cord and close to the vertebral column) of cattle aged thirty months or older.

"Storage" means the holding of solid waste materials for a temporary period.

"Street waste" means solid or dewatered materials collected from stormwater catch basins and similar stormwater treatment and conveyance structures, and materials collected during street and parking lot sweeping.

"Surface impoundment" means a facility or part of a facility ((which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is)) designed to ((hold)) contain an accumulation of liquids or sludges, and whose structural support is provided primarily by earthen materials. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells or infiltration basins.

"Surface water" means all lakes, rivers, ponds, wetlands, streams, inland waters, salt waters and all other surface water and surface water courses within the jurisdiction of the state of Washington.

"Tank" means a ((stationary device)) facility or part of a facility designed to contain an accumulation of liquids or ((semisolid materials meeting the definition of solid waste or leachate, and which is constructed primarily of nonearthen materials to provide structural support.

"Throughput" means the amount of incoming feedstocks in tons or cubic yards that a solid waste facility processes in a given amount of time, such as a calendar year. Throughput is identified by the conditions of exemption, the permit, or the plan of operations as approved by the jurisdictional health department or the department)) sludges, and designed and constructed of materials with sufficient strength so that its walls can be self-supporting.

"Tip floor" or "tipping floor" means the receiving area for incoming waste at a transfer station, material recovery facility, or recycling facility where vehicles unload waste materials prior to processing or consolidation for transport. A container into which waste is directly deposited, such as a drop box, is not a tipping floor.

"Transfer station" means a ((permanent, fixed, supplemental collection and transportation)) facility((-used by)) that receives solid waste (e.g., municipal solid waste, contaminated soil, or other solid wastes) from off-site from persons ((and)) or route collection vehicles ((to deposit collected solid waste from off-site into a larger)) for consolidation into transfer vehicles, vessels, or containers for transport to a solid waste handling facility.

"Treatment" means the physical, chemical, or biological processing of solid waste to make ((such)) solid wastes safer for storage or disposal, amenable for recycling or energy recovery, or reduced in volume.

"Twenty-five-year storm" means a storm of twenty-four hours duration and of such an intensity that it has a four percent probability of being equaled or exceeded each year.

"Universal wastes" means universal wastes as defined in chapter 173-303 WAC, Dangerous waste regulations. Universal wastes include, but may not be limited to, dangerous waste batteries, mercury-containing thermostats, and universal waste lamps generated by fully regulated dangerous waste generators or CESQGs.

"Unstable area" means a location that is susceptible to forces capable of impairing the integrity of the facility's liners, monitoring system or structural components. Unstable areas can include poor foundation conditions and areas susceptible to mass movements.

"Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric pressure, and the formation occurs above the zone of saturation.

"Vector" means a living animal(;;) including, but not limited to, insects, rodents, and birds, which is capable of transmitting an infectious disease from one organism to another.

"Vermicomposting" means the controlled and managed process by which live worms convert organic residues into dark, fertile, granular excrement.

"Waste tires" means any tires that are no longer suitable for their original intended purpose because of wear, damage or defect. ~~((Used))~~ Waste tires include tires~~((which were))~~ originally intended for use on public highways that are considered unsafe for this use in accordance with RCW 46.37.425~~((, are waste tires))~~. Waste tires also include quantities of used tires that may be suitable for their original intended purpose when mixed with tires ~~((considered unsafe per RCW 46.37.425))~~ not suitable for their original intended purpose.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Wood derived fuel" means wood pieces or particles used as a fuel for energy recovery, which contain paint, bonding agents, or creosote. Wood derived fuel does not include wood pieces or particles coated with paint that contains lead or mercury, or wood treated with other chemical preservatives such as pentachlorophenol, copper naphthenate, or copper-chrome-arsenate.

"Wood waste" means ~~((solid waste consisting of))~~ wood pieces or particles determined to be solid waste per WAC 173-350-021 generated ~~((as a by-product or waste from the manufacturing of wood products,))~~ from construction, demolition, handling and storage of raw materials, trees ~~((and)), stumps, and manufacturing of wood products.~~ This may include(s), but is not limited to, sawdust, chips, shavings, bark, pulp, ~~((hogged fuel,))~~ and log sort yard waste, but does not include wood pieces or particles containing paint, laminates, bonding agents, or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

"Yard debris" means plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping or similar activities. Yard debris includes, but is not limited to, grass clippings,

leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris.

"Zone of saturation" means that part of a geologic formation in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-200 Beneficial use permit exemptions.

(1) Beneficial use permit exemptions - Applicability. ~~((Any person may apply to the department for exemption from the permitting requirements of this chapter for beneficial use of solid waste. Applications for permit exemptions shall be prepared and submitted in accordance with the requirements of subsections (3) and (4) of this section. Upon the department's approval of an application for permit exemption, all approved beneficial use of solid waste shall be conducted in accordance with the terms and conditions for approval, as well as those general terms and conditions prescribed in subsection (2) of this section.~~

~~((2))~~

(a) This section applies to the beneficial use of solid waste in a manner approved by the department when the department has approved a beneficial use permit application.

(b) This section does not apply to:

(i) Solid waste handling facilities requiring permits or facilities operating under a conditional exemption authorized by RCW 70.95.305;

(ii) Materials used as alternative daily cover at landfills, which requires approval as part of the solid waste permitting process or subsequent allowance by the jurisdictional health department; and

(iii) Use of a solid waste as a component of fill unless a demonstration shows that the material meets specific engineering needs and specifications other than occupying space. Any proposal made under this section to use solid waste as a component of fill must be certified by a professional engineer registered in the state of Washington, in an engineering discipline appropriate for the proposed activity.

(2) Beneficial use permit exemptions - Application procedures.

(a) Applications for permit exemptions must be prepared and submitted on forms prescribed by the department and in accordance with the requirements of this subsection. Any person(s) applying for a beneficial use permit exemption must demonstrate to the satisfaction of the department that the proposed use of the specific solid waste does not present a threat to human health or the environment. The application must at a minimum contain the following:

(i) The name(s), address(es), and phone number(s) of the waste generator(s);

(ii) The name(s), address(es), and phone number(s) of the applicant;

(iii) The uniform business identifier number for the waste generator and any third-party handler of the waste material;

(iv) A detailed description of the solid waste, including ingredients used in making the original product from which the solid waste is derived, and the proposed beneficial use;

(v) Evidence that the material will perform as claimed;

(vi) A description of how the waste will be transported or distributed for the proposed beneficial use;

(vii) A description of the materials that contribute or potentially contribute contaminants/pollutants to the waste to be beneficially used;

(viii) A schematic and text summary of the waste generator(s) operations, including all points where wastes are generated, treated or stored;

(ix) A description of how terms and conditions of subsection (3)(a) of this section will be met;

(x) A State Environmental Policy Act checklist under chapter 197-11 WAC, SEPA rules;

(xi) Appropriate signatures as described in WAC 173-350-715(3);

(xii) If the beneficial use is proposed as a soil amendment, or for other solid wastes beneficially applied to the land, a description of how the terms and conditions of subsection (3)(b) of this section will be met; and

(xiii) Any additional information deemed necessary by the department.

(b) Once the department determines that the application is complete, the department will notify the applicant and initiate the public review process outlined in subsection (5) of this section.

(c) Once the public review process outlined in subsection (5) of this section has begun, any changes to the application or submittal of additional information by the applicant will result in a withdrawal of the completeness determination by the department and termination of the public review process. The department will resume review of the amended application in accordance with the procedures of subsection (5) of this section.

(d) After completion of the comment period, the department will review comments, technical information from agency and other publications, standards published in regulations, and other information deemed relevant by the department to render a decision.

(e) Every complete application will be approved or disapproved by the department in writing within ninety days after receipt. Exemptions will be granted by the department only to those beneficial uses of solid waste that the department determines do not present a threat to human health or the environment.

(f) Upon approval of the application by the department, the beneficial use of the solid waste by the original applicant is exempt from solid waste permitting for use anywhere in the state consistent with the terms and conditions of the approval.

(3) Beneficial use permit exemptions - General terms and conditions.

(a) The following general terms and conditions apply to all permit exempt beneficial uses of solid waste approved by the department. All persons beneficially using solid waste approved for permit exemption in accordance with this section ~~((shall))~~ **must**:

(i) Conduct the beneficial use in a manner that does not present a threat to human health or the environment;

(ii) Ensure that the material is not a dangerous waste regulated under chapter 173-303 WAC, Dangerous waste regulations;

(iii) Not dilute a waste, or the residual from treatment of a waste ~~((;))~~ **in order to lessen contaminant concentrations inherent in the waste** as a substitute for treatment or disposal;

(iv) ~~((Comply with all applicable federal, state, and local rules, regulations, requirements and codes, and local land use requirements;))~~ **Meet the performance standards of WAC 173-350-040;**

(v) Immediately notify the department and the jurisdictional health department of any accidental release(s) of contaminants to the environment;

(vi) Separate wastes intended for beneficial use from other wastes that are ~~((destined))~~ **intended for disposal or other destination**, prior to entering the location where the beneficial use will occur;

(vii) Manage the waste in a manner that controls vector attraction;

(viii) Ensure that solid waste being stored prior to being beneficially used is managed in accordance with the requirements of all applicable sections of this chapter **unless alternative intermediate storage is approved by the department during the beneficial use exemption application review process;**

(ix) Allow the department or the jurisdictional health department, at any reasonable time, to inspect the location where a permit exempt solid waste is stored or used to ensure compliance with applicable terms and conditions of this section; and

(x) Prepare and submit ~~((a copy of))~~ an annual report to the department by April 1st on forms supplied by the department. The annual report ~~((shall))~~ **must** detail the activities of the exemption holder during the previous calendar year and ~~((shall))~~ **must** include the following information:

(A) The permit exemption number applicable to the beneficial use activity;

(B) The name, address, and telephone number of the exemption holder;

(C) The amount of solid waste beneficially used;

(D) A certification that the nature of the waste and the operating practices have been in compliance with the terms and conditions of this section and the approved beneficial use permit exemption during the previous calendar year; and

(E) Any additional information ~~((that may be specified))~~ **required by the department ~~((under))~~ as a condition of the beneficial use ~~((permit exemption))~~ determination.**

(b) In addition to the general terms and conditions established in (a) of this subsection, solid wastes applied to the land for agronomic value or soil amending capability under a beneficial use permit exemption ~~((shall))~~ **must**:

(i) **Provide an analysis of nutrients at a minimum to include organic nitrogen, nitrate-nitrogen, ammonium-nitrogen, total phosphorus, and total potassium, reported on a dry weight basis;**

(ii) **Provide an analysis of physical/chemical parameters to include at a minimum: Total solids, total volatile solids, pH, electrical conductivity, and total organic carbon;**

(iii) Provide a discussion of any pathogens known or suspected to be associated with this material, including those that can cause disease in plants, animals or humans;

(iv) Provide additional analysis required by the department. The department may reduce the analytical requirements of this section;

(v) Meet the standards for metals ((standards required)) established by the Washington state department of agriculture ((WSDA)) for registered commercial fertilizers ((by following the procedures of WAC 16-200-7062 through 16-200-7064, Feeds, fertilizers, and livestock remedies)) regulated under WAC 16-200-7061 through 16-200-7064, Fertilizers;

~~((ii) Be applied)~~ (vi) Apply at an application rate and in a manner that ensures protection of groundwater and surface water. ~~(At a minimum, the application rate shall take into account the concentration of available nutrients and micronutrients in the soil amendment, other solid waste applied to the land, residual nutrients at the application site(s), additional sources of nutrients, pollutant loading rates, soil and waste pH, soil type, crop type and vertical separation from groundwater; and~~

(iii)) and does not exceed an application rate that would violate the Washington state department of agriculture standards for metals in fertilizers; and

(vii) Not be stored at an application site during periods when precipitation ((or)) wind, or other factors will cause migration from the storage area, unless the site is specifically designed to accommodate storage during these periods and storage is approved by the department during the permit exemption application process. The quantity stored at an application site ((shall)) must not exceed the ((maximum)) amount needed to meet the annual needs of the site based on the approved application rate. When a soil amendment is stored at an application site it ((shall)) must not contain free liquid waste unless the requirements of WAC 173-350-330 are met or an alternative storage method is approved by the department during the permit exemption application process.

(c) The department may require a person operating under any exemption issued under this section to meet additional or more stringent requirements for protection of human health and the environment, or to ensure compliance with other applicable regulations:

(i) At the time the department approves an application for a beneficial use permit exemption; or

(ii) When new information becomes available that warrants additional protections, but in the opinion of the department does not necessitate revocation of the beneficial use permit exemption.

(d) The department ((shall)) will notify ((in writing)) the exempted party and all jurisdictional health departments of any additional or more stringent requirements.

~~((3) Beneficial use permit exemption - Initial application procedure. Any person(s) interested in obtaining a state-wide exemption from solid waste permitting requirements for the beneficial use of a solid waste must demonstrate to the satisfaction of the department that the proposed use does not present a threat to human health and the environment. Applications shall be submitted to the department on a form supplied by the department. All application attachments and~~

~~other submittals must be on paper no larger than 11 inch x 17 inch. The application shall at a minimum contain the following:~~

~~(a) The name(s), address(es) and phone number(s) of the waste generator(s);~~

~~(b) The name(s), address(es) and phone number(s) of the applicant. If the applicant is a broker or other third party the uniform business identifier number shall also be included;~~

~~(c) A list of all product(s) made by the waste generator(s);~~

~~(d) A list of all feedstocks used to manufacture the product(s);~~

~~(e) A description of the solid waste and the proposed beneficial use;~~

~~(f) A description of how the waste will be transported or distributed for the proposed beneficial use;~~

~~(g) A description of other materials that contribute or potentially contribute contaminants/pollutants to the waste to be beneficially used;~~

~~(h) A schematic and text summary of the waste generator(s) operations, including all points where wastes are generated, treated or stored;~~

~~(i) A description of how terms and conditions of subsection (2)(a) of this section will be met;~~

~~(j) A State Environmental Policy Act checklist;~~

~~(k) If the beneficial use is proposed as a soil amendment, or for other solid wastes beneficially applied to the land, a description of how the terms and conditions of subsection (2)(b) of this section will be met; and~~

~~(l) Any additional information deemed necessary by the department.)~~

(4) Beneficial use permit exemptions - Secondary application procedure. Beneficial use permit exemptions, approved by the department in accordance with the procedures of subsection (5) of this section, are granted solely to the original applicant(s). Any person, other than the original applicant(s), interested in beneficially using solid waste pursuant to the terms and conditions of an existing permit exemption ((shall)) must apply to the department by following the procedures described in subsection ((3)) (2) of this section.

(5) Beneficial use permit exemptions - ((Determination, revocation, and appeals)) Public review process.

~~(a) ((The department shall review every application for completeness.)) Once an application is determined to be complete, the department ((shall)) will:~~

~~(i) Notify the applicant that the application has been determined to be complete(-);~~

~~(ii) ((Forward a copy of)) Notify all jurisdictional health departments, interested parties, representatives of the solid waste industry, and the Washington department of agriculture that a proposal is under consideration and provide access to the complete application and supporting documentation ((to all jurisdictional health departments for review and comment. Within forty-five calendar days, the jurisdictional health departments shall forward their comments and any other information that they deem relevant to the department.~~

~~(iii) The department shall develop and maintain a register of all complete applications it receives for beneficial use exemptions. The register shall include information regarding~~

the proposed beneficial use and process for submitting comments. The department shall maintain a list of interested parties and forward the register to those parties. The department may provide the register and application information in an electronic form upon request by an interested party.

(b) Once a determination is made by the department that an application is complete and the public review process has begun, any changes to the application or submittal of additional information by the applicant shall result in a withdrawal of the completeness determination by the department and termination of the public review process. The department shall resume review of the amended application in accordance with the procedures of (a) of this subsection.

(c) After completion of the comment period, the department shall review comments, technical information from agency and other publications, standards published in regulations, and other information deemed relevant by the department to render a decision.

(d) Every complete application shall be approved or disapproved by the department in writing within ninety days after receipt. Exemptions shall be granted by the department only to those beneficial uses of solid waste that the department determines do not present a threat to human health or the environment.

(e) Upon approval of the application by the department, the beneficial use of the solid waste by the original applicant is exempt from solid waste handling permitting for use anywhere in the state consistent with the terms and conditions of the approval.

(f) via the department's web site for review and comment. Access to the proposal and supporting documentation will be available in hard copy or other format upon request.

(iii) Post the complete proposal and supporting documentation on the agency's web site for not less than forty-five calendar days along with instructions for commenting on the proposal;

(iv) Within forty-five calendar days, any person or jurisdictional health department may comment on the application by forwarding comments and any other information deemed relevant, to the department; and

(v) The Washington state department of agriculture's comments must be limited to addressing whether approving the application will result in the risk of spreading disease, plant pathogens, or pests to areas that are not under a quarantine, as defined in RCW 17.24.007.

(b) The department will develop and maintain a register of all complete applications it receives for beneficial use exemptions, and all approvals and denials. The register will include information regarding the proposed beneficial use and the waste being beneficially used.

(c) The department will maintain a list of interested parties and solid waste industry contacts.

(6) Beneficial use permit exemptions - Revocations, enforcement, and appeals.

(a) The department may require a person operating under any exemption covered by this section to apply to the jurisdictional health department for a solid waste handling permit under the applicable section of this chapter if:

(i) The exemption holder fails to comply with the terms and conditions of this section and the approval; or

(ii) The department determines that the exemption was obtained by misrepresenting or omitting any information that potentially could have affected the issuance or terms and conditions of an exemption; or

(iii) New information not previously considered or available as part of the application demonstrates to the department that management of the waste under a beneficial use permit exemption may present a threat to human health or the environment.

~~((g))~~ (b) The department ~~((shall))~~ will provide written notification to the exempted party and all jurisdictional health departments of any requirement to apply for a permit under this chapter. A person that is required by the department to apply for permit coverage ~~((shall))~~ must immediately cease beneficial use activities until all necessary solid waste handling permits are issued.

~~((h))~~ (c) The terms and conditions of subsection ~~((2))~~ (3)(a)(viii) of this section ~~((shall))~~ remain in effect until the solid waste handling permit process has been completed unless an administrative order issued under the authority of RCW 70.95.315 directs that use activities cease.

~~((i))~~ (d) Any person that violates the terms and conditions of a beneficial use permit exemption issued under this section may be subject to the ~~((civil penalty))~~ enforcement provisions of RCW 70.95.315.

~~((j))~~ (e) Appeals of the department's decision to issue or deny or revoke a beneficial use permit exemption ~~((shall))~~ must be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The board's review of the decision ~~((shall))~~ will be made in accordance with chapter 43.21B RCW, Environmental and land use hearings office—Pollution control hearings board, and any subsequent appeal of a decision of the board ~~((shall))~~ must be made in accordance with RCW 43.21B.180. Persons that may appeal are:

(i) For waste derived soil amendments any aggrieved party may appeal~~((-)); and~~

(ii) For all other beneficial uses of solid waste any jurisdictional health department or the applicant may appeal.

~~((6))~~ (7) Beneficial use permit exemptions - Solid waste exempt from permitting by rule. Reserved.

Note: RCW 70.95.300 contains provisions that **allow** the department to exempt from permitting certain beneficial uses of solid waste by rule. The statute also requires the department to develop an application and approval process by which a person could apply for a beneficial use permit exemption. At this time the department has chosen to limit rule making to development of the required application and approval process, and hold a section in reserve for future development of a list of approved beneficial uses.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-210 Recycling and material recovery facilities. (1) Recycling and material recovery facilities - Applicability.

(a) These standards apply to recycling ~~((solid waste))~~ and material recovery facilities.

- (b) These standards do not apply to:
 - ~~((a)) (i)~~ Storage ~~(s)~~ or treatment ~~((or recycling))~~ of solid waste in outdoor piles ~~((which are))~~ subject to WAC 173-350-320;
 - ~~((b)) (ii)~~ Storage or recycling of solid waste in surface impoundments ~~((which are))~~ subject to WAC 173-350-330;
 - ~~((c)) (iii)~~ Composting facilities subject to WAC 173-350-220;
 - ~~((d)) (iv)~~ Solid waste that is beneficially used ~~((on the land that is subject to WAC))~~ and approved in accordance with the procedures of WAC 173-350-200 or 173-350-230;
 - ~~((e)) (v)~~ Storage of waste tires prior to recycling ~~((which is))~~ subject to WAC 173-350-350;
 - ~~((f)) (vi)~~ Storage of moderate risk waste prior to recycling ~~((which is))~~ subject to WAC 173-350-360;
 - ~~((g)) (vii)~~ Energy recovery or incineration of solid waste ~~((which is))~~ subject to WAC 173-350-240;
 - ~~((h) Intermediate solid waste handling facilities subject to WAC 173-350-310.) (viii)~~ Anaerobic digesters subject to WAC 173-350-250;
 - ~~(ix)~~ Other organic materials handling subject to WAC 173-350-225;
 - ~~(x)~~ Drop boxes used solely for collecting recyclable materials subject to WAC 173-350-310;
 - ~~(xi)~~ Treatment of contaminated soils or contaminated dredge material indoors subject to WAC 173-350-490.

(2) Recycling and material recovery facilities - Permit exemptions ~~((and notification:~~

~~(a)),~~ In accordance with RCW 70.95.305, recycling ~~((of solid waste is subject solely to the requirements of (b) of this subsection and is))~~ and material recovery facilities managed in accordance with the terms and conditions of Table 210-A of this subsection are exempt from solid waste handling permitting. ~~((Any person engaged in recycling that does not comply with the terms and conditions of (b) of this subsection is required to obtain a permit from the jurisdictional health department in accordance with the requirements of WAC 173-350-490.))~~ If a facility does not operate in compliance with the terms and conditions established for an exemption under this subsection, the facility may be subject to the per-

mitting requirements for solid waste handling under this chapter. In addition, violations of the terms and conditions of ~~((b) of))~~ this subsection may be subject to the ~~((penalty))~~ enforcement provisions of RCW 70.95.315.

~~((b) Recycling shall be conducted in conformance with the following terms and conditions in order to maintain permit exempt status:~~

- ~~(i) Meet the performance standards of WAC 173-350-040;~~
- ~~(ii) Accept only source separated solid waste for the purpose of recycling;~~
- ~~(iii) Allow inspections by the department or jurisdictional health department at reasonable times;~~
- ~~(iv) Notify the department and jurisdictional health department, thirty days prior to operation, or ninety days from the effective date of the rule for existing recycling operations, of the intent to conduct recycling in accordance with this section. Notification shall be in writing, and shall include:~~
 - ~~(A) Contact information for the person conducting the recycling activity;~~
 - ~~(B) A general description of the recycling activity;~~
 - ~~(C) A description of the types of solid waste being recycled; and~~
 - ~~(D) An explanation of the recycling processes and methods;~~
 - ~~(v) Prepare and submit an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report shall detail recycling activities during the previous calendar year and shall include the following information:~~
 - ~~(A) Name and address of the recycling operation;~~
 - ~~(B) Calendar year covered by the report;~~
 - ~~(C) Annual quantities and types of waste received, recycled and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and~~
 - ~~(D) Any additional information required by written notification of the department.)~~

Table 210-A

Terms and Conditions for Solid Waste Permit Exemption

	Waste Materials	Specific Requirements for Activity or Operation
(1)	<u>Cured concrete or wood waste at point of generation</u>	(a) Meet the performance standards of WAC 173-350-040; and (b) Recycle and use materials back on-site.
(2)	<u>Comingled brick, cured, concrete, or asphaltic materials</u>	(a) Meet the performance standards of WAC 173-350-040; (b) Recycle or ship for recycling at least fifty percent of all incoming material annually; (c) Comply with all applicable requirements of chapter 173-345 WAC, <u>Recyclable materials—Transporter and facility requirements</u> ; (d) Allow inspections by the department or jurisdictional health department at reasonable times; (e) <u>Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department and must be complete; and</u>

	<u>Waste Materials</u>	<u>Specific Requirements for Activity or Operation</u>
		<p><u>(f) Prepare and submit an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report must detail material recovery or recycling activities during the previous calendar year and must include the following information:</u></p> <p><u>(i) Name and address of the operation;</u></p> <p><u>(ii) Calendar year covered by the report;</u></p> <p><u>(iii) Annual quantities and types of waste received, recovered or recycled, and disposed, in tons;</u></p> <p><u>(iv) Destination of materials; and</u></p> <p><u>(v) Any additional information required by the department.</u></p>
(3)	<u>Source-separated recyclable materials</u>	<p><u>(a) Meet the performance standards of WAC 173-350-040; and</u></p> <p><u>(b) Accept only wastes segregated into individual material streams. Examples of individual material streams are loads composed solely of cardboard, mattresses, or metal of one type or several types. More than one individual material stream may be accepted at the same facility, but mixed waste materials, including commingled recyclable materials, may not be accepted under this exemption;</u></p> <p><u>(c) Dispose of an incidental and accidental residual not to exceed five percent of weight or volume of the total waste received per year or per load, whichever is more stringent;</u></p> <p><u>(d) Manage the operation to prevent the attraction of vectors;</u></p> <p><u>(e) Recycle or ship for recycling at least fifty percent of all incoming material annually;</u></p> <p><u>(f) Comply with all applicable requirements of chapter 173-345 WAC, <u>Recyclable materials—Transporter and facility requirements</u>;</u></p> <p><u>(g) Allow inspections by the department or jurisdictional health department at reasonable times;</u></p> <p><u>(h) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department and must be complete; and</u></p> <p><u>(i) Prepare and submit an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report must detail material recovery or recycling activities during the previous calendar year and must include the following information:</u></p> <p><u>(i) Name and address of the operation;</u></p> <p><u>(ii) Calendar year covered by the report;</u></p> <p><u>(iii) Annual quantities and types of waste received, recovered or recycled, and disposed, in tons;</u></p> <p><u>(iv) Destination of materials; and</u></p> <p><u>(v) Any additional information required by the department.</u></p>

(3) Recycling and material recovery facilities - Permit requirements - Location. There are no specific location standards for recycling and material recovery facilities subject to permitting under this chapter; however, recycling and material recovery facilities must meet the performance standards of WAC 173-350-040.

(4) Recycling and material recovery facilities - Permit requirements - Design. Recycling and material recovery facilities must be designed so that the facilities can be operated to meet the performance standards of WAC 173-350-040, and the following design standards:

(a) Control public access, and prevent unauthorized vehicular traffic and illegal dumping of waste;

(b) Be sturdy and constructed of easily cleanable materials;

(c) Provide effective means to control rodents, insects, birds, and other vectors;

(d) Provide effective means to control litter including, but not limited to, orientation of the tipping floor in a manner that prevents prevailing winds from moving waste outside the collection area when other structures are not in place to prevent this;

(e) Provide a tip floor made of impervious material such as concrete or asphalt to prevent soil and groundwater contamination. The surface must be durable enough to withstand equipment. The jurisdictional health department may approve other types of surfaces if the applicant can demonstrate that it will prevent soil and groundwater contamination;

(f) Cover the tipping floor to protect it from precipitation;

(g) Convey leachate from the tipping floor and any ancillary areas likely to collect leachate, such as wash down areas, to a surface impoundment, tank, or sanitary sewer, or use other methods approved by the jurisdictional health department to prevent uncontrolled discharge;

(h) Provide for stormwater runoff collection and discharge from a twenty-five-year storm;

(i) Provide pollution control measures to protect air quality; and

(j) Provide all-weather surfaces for vehicular traffic.

(5) Recycling and material recovery facilities - Permit requirements - Documentation.

(a) The owner or operator must submit facility drawings and construction documents for, at a minimum, any proposed addition or modification of elements described in subsection (4) of this section to the jurisdictional health department for review and approval. The facility drawings and construction documents for proposed construction of engineered features must be prepared by a professional engineer registered in the state of Washington, and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features. The engineering report must demonstrate that the proposed design will meet the performance standards of WAC 173-350-040;

(ii) Scale drawing of the facility including the location and size of waste handling areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;

(iii) Design specifications for the engineered features of the facility as applicable; and

(iv) For new construction, a construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of the facility, to ensure the facility is constructed in accordance with the approved design.

(b) The owner or operator must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility construction, including the results of observations and any testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. The owner or operator must not commence operation in a newly constructed portion of the facility until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

(6) Recycling and material recovery facilities - Permit requirements - Operating. The owner or operator of a recycling or material recovery facility must:

(a) Operate the site in compliance with the performance standards of WAC 173-350-040 and this subsection. In addition the owner or operator must develop, keep, and follow a plan operation approved as part of the permitting process. The plan of operation must be available for inspection at the request of the jurisdictional health department. If necessary, the plan must be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation must include the following:

(i) A description of the types of waste materials to be handled at the facility;

(ii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

(iii) A description of how waste materials are to be handled on-site, including recycling or recovery, storage, maximum site capacity, method of adding or removing waste materials from the facility, and equipment used;

(iv) A description of how the owner or operator will ensure the facility is operated in a way to:

(A) Control litter, dust, and nuisance odors;

(B) Control rodents, insects, and other vectors;

(C) Provide attendant(s) on-site during hours of operation. Materials may be transferred after hours without an attendant on-site if other controls approved by the jurisdictional health department are in place;

(D) Provide a sign at the site entrance that identifies the facility and shows at a minimum the name of the site;

(E) Immediately summon fire, police, or emergency service personnel in the event of an emergency;

(F) Remove or otherwise manage leachate from containment structure(s) to prevent soil and/or groundwater contamination;

(G) Remove waste materials from the tipping floor at a frequency approved by the jurisdictional health department; and

(H) Ensure that handling of waste capable of attracting birds does not pose an aircraft safety hazard.

(v) A description of how operators will inspect and maintain the facility to prevent malfunctions, deterioration, operator errors, and discharges that may cause or lead to the release of wastes to the environment or a threat to human health, including the inspection form operators will use. Inspections must be conducted as needed, but at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

(vi) A description of how operators will maintain operating records on the amounts (weight or volume) and types of waste received and removed from the facility, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Facility inspection reports must be maintained in the operating record, including at least the date of inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation must be noted in the operating record. Records must be kept for a minimum of five years and must be available upon request by the jurisdictional health department;

(vii) Safety and emergency plans; and

(viii) Other details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(b) Prepare and submit an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report must detail recycling or material recovery activities during the previous calendar year and must include the following information:

(i) Name and address of the recycling or material recovery operation;

(ii) Calendar year covered by the report;

(iii) Annual quantities and types of waste received, recovered or recycled, and disposed, in tons;

(iv) Destination of material; and

(v) Any additional information required by the jurisdictional health department as a condition of the permit.

(7) Recycling and material recovery facilities - Permit requirements - Groundwater monitoring. There are no specific groundwater monitoring requirements for recycling and material recovery facilities subject to this chapter; however, recycling and material recovery facilities must meet the performance standards of WAC 173-350-040.

(8) Recycling and material recovery facilities - Permit requirements - Closure. The owner or operator of a recycling or material recovery facility must develop, keep, and follow a closure plan that includes:

(a) Notification to the jurisdictional health department sixty days in advance of closure;

(b) Removal of all waste material to a facility that conforms with the applicable regulations for handling the waste; and

(c) Methods of removing waste material.

(9) Recycling and material recovery facilities - Permit requirements - Financial assurance. There are no specific financial assurance requirements for recycling and material recovery facilities subject to this chapter; however, recycling and material recovery facilities must meet the performance standards of WAC 173-350-040.

(10) Recycling and material recovery facilities - Permit application contents. The owner or operator of a recycling or material recovery facility must obtain a solid waste permit from the jurisdictional health department. All applications for permits must be submitted according to the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit must contain:

(a) Engineering reports/plans and specifications that address the standards of subsections (4) and (5) of this section;

(b) A plan of operation meeting the applicable requirements of subsection (6) of this section;

(c) A closure plan meeting the requirements of subsection (8) of this section; and

(d) Any additional information required by written notification of the jurisdictional health department.

AMENDATORY SECTION (Amending WSR 13-08-016, filed 3/25/13, effective 4/25/13)

WAC 173-350-220 Composting facilities. (1) Composting facilities - Applicability.

~~(a) ((This section applies))~~ These standards apply to all facilities that treat solid waste by composting. ~~((This section does))~~

(b) These standards do not apply to:

(i) Methods of managing organic materials that are excluded from the solid waste handling standards in WAC 173-350-020;

(ii) Composting used as a treatment for contaminated soil~~((s))~~ or contaminated dredged material regulated under WAC 173-350-320 or 173-350-490;

(iii) Anaerobic digesters regulated under WAC 173-350-250, or treatment of other liquid or solid wastes in digesters regulated under WAC 173-350-330;

(iv) Composting of bovine and equine carcasses for producers subject to RCW 70.95.306. Producers that fail to meet the conditions of RCW 70.95.306 will be required to obtain a solid waste handling permit from the jurisdictional health department and must comply with all other conditions of this chapter; and

(v) Composting biosolids when managed under chapter 173-308 WAC, Biosolids management.

~~((b))~~ **(2) Composting facilities - Permit exemptions.** In accordance with RCW 70.95.305, conditionally exempt facilities composting materials and volumes in Table 220-A must meet the conditions listed in Table 220-A, and ~~((e))~~ (a) through (e) of this subsection to be conditionally exempt from solid waste handling permitting. Feedstocks not listed in Table 220-A must be approved by the department and jurisdictional health department. For the purposes of this subsection, "material on-site at any one time" includes feedstocks, active composting, curing piles, and composted materials. An owner or operator that does not comply with the terms and conditions of Table 220-A and ~~((e))~~ (a) of this subsection is required to obtain a permit from the jurisdictional health department and must comply with all other applicable requirements of this chapter. Violations of the terms and conditions of Table 220-A and ~~((e))~~ (a) of this subsection may be subject to the ~~((penalty))~~ enforcement provisions of RCW 70.95.315.

**Table 220-A
Terms and Conditions for Solid Waste Permit Exemptions**

	Organic Materials	Volume	Specific Requirements for Activity or Operation
(1)	All organic feedstocks	No more than 5,000 gallons or 25 cubic yards of material on-site at any one time.	No notification, reporting or testing requirements.
(2)	All organic feedstocks	Greater than 25 but no more than 250 cubic yards of material on-site at any one time, not to exceed 1,000 cubic yards in a calendar year.	<p>(a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department;</p> <p>(b) Facilities that distribute composted material off-site must meet the following conditions:</p> <p>(i) Manage the operation to reduce pathogens to meet limits set by Table 220-B;</p> <p>(ii) Conduct compost analysis according to the requirements of Table 220-B. Compost testing frequency is based on volume of compost produced annually as required by subsection (4)(a)(x)(B) of this section; and</p> <p>(iii) Submit annual reports and results of composted material analysis to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.</p>
(3)	Yard debris Crop residues Manure and bedding Bulking agents	Greater than 25 but no more than 500 cubic yards of material on-site at any one time, not to exceed 2,500 cubic yards processed in a calendar year.	<p>(a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department.</p> <p>(b) Facilities that distribute composted materials off-site must meet the following conditions:</p> <p>(i) Manage the operation to reduce pathogens to meet limits set by Table 220-B;</p> <p>(ii) Conduct compost analysis according to the requirements of Table 220-B. Compost testing frequency is based on volume of compost produced annually as required by subsection (4)(a)(x)(B) of this section; and</p> <p>(iii) Submit annual reports and results of composted material analysis to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.</p>

	Organic Materials	Volume	Specific Requirements for Activity or Operation
(4)	Agricultural wastes Yard debris Bulking agents	Greater than 25 but no more than 1,000 cubic yards of agricultural wastes and bulking agents on-farm at any one time, and up to 50% of organic materials on-farm can be yard debris.	Agricultural farms managing more than 25 cubic yards of imported yard debris on-site at any one time or composting only agricultural wastes but that distribute off-site must meet the following conditions: (a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notification must be submitted on a form provided by the department; (b) If agricultural farm is only managing agricultural waste and not distributing composted material off farm, then notification in (4)(a) of this table is not required; (c) Facilities that distribute composted material off-site must meet the following conditions: (i) Manage operation to reduce pathogens to meet limits set by Table 220-B of this section; (ii) Conduct compost analysis according to the requirements of Table 220-B. Compost testing frequency is based on volume of compost produced annually as required by subsection (4)(a)(x)(B) of this section; and (iii) Submit annual reports and results of composted material analysis to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.
(5)	Agricultural wastes Manure and bedding from zoos Bulking agents	Greater than 25 cubic yards with no upper limits when only agricultural wastes, manure and bedding from zoos, and bulking agents are processed on-farm, or on-site for zoos.	Agricultural farms that distribute composted material off-farm, or off-site for zoos, must meet the following conditions: (a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notification must be submitted on a form provided by the department; (b) For composting at a dairy, composting must occur as part of an updated dairy nutrient management plan as required by chapter 90.64 RCW, Dairy Nutrient Management Act; (c) For composting at a farm other than a dairy, composting must occur as part of an updated farm management plan written in conjunction with a conservation district, a qualified engineer, or other agricultural professional able to certify that the plan meets applicable conservation practice standards in the USDA <i>Washington</i>

	Organic Materials	Volume	Specific Requirements for Activity or Operation
			<p><i>Field Office Technical Guide</i>, Code 317, produced by the Natural Resources Conservation Service;</p> <p>(d) Facilities that distribute composted material off-site must meet the following conditions:</p> <p>(i) Manage the operation to reduce pathogens to meet limits set by Table 220-B of this section;</p> <p>(ii) Conduct compost analysis according to the requirements of Table 220-B. Compost testing frequency is based on volume of compost produced annually as required by subsection (4)(a)(x)(B) of this section; and</p> <p>(iii) Submit annual reports and results of composted material analysis to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.</p>

~~((e)) Composting operations managing the types and volumes of materials identified in Table 220-A must meet the following terms and conditions to maintain their exempt status:~~

~~((i)) (a) Comply with the performance standards of WAC 173-350-040;~~

~~((ii)) (b) Manage the operation to prevent the migration of agricultural pests identified by local horticultural pest and disease control boards, as applicable;~~

~~((iii)) (c) Control nuisance odors to prevent migration beyond property boundaries;~~

~~((iv)) (d) Manage the operation to prevent attraction of flies, rodents, and other vectors; and~~

~~((v)) (e) Allow the department or the jurisdictional health department to inspect the site at reasonable times.~~

~~((2)) (3) **Composting facilities - Permit requirements - Location** (~~standards (permit requirements)~~). There are no specific location standards for composting facilities subject to this chapter; however, composting facilities must meet the ~~(requirements of other federal, state, or local laws and regulations that apply under)~~ **performance standards of WAC 173-350-040**~~((5))~~.~~

Note: When considering compost facility location, please review the U.S. Department of Transportation Federal Aviation Advisory Circular. No. 150/5200-33B 2007.

~~((3)) (4) **Composting facilities - Permit requirements - Design** (~~standards (permit requirements)~~). Composting facilities must be designed and constructed to meet the requirements of this subsection.~~

~~(a) Composting facilities must be designed and constructed such that:~~

~~(i) The facility can be operated to meet the performance standards ~~(requirements in)~~ of WAC 173-350-040; and~~

~~(ii) The facility can be operated to promote controlled, aerobic decomposition. This requirement is intended to ensure that compost facility designers take into account porosity, nutrient balance, pile oxygen, pile moisture, pile~~

temperature, and retention time of composting when designing a facility. It is not intended to mandate forced aeration or any other specific composting technology.

(b) The owner or operator of a composting facility must prepare and provide to the jurisdictional health department engineering reports, engineering plans, and engineering specifications that address the design standards of this subsection. The engineering documents must be prepared by ~~((an))~~ a professional engineer ~~((licensed))~~ registered in the state of Washington, and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features of the facility including, but not limited to: Pad, impoundments, stormwater management features, leachate management features, and aeration and emission control features as required by the permitting air authority where applicable. The engineering report must demonstrate that the proposed design will meet the performance standards of this chapter;

(ii) Scale drawings of the facility including the location and size of feedstock and composted material storage areas, compost processing areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;

(iii) Design specifications for the engineered features of the facility including, but not limited to, pads, stormwater management features, leachate management features, and aeration and emission management features as required by a permitting air authority where applicable; and

(iv) A construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of the facility to ensure the facility is constructed in accordance with the approved design.

(c) When operations require public access, all-weather roads must be provided from the highway or roads to and within the compost facility and must be designed and main-

tained to prevent traffic congestion, traffic hazards, dust, and noise pollution.

(d) Compost facilities must manage stormwater and leachate to meet the standards of this section and of any and all federal, state, and local water and air quality permits.

(e) Composting facilities must minimize the production of leachate and runoff by designing stormwater management features such as run-on prevention systems, which may include covered areas (roofs), diversion swales, ditches, or other features designed to divert stormwater from areas of feedstock preparation, active composting, and curing.

(i) Composting facilities must manage any leachate generated at the facility by providing leachate management features. The leachate management features include, but are not limited to, leachate collection, conveyance, and storage structures, or treatment systems. Leachate must be collected from areas of feedstock storage and preparation, active composting, and curing, and be conveyed to a leachate storage structure or treatment system. Any discharges to ground that result in contaminants migrating to groundwater require a waste discharge permit under chapter 90.48 RCW, Water pollution control, prior to discharge. Discharges to ground that result in degradation of groundwater quality are prohibited under chapter 90.48 RCW, Water pollution control. Any discharge to sanitary sewer requires additional permitting by the local delegated authority or department;

(ii) Stormwater and leachate collection and conveyance structures must be designed based on the volume of water resulting from a twenty-five-year storm event ~~((as defined in WAC 173-350-100))~~;

(iii) Leachate storage structures such as ponds or tanks must be of adequate capacity to store the normal maximum volume of leachate generated by the facility. The normal maximum volume will be established based on the following conditions:

(A) Facility design;

(B) Normal climatic precipitation and evaporation data for the location of the facility;

(C) Monthly leachate reuse or removal; and

(D) A factor of safety to accommodate variability of actual conditions from normal conditions.

(iv) Leachate holding ponds and tanks must be designed according to the following:

(A) Leachate ponds at registered dairies must meet Natural Resources Conservation Service standards for a waste storage facility in the 2001 (revised June 2011) *Washington Field Office Technical Guide* (Code 313).

(B) Leachate ponds at composting facilities other than registered dairies must be designed to meet the following requirements:

(I) Have a liner consisting of a minimum 30-mil thickness geomembrane on a subgrade that provides sufficient bearing capacity to support the liner and the contents of the pond. A liner constructed with a high density polyethylene geomembrane must be at least 60-mil thick to allow for proper welding. The jurisdictional health department may approve the use of an alternative liner design if the owner or operator can demonstrate during the permitting process that the proposed design will prevent migration of solid waste

constituents or leachate into the ground or surface waters at least as effectively as the liners described in this subsection;

(II) Have dikes and slopes designed to maintain their structural integrity under conditions of a leaking liner and capable of withstanding erosion from wave action, overfilling, or precipitation;

(III) Have freeboard (distance between the liquid level and the top of the pond) equal to or greater than eighteen inches to avoid overtopping from wave action, overfilling, or precipitation. The jurisdictional health department may reduce the freeboard requirement ~~((provided that))~~ if other engineering controls are in place that prevent overtopping. These engineering controls must be specified during the permitting process; and

(IV) Leachate ponds that have the potential to impound more than ten-acre feet (three million two hundred fifty-nine thousand gallons) of liquid measured from the top of the dike and which would be released by a failure of the containment dike must be reviewed and approved by the dam safety section of the department.

(C) Tanks used to store leachate must meet design standards in WAC 173-350-330 ~~((4))~~ (4)(b).

(f) Incoming feedstocks, active composting, and curing materials must be placed on pads that prevent contamination of soil or groundwater underlying or adjacent to the pads. Pads must meet the following requirements:

(i) All pads must be curbed or graded in a manner to prevent ponding, to control run-on and runoff, and to separately collect and convey all stormwater and leachate to separate storage or holding systems. Stormwater that is combined with leachate must be managed as leachate in accordance with this section;

(ii) All pads must be constructed on subgrades that provide sufficient bearing capacity to support the weight of the pad, the materials placed on them, and the equipment used in handling the materials;

(iii) The entire surface area of the pad must be designed to maintain its structural and hydraulic integrity against loads resulting from any machinery used for feedstock and compost handling activities, and from surface wear or damage caused by feedstock and compost handling, or by active composting at the facility;

(iv) The pad may be constructed of materials such as concrete (with sealed joints), asphaltic concrete, or soil cement that prevents subsurface soil and groundwater contamination; and

(v) The jurisdictional health department may allow pads for compost facilities to be designed and constructed with materials other than those listed in (f)(iv) of this subsection, provided the applicant demonstrates in the engineering report to the jurisdictional health department's and the department's satisfaction that the alternative pad provides sufficient protection to meet the performance standards of this section and of WAC 173-350-040.

~~((4))~~ **(5) Composting facilities - ~~((Operating standards (permit requirements)))~~ Permit requirements - Documentation.** Within thirty days of completing construction, the owner or operator of a composting facility must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility con-

struction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities must not begin operating until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report, plans, and specifications and has approved the construction documentation in writing. The jurisdictional health department has thirty days after receiving complete construction records to provide its determination.

(6) Composting facilities - Permit requirements - Operating. The owner or operator of a composting facility must:

- (a) Operate the facility to:
 - (i) Control air contaminants such as dust and nuisance odors to prevent other contaminants from migrating beyond property boundaries in accordance with WAC 173-350-040((4)) (3);
 - (ii) Prevent the attraction of vectors;
 - (iii) Prevent the migration of agricultural pests identified by local pest and disease control boards, as applicable;
 - (iv) Ensure access to the facility is restricted when the facility is closed;
 - (v) Ensure that only feedstocks identified in the approved plan of operation are accepted at the facility;
 - (vi) Ensure the facility operates under the supervision and control of a properly trained individual(s) during all hours of operation:

(A) Facility supervisors responsible for daily operation must receive training, or be able to document prior training, in the basics of composting within the first year of supervising the facility. Training must consist of classroom and hands-on course work and conclude with a certificate of completion that must be kept on-site at all times. Appropriate compost training can be obtained through organizations such as the Washington organic recycling council, the Solid Waste Association of North America, the U.S. Composting Council, or other training as approved by the jurisdictional health department((-)); and

(B) Ensure facility employees are trained in appropriate facility operations, maintenance procedures, and safety and emergency procedures according to individual job duties and according to an approved plan of operation. A trained supervisor may provide appropriate training to employees responsible for daily operations.

(vii) Implement and document pathogen reduction activities. Documentation must include compost pile temperatures representative of the composting materials, and notation of turnings as appropriate, based on the composting method used. Pathogen reduction activities must at a minimum include the following:

(A) In vessel composting - The temperature of the active compost pile must be maintained at fifty-five degrees Celsius (one hundred thirty-one degrees Fahrenheit) or higher for three consecutive days (seventy-two hours); or

(B) Aerated static pile must have a cover such as a synthetic material or a layer of finished compost to ensure that pathogen reduction temperatures are reached and vectors are controlled((-)). The temperature of the active compost pile must be maintained at fifty-five degrees Celsius (one hundred

thirty-one degrees Fahrenheit) or higher for three consecutive days (seventy-two hours); or

(C) Windrow composting - The temperature of the active compost pile must be maintained at fifty-five degrees Celsius (one hundred thirty-one degrees Fahrenheit) or higher for fifteen days or longer. During the period when the compost is maintained at fifty-five degrees Celsius (one hundred thirty-one degrees Fahrenheit) or higher, there must be a minimum of five turnings of the windrow; or

(D) An alternative method of composting that can be demonstrated by the owner or operator to achieve an equivalent reduction of human pathogens.

(viii) Monitor the composting process according to the plan of operation submitted during the permitting process. Monitoring must include inspection of incoming loads of feedstocks and pathogen reduction requirements of (a)(vii) of this subsection;

(ix) Collect composted material samples for analysis that are representative of the pile. Use a sampling method such as described in the U.S. Composting Council 2002 Test Methods for the Examination of Composting and Compost, Method 02.01-A through E; and

(x) Analyze composted material for metals and other testing parameters listed in Table 220-B.

(A) The jurisdictional health department may require additional tests for metals and contaminants;

(B) Testing frequency is based on amount of composted material produced. A representative sample of composted material must be tested for every 5,000 cubic yards produced, or every three hundred sixty-five days, whichever is more frequent. The jurisdictional health department may modify the frequency of testing based on historical data for a particular facility;

(C) Composted material meeting the conditions of subsection ((4)) (6)(a)(x) and (g) of this section can be stored off of a pad.

Table 220-B

Testing Parameters

Metals and other testing parameters	Limit (mg/kg dry weight), unless otherwise specified
Arsenic	≤ 20 ppm
Cadmium	≤ 10 ppm
Copper	≤ 750 ppm
Lead	≤ 150 ppm
Mercury	≤ 8 ppm
Molybdenum	≤ 9 ppm
Nickel	≤ 210 ppm
Selenium	≤ 18 ppm
Zinc	≤ 1400 ppm
Physical contaminants ¹	≤ 1 percent by weight total, not to exceed .25 percent film plastic by weight
Sharps	0
pH	5 - 10 (range)

Metals and other testing parameters	Limit (mg/kg dry weight), unless otherwise specified
Biological stability ²	Moderately unstable to very stable
Fecal coliform ³	< 1,000 Most Probable Number per gram of total solids (dry weight)
OR	
Salmonella	< 3 Most Probable Number per 4 grams of total solids (dry weight)

¹A label or information sheet must be provided with compost that exceeds .1((%)) percent by weight of film plastic. See WAC 173-350-220 ((4)) (6)(f)(iii)(D)(I).

²Tests for biological stability must be done as outlined in the United States Composting Council Test Methods for the Examination of Composting and Compost unless otherwise approved by the jurisdictional health department.

³Test for either fecal coliform or salmonella.

Note: Biosolids composters regulated under this chapter must communicate with the jurisdictional health department to determine if different testing parameters and testing frequencies are required.

(b) Inspect the facility to prevent malfunctions and deterioration, operator errors and discharges that may cause or lead to the release of waste to the environment or a threat to human health. Inspections must be conducted at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process.

(c) For compost facilities with leachate holding ponds, conduct regular liner inspections at least once every five years, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. The frequency of inspections must be specified in the operations plan and must be based on the type of liner, expected service life of the material, and the site-specific service conditions:

(i) Inspect the liner for degradation and ruptures of the liner material and for failure of any seams or joints in the liner material. If the maximum wetted extent of the liner geomembrane cannot be directly inspected visually, then the liner must be tested for leaks by electrical leak detection survey methods. If leaks, degradation, or ruptures of the liner material are detected, the liner must be repaired; and

(ii) The jurisdictional health department must be given sufficient notice and have the opportunity to be present during liner inspections. An inspection record must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least five years from the date of inspection. Inspection records must be available to the jurisdictional health department upon request.

(d) Maintain operating records of the following:

- (i) Daily temperatures representative of compost piles;
- (ii) Additional process monitoring data as prescribed in the plan of operation;
- (iii) Results of analyses for composted materials as required in (a)(x) of this subsection and Table 220-B; and

(iv) Facility inspection reports must be maintained in the operating record. Significant deviations from the plan of operation must be noted in the operating record. Records must be kept for a minimum of five years and must be available upon request by the jurisdictional health department.

(e) Prepare and submit ~~((a copy of))~~ an annual report to the jurisdictional health department and the department by April 1st of each calendar year on forms provided by the department. The annual report must detail the facility's activities during the previous calendar year and must include the following information:

- (i) Name and address of the facility;
- (ii) Calendar year covered by the report;
- (iii) Annual quantity and type of feedstocks received and compost produced, in cubic yards or tons;
- (iv) Annual quantity of composted material sold or distributed, in cubic yards or tons;
- (v) Annual summary of laboratory analysis of composted material; and
- (vi) Any additional information required by the jurisdictional health department as a condition of the permit.

(f) Develop, keep, and follow a plan of operation approved as part of the permitting process. The plan of operation must convey to site personnel the concept of operation intended by the designer. The plan of operation must be kept on-site and be available for inspection at the request of the jurisdictional health department. If necessary, the plan must be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation must include the following:

(i) List of feedstocks to be composted, including a general description of the source of feedstocks. Feedstocks must be approved by the department or jurisdictional health department;

(ii) A plan to control air contaminants such as dust and nuisance odors to prevent contaminants from migrating beyond property boundaries in accordance with WAC 173-350-040((4)) (3), including:

(A) A description of how staff will document and respond to nuisance odor complaints should they arise. The plan must include date and time of complaints, weather conditions, and operations at the facility at the time of the complaint, and a summary of actions taken;

(B) A description of facility and operational features to prevent nuisance odors beyond the facility's property boundary, as determined by the jurisdictional health department, the department, or the air authority. The description must address the receiving, composting, curing, and storage areas of the facility;

(C) A description of facility maintenance activities that encompass nuisance odor prevention and control, such as acquiring critical odor control backup equipment in the event of a breakdown, a schedule for purging aeration lines and changing biofilter media as appropriate, and a schedule for cleaning leachate ponds or leachate storage tanks as appropriate; and

(D) A description of how feedstocks with high moisture or the potential for high odors will be managed to reduce nuisance odors upon receipt, and through the composting process.

(iii) A description of how wastes and organic materials including incoming feedstocks, composting, curing, and composted materials are to be handled on-site during the facility's active life, including:

(A) Maximum site capacity in cubic yards for all materials on-site at any one time. The jurisdictional health department may require cumulative capacity for materials or separate capacities for incoming feedstocks, composting, curing, and composted materials, or any combination;

(B) ~~((Throughput))~~ Processing capacity in tons or cubic yards of solid waste feedstocks processed in a given amount of time. The jurisdictional health department may require monthly or annual ~~((throughput))~~ processing capacity;

(C) Procedures and criteria for ensuring that only the feedstocks described will be accepted. This includes a plan for rejecting feedstocks contaminated with greater than five percent physical contaminants by volume, or a plan to accept and separate contaminated loads from noncontaminated loads, and reduce physical contaminants to an acceptable level prior to composting;

(D) Procedure to reduce physical contaminants in composted material to meet testing parameters in Table 220-B. Grinding to reduce the size of physical contaminants does not meet the requirements of this section;

(I) Compost facilities must provide a label or information sheet to purchasers of compost that exceeds .1((%)) percent film plastic by weight but does not exceed .25((%)) percent film plastic by weight. The label or information sheet must include the statement in subsection (4)(f)(iii)(D)(II) of this section, or equivalent language approved by jurisdictional health department or the department.

(II) "This compost does not meet Department of Ecology standards for film plastic content for unrestricted use. This compost may only be used in locations where a means of removing or containing the film plastic on-site is put in place promptly after use. Acceptable controls include removal from the site, incorporation, planting, covering with soil or another media, or containment in a compost sock or similar device. This product may not be used adjacent to regulated waters of the state (e.g., wetlands, streams, lakes) or in environmentally sensitive areas."

(E) Procedures for handling unacceptable wastes;

(F) A discussion on types and amounts of feedstocks including basic calculations showing that the facility will be able to achieve an acceptable mix of materials for efficient decomposition;

(G) Material flow plan describing general procedures to manage all materials on-site from incoming feedstock to composted material;

(H) A description of equipment, including equipment to add water to compost as necessary;

(I) Compost process monitoring plan, including compost mix (carbon to nitrogen ratio), temperature, moisture, and porosity;

(J) Pathogen reduction plan;

(K) Representative sampling and analysis plan for the composted material such as described in the 2002 U.S. Composting Council Test Methods for the Examination of Composting and Compost Method 02.01-A through E;

(L) Leachate management plan, including monthly precipitation and evaporation data, and if applicable, monthly leachate reuse or removal; and

(M) Stormwater management plan.

(iv) A description of how equipment, structures, and other systems are to be inspected and maintained, including the frequency of inspections and inspection logs;

(v) A description of how facility staff will receive appropriate training in the operation of the facility, including how they will be trained to identify nuisance odors and how to correct them;

(vi) A community relations plan describing how the owner or operator will document and manage complaints;

(vii) Safety, fire, and emergency plans;

(viii) Forms for recordkeeping of daily volumes or weights of incoming feedstocks by type, outgoing composted material, and process monitoring results; and

(ix) Other details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(g) Manage composted material piles that have met the testing parameters in Table 220-B in the following manner:

(i) Comply with the performance standards of WAC 173-350-040; ~~((and))~~

(ii) Minimize and control runoff from composted material piles through the use of covers, diversion swales, berms, ditches, or other features designed to prevent runoff and divert stormwater from compost material; and

(iii) Minimize odor by maintaining porosity of composted material piles and managing moisture levels in composted material piles, not to exceed sixty percent moisture.

~~((5))~~ **7) Composting facilities - Permit requirements - Groundwater monitoring** ~~((requirements (permit requirements)))~~. There are no specific groundwater monitoring requirements for composting facilities subject to this chapter; however, composting facilities must meet the ~~((requirements of other federal, state, or local laws and regulations that apply under))~~ performance standards of WAC 173-350-040~~((5))~~.

~~((6))~~ **8) Composting facilities - Permit requirements - Closure** ~~((requirements (permit requirements)))~~. The owner or operator of a composting facility must:

(a) Notify the jurisdictional health department sixty days in advance of closure. At closure, the facility owner or operator is financially responsible for the removal of all solid waste, including but not limited to, raw or partially composted feedstocks, composted material and leachate from the facility. The materials must be sent to another facility that complies with the applicable regulations for handling the waste~~((:))~~; and

(b) Develop, keep, and follow a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan must include methods of removing solid waste, leachate, and other organic materials from the facility. For planning purposes, assume that the facility is at full, permitted site capacity at the time of closure.

~~((7))~~ **9) Composting facilities - Permit requirements - Financial assurance** ~~((requirements (permit requirements)))~~. There are no specific financial assurance

requirements for composting facilities subject to this chapter; however, composting facilities must meet the ~~((requirements of other federal, state, or local laws and regulations that apply under))~~ performance standards of WAC 173-350-040~~((5))~~.

~~((8))~~ **(10) Composting facilities - Permit application contents** ~~((permit requirements))~~. The owner or operator of a composting facility must obtain a solid waste permit from the jurisdictional health department. All applications for permits must be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit must contain:

(a) Engineering reports, plans, and specifications that address the design standards of subsections ~~((3))~~ **(4) and (5)** of this section;

(b) A plan of operation meeting the requirements of subsection ~~((4))~~ **(6)** of this section; and

(c) A closure plan meeting the requirements of subsection ~~((6))~~ **(8)** of this section.

~~((9) Composting facilities - Construction records (permit requirements)). Within thirty days of completing construction, the owner or operator of a composting facility must provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities must not begin operating until the jurisdictional health department has determined that the construction was~~

~~completed in accordance with the approved engineering report, plans, and specifications and has approved the construction documentation in writing. The jurisdictional health department has thirty days after receiving complete construction records to provide its determination.~~

~~(10))~~ **(11) Composting facilities - Designation of composted materials** ~~((permit requirements))~~. When used on-site or distributed off-site, composted materials meeting the testing parameters of Table 220-B are no longer subject to this chapter. Composted materials that do not meet these requirements are solid waste and subject to management under chapter 70.95 RCW, Solid waste management—Reduction and recycling.

AMENDATORY SECTION (Amending WSR 13-08-016, filed 3/25/13, effective 4/25/13)

WAC 173-350-225 Other organic material handling activities. (1) In accordance with RCW 70.95.305, activities identified in this section are exempt from solid waste handling permitting when in compliance with the terms and conditions of this section. Any person engaged in the activities in this section that does not comply with the terms and conditions of this section is required to obtain a permit from the jurisdictional health department in accordance with the requirements of WAC 173-350-490. In addition, violations of the terms and conditions of this ~~((subsection))~~ section may be subject to the ~~((penalty))~~ enforcement provisions of RCW 70.95.315.

Table 225-A

Terms and Conditions for Solid Waste Permit Exemptions

	Organic Materials	Volume	Specific Requirements for Activity or Operation
(1)	All organic feedstocks	No more than 5,000 gallons or 25 cubic yards of material on-site at any one time.	No notification, reporting or testing requirements.
(2)	All organic feedstocks	Greater than 25 but no more than 250 cubic yards of material generated on- or off-site, or up to 1,000 cubic yards of material generated on-site at any one time.	Exemption applies to vermicomposting only. Vermicomposting facilities managing more than 25 cubic yards of any organic material must meet the following conditions: (a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department. (b) Facilities that distribute material off-site must submit annual reports to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.

	Organic Materials	Volume	Specific Requirements for Activity or Operation
(3)	Preconsumer vegetative food waste Yard debris Crop residues Manure and bedding Bulking agents	Greater than 25 but no more than 1,000 cubic yards of material on-site at any one time.	Exemption applies to vermicomposting only. Vermicomposting facilities managing more than 25 cubic yards of only the listed feedstocks must meet the following conditions: (a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department. (b) Facilities that distribute material off-site must submit annual reports to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.
(4)	All organic feedstocks	Greater than 5,000 but no more than 50,000 gallons of liquid or semi-solid material on-site at any one time; or Greater than 25 but no more than 250 cubic yards of nonliquid material on-site at any one time.	Other conversion technologies managing more than 5,000 gallons liquid or semi-solid or 25 cubic yards of nonliquid material must meet the following conditions: (a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notification must be submitted on a form provided by the department. (b) Facilities that distribute material off-site must meet the following conditions: (i) Sample and test material every 1 million gallons or 5,000 cubic yards or once per year, whichever is more frequent, to demonstrate it meets compost quality standards of WAC 173-350-220(4) (Table 220-B) before it is distributed for off-site use; or (ii) Ensure material meets the conditions for a commercial fertilizer as applicable in chapter 15.54 RCW, <u>Fertilizers, minerals, and limes</u> ; or (iii) Send material to a compliant permitted or conditionally exempt compost facility for further treatment to meet compost quality standards; or (iv) Land apply material in accordance with WAC 173-350-230, Land application; or (v) Use material in accordance with WAC 173-350-200, Beneficial use permit exemption; or (vi) Process or manage material in an alternate manner approved by the department or the jurisdictional health department.

	Organic Materials	Volume	Specific Requirements for Activity or Operation
			(c) Submit annual reports to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.

(2) Facilities managing under the rules and volumes of material described in Table 225-A above are conditionally exempt facilities when they meet the following conditions:

(a) Comply with the performance standards ~~((s))~~ of WAC 173-350-040;

(b) Allow inspections by the department and/or jurisdictional health department at reasonable times to verify compliance with the conditions specified in this subsection;

(c) Manage the operation to prevent attraction of flies, rodents, and other vectors;

(d) Control nuisance odors to prevent migration beyond property boundaries; and

(e) Manage the operation to prevent the migration of agricultural pests identified by local horticultural pest and disease control boards, as applicable.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-230 Land application. (1) **Land application - Applicability.** ~~((This section applies))~~

(a) ~~These standards apply to solid waste that is beneficially used on the land through application at an agronomic rate, as a soil amendment, or for ((its agronomic value, or soil amending capability, including)) land reclamation. ((This section does))~~

(b) ~~These standards do not apply to:~~

~~((a) The application of commercial fertilizers registered with the Washington state department of agriculture as provided in RCW 15.54.325, and which are applied in accordance with the standards established in RCW 15.54.800(3);~~

~~(b) Biosolids regulated under chapter 173-308 WAC, Biosolids management;~~

~~(c) Composted materials no longer considered solid waste under WAC 173-350-220(10);~~

~~(d) Dangerous waste regulated under chapter 173-303 WAC Dangerous waste regulations;~~

~~(e) Waste derived soil amendments)) (i) Land application of manure and bedding, crop residue, and on-farm vegetative waste at agronomic rates as excluded under WAC 173-350-020;~~

~~((ii) Land application of solid waste exempted from permitting under WAC 173-350-200; ((and~~

~~((f))~~

~~((iii) Solid waste used to improve the engineering characteristics of soil;~~

~~((iv) Land application of composted materials as defined in WAC 173-350-100;~~

~~((v) Land application of vermicompost and organic materials meeting the terms and conditions for permit exemption of WAC 173-350-225; and~~

~~((vi) Land application of digestate meeting the terms and conditions for permit exemption or permitting requirements of WAC 173-350-250.~~

~~((2) **Land application - Permit exemptions.** There are no permit exemptions for land application.~~

~~((3) **Land application - Permit requirements - Location** ((standards)). There are no specific location standards for land application of solid waste subject to this chapter; however, land application sites must meet the ((requirements provided under)) performance standards of WAC 173-350-040((~~((s))~~)).~~

~~((~~((3))~~) **Land application - Permit requirements - Design** ((standards)). There are no specific design standards for land application of solid waste subject to this chapter; however, land application sites must meet the ((requirements provided under)) performance standards of WAC 173-350-040((~~((s))~~)).~~

~~((~~((4))~~) **Land application - ((Operating standards)) Permit requirements - Documentation.** There are no specific engineering or construction documentation requirements; however, land application sites must meet the performance standards of WAC 173-350-040.~~

~~((6) **Land application - Permit requirements - Operation.** The owner or operator of a land application site ((shall)) must:~~

~~((a) Operate the site in compliance with the performance standards of WAC 173-350-040((-The jurisdictional health department shall determine the need for environmental monitoring to ensure compliance with the performance standards)) and this section. In addition the owner or operator ((shall:~~

~~((a) Operate the site to ensure that)) must develop, keep, and follow a plan of operation approved as part of the permitting process. The plan of operation must be available for inspection at the request of the jurisdictional health department. If necessary, the plan may be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation must include the following:~~

~~((i) A description of the types of solid wastes to be land applied;~~

~~((ii) A description of the processes by which the solid waste is generated and treated;~~

~~((iii) A description of the characteristics of the waste that provide agronomic, soil-amending, or reclamation capability;~~

~~((iv) A waste monitoring plan that provides representative characterization of the waste over time;~~

~~((v) A description of how the owner or operator will ensure that land application occurs at a predictable application rate determined as follows:~~

~~((A) For agricultural applications, solid waste must be applied to the land at a rate that does not exceed the agronomic rate. The agronomic rate should be based on Washing-~~

ton State University cooperative extension service fertilizer guidelines or other appropriate resources accepted by the jurisdictional health department;

(B) For the purposes of land reclamation or other soil amending activities, the application rate may be designed, for example, to achieve a soil organic matter content or other soil physical characteristics to promote long-term soil productivity, with consideration of the carbon-to-nitrogen ratio to control nutrient leaching; and

(C) For liquid wastes, the application rate must also be based on soil permeability and infiltration rate.

(vi) A description of how the owner or operator will determine the application rate that accounts for the characteristics of the waste to be applied, characteristics of receiving site soils, irrigation practices, climate, and the crop to be grown;

(vii) A description of the process, system, and equipment that will be used to apply the waste that explains:

(A) How the equipment and system will be calibrated to deliver waste at the appropriate rate;

(B) Whether the waste will be allowed to remain on the surface of the land, tilled into the soil, or injected into the soil at the time of application;

(C) When the waste will be applied to the land relative to crop and livestock management practices; and

(D) Any restrictions on application related to climatic factors including typical precipitation, twenty-five-year storm events, temperature, wind, frozen soils, saturated soils, or seasonal high groundwater.

(viii) A description of how the waste will be managed at all points during storage and application to control attraction to vectors and to mitigate nuisance odor impacts (unless exempted under chapter 70.94 RCW, Washington Clean Air Act), including a description of how owners or operators will respond to complaints;

(ix) If the seasonal high groundwater is three feet or less below the surface, a management plan describing how groundwater will be protected;

(x) For waste stored in piles ~~((on))~~ at the land application site, a description of how the owner or operator will ensure that:

(A) Contamination of groundwater, surface water, air, and land during storage ~~((and in case of fire or flood))~~ is prevented;

(B) The potential for combustion within the pile ~~((and the potential for combustion from other sources))~~ is minimized;

(C) The duration of ~~((on-site waste))~~ storage of the entire pile is limited to one year and limited to the amount that will be applied to the site during a one-year period according to the plan of operation, or less if the jurisdictional health department believes it is necessary to prevent the contamination of groundwater, surface water, air ~~((and)),~~ or land ~~((; and~~

~~(D) The amount of material on site does not exceed the amount that could potentially be applied to the site during a one-year period in accordance with the plan of operations;~~

~~(ii) For storage of liquid waste or semisolid waste in surface impoundments or tanks, the requirements of WAC 173-350-330 are met;~~

(iii) Land application occurs at a predictable application rate determined as follows:

(A) For agricultural applications, solid waste shall be applied to the land at a rate that does not exceed the agronomic rate. The agronomic rate should be based on Washington State University cooperative extension service fertilizer guidelines or other appropriate guidance accepted by the jurisdictional health department;

(B) For the purposes of land reclamation or other soil amending activities, the application rate may be designed to achieve a soil organic matter content or other soil physical characteristic and promote long-term soil productivity, with consideration of the carbon-to-nitrogen ratio to control nutrient leaching; and

(C) For liquid wastes, the application rate shall also be based on soil permeability and infiltration rate.

~~(b))~~ Subsequent accumulation under the same conditions is allowed at the same location after the entire pile has been used; and

(D) For piles that will not meet conditions of (A) through (C) of this subsection, a demonstration that the owner or operator will meet the requirement of WAC 173-350-320.

(xi) For waste stored in piles somewhere other than the land application site, a description of how the owner or operator will meet the requirements of WAC 173-350-320;

(xii) For storage of liquid waste or semisolid waste in surface impoundments or tanks, a description of how the owner or operator will meet the requirements of WAC 173-350-330;

(xiii) A description of how the owner or operator will maintain ~~((daily))~~ operating records of the location where waste is applied, amount and type of waste applied ~~((to the land)),~~ the crop planted, and ~~((any additional))~~ other nutrient inputs, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Significant deviations from the plan of operation ~~((shall))~~ must be noted in the operating record. Records ~~((shall))~~ must be kept for a minimum of five years and ~~((shall))~~ be available upon request by the jurisdictional health department; and

~~((e))~~ (xiv) Other details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(b) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report ~~((shall))~~ must detail the land application activities during the previous calendar year and ~~((shall))~~ must include the following information:

(i) ~~((Site))~~ Address or legal description of where waste was land applied;

(ii) Calendar year covered by the report;

(iii) Annual ~~((quantity))~~ quantities and types of waste ~~((received from each source))~~ managed;

(iv) For each crop grown: The acreage used, the amount, type and source of each waste applied, the crop, and any additional nutrient inputs to the land, such as manure, biosolids, or commercial fertilizer;

(v) Quantity and type of any waste remaining in storage as of December 31st of the reporting year;

(vi) Any additional waste characterization information required to be obtained as a condition of the permit, and a summary report of that data;

(vii) Any environmental monitoring data required to be obtained as a condition of the permit, and a summary report of that data; and

(viii) Any additional information required by the jurisdictional health department as a condition of the permit;

~~(d) Develop, keep, and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:~~

~~(i) A description of the types of solid wastes to be handled at the site;~~

~~(ii) A description of how wastes are to be handled on-site during the life of the site including:~~

~~(A) How wastes will be delivered to the site and meet any local agency notification requirements;~~

~~(B) A description of the process, system and equipment that will be used to apply the waste to the land that explains:~~

~~(I) How the equipment and system will be calibrated to deliver waste at the agronomic rate;~~

~~(II) Whether the waste will be allowed to remain on the surface of the land, will be tilled into the soil, or will be injected into the soil at the time of application;~~

~~(III) When the waste will be applied to the land relative to crop and livestock management practices; and~~

~~(IV) Any proposed restrictions on application related to climatic factors including typical precipitation, twenty-five-year storm events as defined in WAC 173-350-100, temperature, and wind, or site conditions including frozen soils and seasonal high groundwater;~~

~~(C) A description of how the waste will be managed at all points during storage and application to control attraction to disease vectors and to mitigate nuisance odor impacts;~~

~~(iii) A spill response plan including the names and phone numbers of all contacts to be notified in the event of a spill and how the spill will be cleaned up;~~

~~(iv) If the seasonal high groundwater is three feet or less below the surface, a management plan describing how groundwater will be protected;~~

~~(v) A waste monitoring plan providing analytical results representative of the waste being applied to the land, over time, taking into account the rate of production of the waste, timing of delivery, and storage;~~

~~(vi) The forms used to record volumes, weights and waste application data;~~

~~(vii) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department).~~

~~((5)) (7) **Land application - Permit requirements - Groundwater monitoring** (*requirements*). There are no specific groundwater monitoring requirements for land application sites subject to this chapter; however, land application sites must meet the (*requirements provided under*) performance standards of WAC 173-350-040.~~

~~((6)) (8) **Land application - Permit requirements - Closure** (*requirements*). The owner or operator of all land application sites (~~shall~~) must notify the jurisdictional health department sixty days in advance of closure. All land application sites (~~shall~~) must be closed by applying all materials in storage in accordance with the permit, or by removing those materials to a facility that conforms to the applicable regulations for handling the waste.~~

~~((7)) (9) **Land application - Permit requirements - Financial assurance** (*requirements*). There are no specific financial assurance requirements for land application sites subject to this chapter; however, land application sites must meet the (*requirements provided under*) performance standards of WAC 173-350-040.~~

~~((8)) (10) **Land application - Permit application contents.**~~

~~(a) The owner or operator of land application sites subject to this section (~~shall~~) must obtain a solid waste permit from the jurisdictional health department. All applications for permits (~~shall~~) must be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit (~~shall~~) must contain:~~

~~(i) Contact information, including name, contact person, mailing address, phone, fax, email for:~~

~~(A) Any person who generates waste that will be applied to the site;~~

~~(B) The person who is applying for a permit (the permit holder);~~

~~(C) The person who prepares the permit application; and~~

~~(D) The person who owns the site where the waste will be applied.~~

~~(ii) (~~Statement of intended use. The permit application shall contain a clear explanation of the benefit to be obtained from land application of the material. Avoidance of disposal is not adequate justification for land application of solid waste.~~~~

~~(iii) An analysis of the waste which includes:~~

~~(A) A description of the material to be applied to the land;~~

~~(B) A description of the processes by which the material is generated and treated including all processed feedstocks;~~

~~(C) Any pseudonyms or trade names for the material;~~

~~(D) A discussion of the potential for the material to generate nuisance odors or to attract disease vectors, including any complaints regarding nuisance odors associated with this material;~~

~~(E)) An analysis of pollutant concentrations of the following reported on a dry weight basis:~~

~~((H)) (A) Total arsenic;~~

~~((H)) (B) Total barium;~~

~~((H)) (C) Total cadmium;~~

~~((IV)) (D) Total chromium;~~

~~((V)) (E) Total copper;~~

~~((VI)) (F) Total lead;~~

~~((VII)) (G) Total mercury;~~

~~((VIII)) (H) Total molybdenum;~~

~~((IX)) (I) Total nickel;~~

~~((X)) (J) Total selenium;~~

~~((XI)) (K) Total zinc.~~

~~((F))~~ (iii) An analysis of nutrients at a minimum to include ~~((total Kjeldahl))~~ organic nitrogen, ~~((total))~~ nitrate-nitrogen, ~~((total ammonia and))~~ ammonium-nitrogen, total phosphorus, and ~~((extractable))~~ total potassium, reported on a dry weight basis;

~~((G))~~ (iv) An analysis of physical/chemical parameters to include at a minimum: Total solids, ~~((total volatile solids,))~~ pH, ~~((electrical conductivity))~~ soluble salts, total organic carbon;

~~((H))~~ (v) A discussion of any pathogens known or suspected to be associated with this material, including those which can cause disease in plants, animals, or humans;

~~((I) The concentration of fecal coliform bacteria expressed as CFU or MPN per gram of dry solid material; and~~

~~((J))~~ (vi) Any additional analysis required by the jurisdictional health department. The jurisdictional health department may reduce the analytical requirements of this section ~~((: Methods of analysis are to be determined by the jurisdictional health department.~~

~~((iv))~~;

(vii) A ~~((comprehensive))~~ land application site characterization including:

(A) A description of current practices and a brief description of past practices on the ~~((application))~~ site ~~((: including application of wastes, soil amendments, manures, biosolids, liming agents, and other fertilization practices, livestock usage, irrigation practices, and crop history. Also indicate whether any management plan has been prepared for the site such as a farm, forest, or nutrient management plan. Discuss any potential changes to management practices at the site;~~

~~((B) A description of the climate at the application site including typical precipitation, precipitation of a twenty-five-year storm, as defined in WAC 173-350-100, temperatures, and seasonal variations);~~

~~((C))~~ (B) A ~~((brief))~~ discussion of the potential for runoff and runoff, and typical depths to seasonal high groundwater. Runoff discussion must include direction of site drainage and identification of any surface water within one-quarter mile of the site;

~~((D))~~ (C) An analysis of soil nutrients including ~~((residual nitrate))~~ plant available nitrogen in the upper ~~((two))~~ three feet of soil in one foot increments;

~~((E))~~ (D) A site map showing property boundaries ~~((and ownership of))~~, adjacent properties and adjacent property uses, with the application areas clearly shown, and with the latitude and longitude of the approximate center of each land application site;

~~((F))~~ (E) A topographic relief map of the site extending one-quarter mile beyond the site boundaries at a scale of 1:24,000 or other scale if specified by the jurisdictional health department;

~~((G))~~ (F) Show the following information on either of the maps provided or on additional maps ~~((if needed))~~:

(I) Location of the site by street address, if applicable;

(II) The zoning classification of the site;

(III) The means of access to the site;

(IV) The size of the site in acres, and if applicable, the size of individual fields, units, and application areas;

(V) The location and size of any areas which will be used to store the waste;

~~((VI))~~ ~~((Adjacent properties, uses, and their zoning classifications;~~

~~((VII))~~ ~~((Delineation of wetlands on the site;~~

~~((VIII))~~ Any portion of the site that falls within a well-head protection area;

~~((IX))~~ (VII) Any seasonal or perennial surface water ~~((bodies))~~ located on the site or perennial surface water bodies within one-quarter mile of the site;

~~((X))~~ (VIII) The location of all wells within one-quarter mile of the boundary of the application area ~~((which are listed in public records or otherwise known,))~~ whether for domestic, irrigation, or other purposes;

~~((XI))~~ (IX) Any setback or buffer to surface water, property boundaries, or other feature, if proposed;

~~((XII))~~ (X) The location of any critical areas or habitat identified under the Endangered Species Act, local growth management plans, habitat conservation plans, conservation reserve program, or local shoreline master program ~~((;~~

~~((XIII))~~ ~~((A copy of the Natural Resources Conservation Service soil survey map from the most recent edition of the soil survey that includes the distribution of soil types with an overlay of the site boundaries)); and~~

~~((XIV))~~ (XI) A description of the soil type(s), textural classes, and soil depths present on the site as determined by the most recent edition of the Natural Resources Conservation Service soil survey or from actual field measurements.

~~((v))~~ (viii) A plan of operation meeting the requirements of subsection ~~((4))~~ (6) of this section.

(b) Two or more areas of land under the same ownership or operational control which are not contiguous may be considered as one site for the purposes of permitting, if in the opinion of the jurisdictional health department the areas are sufficiently proximate and management practices are sufficiently similar that viewing them as one proposal would expedite the permit process without compromising the public interest. A jurisdictional health department may also require separate permits for a contiguous area of land if it finds that the character of a proposed site or management practices across the site are sufficiently different that the permit process and public interest would be best served by a more focused approach.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-240 Energy recovery and incineration facilities. (1) Energy recovery and incineration facilities - Applicability.

(a) These standards apply to all facilities designed to burn more than twelve tons of solid waste ~~((or refuse-derived fuel))~~ per day.

(b) These standards do not apply to:

(i) Facilities that burn gases ~~((recovered at))~~ from a land-fill or solid waste digester ~~((s-~~

~~((e)))~~;

(ii) Facilities that burn materials that are no longer solid waste as determined by WAC 173-350-021.

(2) Energy recovery and incineration facilities - Permit exemptions. In accordance with RCW 70.95.305, the combustion of ~~((wood waste, wood derived fuel, and wastewater treatment sludge generated from the manufacturing of wood pulp or paper, for the purpose of energy recovery is subject solely to the requirements of (d)(i) through (iv) of this subsection and is exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of (d)(i) through (iv) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter))~~ waste materials in compliance with the terms and conditions of Table 240-A is exempt from the requirement to obtain a solid waste handling permit from the jurisdictional health department. If a facility does not operate in compliance with the terms and conditions established for an exemption under this subsection, the facility may be subject to the permitting requirements for solid waste handling under this chapter. In addition, violations of the

terms and conditions of ~~((d)(i) through (iv) of))~~ this subsection may be subject to the ~~((penalty))~~ enforcement provisions of RCW 70.95.315.

~~((d))~~ Owners and operators of all categorically exempt energy recovery facilities shall:

(i) Comply with the performance standards of WAC 173-350-040;

(ii) Ensure that only fuels approved in writing by the agency with jurisdiction over the facility for air quality regulation are combusted;

(iii) Allow department and jurisdictional health department representatives to inspect the facility at reasonable times for the purpose of determining compliance with this chapter; and

(iv) Ensure that wastewater treatment sludge generated from the manufacturing of wood pulp or paper is combusted only in energy recovery units at the facility from which it originates.

~~((2))~~

Table 240-A

Terms and Conditions for Solid Waste Permit Exemption

	Waste Materials	Specific Requirements for Activity or Operation
(1)	<p><u>Wood waste</u></p> <p><u>Wood derived fuel</u></p> <p><u>Wastewater treatment sludge generated from the manufacturing of wood pulp or paper</u></p>	<p>(a) Meet the performance standards of WAC 173-350-040;</p> <p>(b) Ensure that only materials approved in writing by the agency with jurisdiction over the facility for air quality regulation are combusted;</p> <p>(c) Allow department and jurisdictional health department representatives to inspect the facility at reasonable times for the purpose of determining compliance with this chapter; and</p> <p>(d) Ensure that wastewater treatment sludge generated from the manufacturing of wood pulp or paper is combusted only in energy recovery units at the facility from which it originates.</p>

(3) Energy recovery and incineration facilities - Permit requirements - Location ~~((standards)).~~ There are no specific location standards for energy recovery or incineration facilities subject to this chapter; however, energy recovery and incineration facilities must meet the ~~((requirements provided under))~~ performance standards of WAC 173-350-040~~((§)).~~

~~((3))~~ **(4) Energy recovery and incineration facilities - Permit requirements - Design** ~~((standards. There are no specific design standards for)).~~ Energy recovery ~~((or))~~ and incineration facilities ~~((subject to this chapter; however, energy recovery and incineration facilities must meet the requirements provided under))~~ must be designed so that the facility, including the following features, can be operated to meet the performance standards of WAC 173-350-040~~((§));~~

(a) The design of the storage and handling units for incoming waste as well as fly ash, bottom ash, and any other wastes produced by air or water pollution controls; and

(b) The design of the incinerator or thermal reactor, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design must also be included.

(5) Energy recovery and incineration facilities - Permit requirements - Documentation.

(a) The owner or operator must submit facility drawings and construction documents for, at a minimum, any proposed addition or modification of elements described in subsection (4) of this section to the jurisdictional health department for review and approval. The facility drawings and construction documents for proposed construction of engineered features must be prepared by a professional engineer registered in the state of Washington and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features. The engineering report must demonstrate that the proposed design will meet the performance standards of WAC 173-350-040;

(ii) Scale drawing of the facility including the location and size of waste handling areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;

(iii) Design specifications for the engineered features of the facility as applicable; and

(iv) For new construction, a construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of

the facility, to ensure the facility is constructed in accordance with the approved design.

(b) The owner or operator must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility construction, including the results of observations and any testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. The owner or operator must not commence operation in a newly constructed portion of the facility until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

((4)) (6) Energy recovery and incineration facilities - Permit requirements - Operating (~~standards~~). The owner or operator of an energy recovery or incineration facility (shall) must:

(a) Operate the (~~facility to:~~) (i) site in compliance with the performance standards of WAC 173-350-040 and this section. In addition, the owner or operator must develop, keep, and follow a plan of operation approved as part of the permitting process. The plan of operation must be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation must include the following:

(i) A description of the types of waste materials to be handled at the facility;

(ii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

(iii) A description of how waste materials are to be handled on-site, including maximum site capacity, methods of adding or removing waste materials from the facility and equipment used;

(iv) A description of how the owner or operator will ensure that the facility is operated in a way to:

(A) Control litter, dust and nuisance odors;

(B) Control rodents, insects, and other vectors;

(C) Confine solid wastes prior to and after processing to specifically designed piles, surface impoundments, tanks or containers meeting the applicable standards of this chapter. Storage of wastes other than in the specifically designed storage compartments is prohibited. Equipment and space (~~shall~~) must be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as required to maintain the plant in a sanitary and clean condition;

((i)) (D) Manage solid wastes on-site during the facility's active life, including alternative storage, and/or disposal plans for all situations that would result in overfilling of the storage facility;

(E) Handle solid wastes, including combustion or other residues, in a manner that complies with this chapter; and

((i)) (F) Provide recyclable material collection at all facilities that accept municipal solid waste from the general public, self-haul residential, or commercial waste generators(~~;~~ and

(iv) Ensure that dangerous waste is not disposed, treated, stored or otherwise handled, unless the requirements of chapter 173-303 WAC, Dangerous waste regulations, are met).

((b)) (v) Inspect the facility to prevent malfunctions and deterioration, operator errors and discharges that may lead to the release of wastes to the environment or cause a threat to human health. Inspections must address how equipment, structures and other systems, including leachate collection and gas collection equipment, are to be inspected and maintained. The owner or operator (~~shall~~) must conduct these inspections as needed, but at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. Inspections must be recorded on an inspection form to be included in the plan of operation.

((e)) (vi) A description of how operators will maintain (~~daily~~) operating records on the amounts (weights or volume) and types of waste(s) received and removed from the facility, and number of vehicles delivering waste to the facility, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Facility inspection reports (~~shall~~) must be maintained in the operating record(~~(- Significant)~~), including at least the date of inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. The operator must notify the jurisdictional health department prior to any significant deviation from the plan of operation, and deviations (~~from the plan of operation shall also~~) must be noted on the operating record. Records (~~shall~~) must be (~~maintained~~) kept for a minimum of five years and (~~shall~~) must be available upon request by the jurisdictional health department;

(vii) Safety, fire and emergency plans, including:

(A) Actions to take if there is a fire or explosion;

(B) Actions to take if leaks are detected;

(C) Remedial action programs to be implemented in case of a release of hazardous substances to the environment; and
(D) Actions to take for other releases (e.g., failure of run-off containment system).

(viii) Other such details to demonstrate that the facility will be operated in accordance with this chapter and as required by the jurisdictional health department.

((d)) (b) Prepare and submit (~~a copy of~~) an annual report to the jurisdictional health department and the department by April 1st of each year on forms supplied by the department. The annual report (~~shall~~) must detail the facility's activities during the previous calendar year and (~~shall~~) must include (~~the following information~~):

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual (~~quantity of each type of solid~~) quantities and types of waste received and incinerated, in tons if available;

(iv) Annual quantity, type and destination of (~~solid~~) waste bypassed, in tons;

(v) Annual quantity of ash disposed and disposal location, in tons; and

(vi) Any additional information required by the jurisdictional health department as a condition of the permit.

~~((e)) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:~~

~~(i) A description of the types of solid wastes to be handled at the facility;~~

~~(ii) How solid wastes are to be handled on-site during the facility's active life, including alternative storage, and/or disposal plans for all situations that would result in overfilling of the storage facility;~~

~~(iii) A description of how equipment, structures and other systems, including leachate collection and gas collection equipment, are to be inspected and maintained, including the frequency of inspection and inspection logs;~~

~~(iv) Safety, fire and emergency plans including:~~

~~(A) Actions to take if there is a fire or explosion;~~

~~(B) Actions to take if leaks are detected;~~

~~(C) Remedial action programs to be implemented in case of a release of hazardous substances to the environment;~~

~~(D) Actions to take for other releases (e.g., failure of run-off containment system);~~

~~(v) Forms used to record volumes or weights;~~

~~(vi) Other such details to demonstrate that the facility will be operated in accordance with this chapter and as required by the jurisdictional health department.~~

~~((5)) (7) Energy recovery and incineration facilities - Permit requirements - Groundwater monitoring (*requirements*). There are no specific groundwater monitoring requirements for energy recovery and incineration facilities subject to this chapter; however, energy recovery and incineration facilities must meet the (*requirements provided under*) performance standards of WAC 173-350-040(~~((5))~~).~~

~~((6)) (8) Energy recovery and incineration facilities - Permit requirements - Closure (*requirements*). The owner or operator of an energy recovery or incineration facility (~~shall~~) must develop, keep, and follow a closure plan that includes:~~

~~(a) (~~Notify~~) Notification to the jurisdictional health department one hundred eighty days in advance of closure (~~At the time of closure all solid waste shall be removed to a facility that conforms with the applicable regulations for handling the waste.~~~~

~~(b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include the methods of removing waste.~~

~~(7) Energy recovery and incineration facilities - Environmental impact statement required. In accordance with RCW 70.95.700, no solid waste energy recovery or incineration facility shall be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030 (2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW, State Environmental Policy Act.~~

~~((8)):~~

~~(b) Removal of all waste material to a facility that meets all applicable regulations for handling the waste, or combustion of all remaining waste prior to closure; and~~

~~(c) Methods of removing waste material.~~

~~(9) Energy recovery and incineration facilities - Permit requirements - Financial assurance (*requirements*). There are no specific financial assurance requirements for energy recovery facilities and incineration facilities subject to this chapter; however, energy recovery and incineration facilities must meet (~~the requirements provided under~~) performance standards of WAC 173-350-040(~~((5))~~).~~

~~((9)) (10) Energy recovery and incineration facilities - Permit application contents. The owner or operator of an energy recovery or incineration facility (~~shall~~) must obtain a solid waste permit from the jurisdictional health department. All applications for permits (~~shall~~) must be in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each permit application (~~shall~~) must contain:~~

~~(a) (~~Preliminary~~) Engineering reports/plans and specifications that address:~~

~~(i) The design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash and any other wastes produced by air or water pollution controls; and~~

~~(ii) The design of the incinerator or thermal treaters, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.) the standards of subsections (4) and (5) of this section;~~

~~(b) A plan of operation that addresses the requirements of subsection (~~((4))~~) (6) of this section; and~~

~~(c) A closure plan meeting the requirements of subsection (~~((6))~~) (8) of this section.~~

~~(11) Energy recovery and incineration facilities - Environmental impact statement. In accordance with RCW 70.95.700, no solid waste energy recovery or incineration facility established on or after January 1, 1989 may be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030 (2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW, State environmental policy.~~

AMENDATORY SECTION (Amending WSR 13-08-016, filed 3/25/13, effective 4/25/13)

WAC 173-350-250 Anaerobic digesters. (1) Anaerobic digesters - Applicability. (~~This section applies~~)

~~(a) These standards apply to all facilities that treat solid waste by anaerobic digestion (~~, except (a), (b), and (c) of this subsection~~).~~

~~(b) These standards do not apply to:~~

~~((a)) (i) Storage or treatment of solid or liquid wastes in surface impoundments or tanks regulated under WAC 173-350-330;~~

~~((b)) (ii) Anaerobic digesters regulated in accordance with chapter 90.48 RCW, Water pollution control; and~~

~~((c)) (iii) Anaerobic digesters regulated in accordance with chapter 173-308 WAC, Biosolids management.~~

(2) **Anaerobic digesters - Permit exemptions.** In accordance with RCW 70.95.305, anaerobic digester facilities processing the types and volumes of materials identified in Table 250-A are subject solely to the requirements of Table 250-A and (b) of this subsection and are exempt from solid waste handling permitting. Feedstocks not listed in Table 250-A must be approved by the department. Violations of the terms and conditions of Table 250-A and (b) of this subsection may be subject to ~~((penalty))~~ enforcement provisions of RCW 70.95.315.

(a) An owner or operator that does not comply with the terms and conditions of Table 250-A and (b) of this subsection must~~((~~

~~*)~~ obtain a solid waste handling permit from the jurisdictional health department~~((;))~~ and ~~((*)~~ comply with all applicable requirements of this chapter.

~~((Violations of the terms and conditions of Table 250-A and (b) of this subsection may be subject to the penalty provisions of RCW 70.95.315.))~~

Table 250-A

Terms and Conditions for Exemptions

	Organic Materials	Volume	Specific Requirements for Activity or Operation
(1)	All organic feedstocks	No more than 5,000 gallons or 25 cubic yards of material on-site at any one time.	No notification, reporting or testing requirements.
(2)	All organic feedstocks	Greater than 5,000 but no more than 50,000 gallons of liquid or semi-solid material on-site at any one time; or Greater than 25 but no more than 250 cubic yards of non-liquid material on-site at any one time.	For facilities managing more than 5,000 gallons or 25 cubic yards on-site at any one time, and if organic materials are received from or distributed off-site, the owner or operator must: (a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department. (b) Facilities that distribute digestate (solids, semi-solids or liquids) off-site must meet the following conditions: (i) Sample and test digestate solids every 5,000 cubic yards or once per year, whichever is more frequent, to demonstrate it meets compost quality standards of WAC 173-350-220(4) (Table 220-B) before it is distributed for off-site use; or (ii) Ensure digestate liquids or nonseparated digestate meets the conditions for a commercial fertilizer as applicable in chapter 15.54 RCW, <u>Fertilizers, minerals, and limes</u> ; or (iii) Send digestate to a compliant permitted or conditionally exempt compost facility for further treatment to meet compost quality standards; or (iv) Land apply digestate in accordance with WAC 173-350-230, Land application; or (v) Use digestate in accordance with WAC 173-350-200, Beneficial use permit exemptions; or (vi) Process or manage digestate in an alternate manner approved by the department or the jurisdictional health department; (vii) Submit annual reports and results of digestate analysis (if applicable) to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.

	Organic Materials	Volume	Specific Requirements for Activity or Operation
(3)	<p>Livestock manure; may include livestock manure that is imported, which means originating off of the farm or site where the anaerobic digester is being operated; and</p> <p>Organic feedstocks except materials collected from municipal, commercial or residential solid waste collection programs. All imported organic materials must be preconsumer.</p> <p>If imported organic feedstocks are likely to contain animal by-products, they must be previously source separated at a facility licensed to process food by the United States Department of Agriculture, the United States Food and Drug Administration, the Washington state department of agriculture, or other applicable regulatory agency.</p> <p>If imported organic feedstocks contain bovine processing waste, they must be derived from animals approved by the United States Department of Agriculture Food Safety and Inspection Service and not contain any specified risk material.</p>	<p>No limits when livestock manure is at least 50((%)) percent of total feedstocks volume, and imported, nonmanure organic feedstocks are not greater than 30((%)) percent of total feedstock volume.</p>	<p>(a) Thirty days prior to operation, facilities managing imported organic feedstocks must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department.</p> <p>(b) All organic materials must be received and stored in a structure(s) that:</p> <p>(i) Complies with the Natural Resources Conservation Service's Practice Standard Code 313 in effect as of July 26, 2009, or other approved storage construction standard approved by the department or the jurisdictional health department;</p> <p>(ii) Is certified by a representative of the Natural Resources Conservation Service to be effective at protecting surface and groundwater; or</p> <p>(iii) Meets applicable construction industry standards adopted by the American Concrete Institute or the American Institute of Steel Construction in effect as of July 26, 2009; and</p> <p>(iv) Prevents migration of nuisance odors beyond property boundaries and minimizes attraction of flies, rodents, and other vectors.</p> <p>(c) The anaerobic digester must be designed and operated in accordance with standards in the Natural Resources Conservation Service's Conservation Practice Standard, Code 366, in effect as of July 26, 2009.</p> <p>(d) All imported organic feedstocks must be fed into the anaerobic digester within 36 hours.</p> <p>(e) Digestate must be managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW, <u>Dairy nutrient management</u>, that includes elements addressing management and use of digestate.</p> <p>Digestate that is managed in accordance with the dairy nutrient management plan under chapter 90.64 RCW, <u>Dairy nutrient management</u>, is no longer a solid waste when those plans include elements addressing management and use of digestate.</p> <p>(f) Facilities that distribute digestate (solids, semi-solids or liquids) off-site other than under a nutrient management plan must meet the following conditions:</p> <p>(i) Digestate must meet compost quality standards of WAC 173-350-220 for pathogens, stability, nutrient testing, metals and other testing before it is distributed for off-site use; or</p> <p>(ii) Be sent to an off-site permitted compost facility for further treatment to meet compost quality standards; or</p>

	Organic Materials	Volume	Specific Requirements for Activity or Operation
	Imported organic feedstocks cannot contain sheep carcasses or sheep processing waste.		(iii) Be processed or managed in an alternate manner approved by the department; and facilities must: Submit annual reports and results of digestate analysis (if applicable) to the department and the jurisdictional health department by April 1st of each calendar year. Annual reports must be submitted on forms provided by the department.

(b) The owner or operator of an anaerobic digester in compliance with all of the conditions of Table 250-A must also meet all of the following conditions in order to maintain exempt status:

(i) Comply with the performance standards of WAC 173-350-040;

(ii) Allow inspections by the department and/or jurisdictional health department at reasonable times to verify compliance with the conditions specified in this subsection;

(iii) Manage the operation to prevent the attraction of flies, rodents, and other vectors; and

(iv) Manage the operation to prevent the migration of agricultural pests identified by local horticultural pest and disease control boards, as applicable.

(3) Anaerobic digesters - Permit requirements - Location (~~(standards (permit requirements))~~). There are no specific location standards for anaerobic digesters subject to this chapter; however, anaerobic digesters must meet the ~~((requirements of other federal, state, or local laws and regulations that apply under))~~ performance standards of WAC 173-350-040((5)).

Note: When considering anaerobic digestion facility location, please review the U.S. Department of Transportation Federal Aviation Advisory Circular No. 150/5200-33B. 2007.

(4) Anaerobic digesters - Permit requirements - Design (~~(standards (permit requirements))~~). Anaerobic digesters must be designed ~~((such))~~ so that the facility can be operated to meet the performance standards ~~((requirements in))~~ of WAC 173-350-040. The owner or operator of an anaerobic digester facility must:

(a) Prepare and provide to the jurisdictional health department engineering reports, plans, specifications, and a construction quality assurance plan that address the standards of this subsection. The reports, plans, and specifications must be prepared by ~~((an))~~ a professional engineer ~~((licensed))~~ registered in the state of Washington and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features of the facility including, but not limited to, pads, impoundments, leachate management features (if applicable), digestate management features, stormwater management features, and anaerobic digester features. The engineering report must demonstrate that the proposed design will meet the performance standards of this chapter;

(ii) Scale drawings of the facility including the location and size of feedstock storage areas, fixed equipment, buildings, leachate management features (if applicable), digestate management features, stormwater management features, access road and other constructed areas, and buildings integral to facility operation;

(ii) Design specifications for the engineered features of the facility including, but not limited to, pads, stormwater management features, leachate management features (if applicable), digestate management features, and an anaerobic digester design that demonstrates all structures, containers, tanks, and/or surface impoundments will meet the requirements of this section, and of any federal, state, or local water and air quality permits; and

(iv) A construction quality assurance plan that describes monitoring, testing and documentation procedures that must be performed during construction of the facility to ensure the facility is constructed in accordance with the approved design.

(b) Provide all-weather roads from the public highway to and within the facility when operations require public access. Roads must be designed and maintained to prevent traffic congestion, traffic hazards, dust and noise pollution((-);

(c) Design waste receiving areas, digesters, digestate management features, stormwater, and leachate management features (if applicable), to prevent contamination of air, soil, surface water, and groundwater((-);

(i) Feedstock, leachate (if applicable), and digestate receiving and storage areas must either be in tanks or surface impoundments meeting the requirements of this section, or be on pads to prevent contamination of air, soil, surface water, and groundwater underlying or adjacent to receiving and storage areas;

(ii) Pads must meet the following requirements:

(A) All pads must be curbed or graded in a manner to prevent ponding, control run-on and runoff, and separately collect and convey all stormwater and leachate to separate storage or holding systems. Stormwater that is combined with leachate must be treated as leachate in accordance with this section;

(B) All pads must be constructed on subgrades that provide sufficient bearing capacity to support the weight of the pad, the materials placed on them, and the equipment used in handling the materials;

(C) The entire surface area of the pad must be designed to maintain its structural and hydraulic integrity against loads resulting from feedstock and digestate storage, machinery used for feedstock handling, and against surface wear or damage caused by feedstock and digestate handling and storage;

(D) The pad may be constructed of materials such as concrete (with sealed joints) or asphaltic concrete that prevents subsurface soil and groundwater contamination; and

(E) The jurisdictional health department may allow pads to be designed and constructed with materials other than those listed in (c)(ii)(D) of this subsection, ~~((provided))~~ if the applicant demonstrates in the engineering report to the jurisdictional health department's satisfaction that the alternative

pad provides sufficient protection to meet the performance standards of this section and of WAC 173-350-040.

(iii) The anaerobic digester design must comply with one of the following three conditions:

(A) Design criteria in the Natural Resources Conservation Service's Washington Conservation Practice Standard, Anaerobic Digester Code 366 in effect October 2010, or other effective date as specified by the department; or

(B) Surface impoundment and tank design standards, WAC 173-350-330(~~((3))~~) (4); or

(C) Other engineered design that the owner or operator can demonstrate (~~((complies with the conditions))~~) meets the performance standards of WAC 173-350-040 to the jurisdictional health department's and the department's satisfaction. Written consent from the jurisdictional health department and the department constitutes approval.

(iv) Stormwater management features must divert stormwater from feedstock receiving and storage areas, and from digestate collection and storage areas. Features may include, but are not limited to, run-on prevention systems, berms, diversion swales, ditches, and other features;

(v) Leachate management features may include, but are not limited to, runoff prevention systems, leachate collection, conveyance, storage structures, and treatment systems;

(vi) Leachate (if applicable) must be contained or collected. Any discharges to ground that result in contaminants migrating to groundwater require a waste discharge permit under chapter 90.48 RCW, Water pollution control, prior to discharge. Discharges to ground that result in degradation of groundwater quality are prohibited under chapter 90.48 RCW, Water pollution control. Any discharge to sanitary sewer requires additional permitting by the local delegated authority or department;

(vii) Leachate ponds or tanks, or digestate liquid storage in ponds or tanks must meet one of the following conditions:

(A) Ponds must meet Natural Resources Conservation Service Standard for a waste storage facility in the 2001 *Washington Field Office Technical Guide 313* (revised June 2011); or

(B) Ponds must have a liner consisting of a minimum 30-mil thickness geomembrane on a subgrade that provides sufficient bearing capacity to support the liner and the contents of the pond. A liner constructed with a high density polyethylene geomembrane must be at least 60-mil thick to allow for proper welding; and

(I) Have dikes and slopes designed to maintain their structural integrity under conditions of a leaking liner and capable of withstanding erosion from wave action, overfilling, or precipitation; and

(II) Have freeboard (distance between the liquid level and the top of the pond) equal to or greater than eighteen inches to avoid overtopping from wave action, overfilling, or precipitation. The jurisdictional health department may reduce the freeboard requirement (~~((provided that))~~) if other engineering controls are in place that prevent overtopping. These engineering controls must be specified during the permitting process; or

(C) The jurisdictional health department may approve the use of an alternative liner design if the owner or operator can demonstrate during the permitting process that the pro-

posed design will prevent migration of solid waste constituents or leachate into the ground or surface waters at least as effectively as the liners described in this subsection; or

(D) Tanks used to store leachate or digestate liquid must meet design standards in WAC 173-350-330 (~~((3))~~) (4)(b).

(viii) Leachate ponds and digestate liquid storage that have the potential to impound more than 10-acre feet (three million two hundred fifty-nine thousand gallons) of liquid measured from the top of the dike and that would be released by a failure of the containment dike must be reviewed and approved by the department's dam safety section.

(5) Anaerobic digesters - Permit requirements - Documentation. Facilities must not start operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report, plans, and specifications and has approved the construction documentation in writing and issued a permit. Within thirty days of completing construction, the owner or operator of an anaerobic digestion facility must provide the following materials to the jurisdictional health department and the department:

(a) Copies of the construction record drawing for engineered features at the facility; and

(b) A report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan.

(6) Anaerobic digesters - Permit requirements - Operating (~~((standards (permit requirements)))~~). The owner or operator of an anaerobic digester must operate in compliance with the performance standards of WAC 173-350-040 or Natural Resource Conservation Service Practice Standard Code 366 as applicable, and:

(a) Operate the facility to:

(i) Control air contaminants, such as dust and nuisance odors, to prevent these and other contaminants from migrating beyond property boundaries;

(ii) Prevent the attraction of vectors;

(iii) Prevent the migration of agricultural pests identified by the local horticultural pest and disease control boards as applicable;

(iv) Confine organic materials prior to and after processing to specifically designated areas, meeting the applicable standards of this section;

(v) Ensure that dangerous waste is not accepted, treated, or stored;

(vi) Ensure the facility operates under the supervision and control of a properly trained individual during hours of operation when facility staffing is required;

(vii) Ensure facility employees are trained in appropriate facility operations, maintenance procedures, and safety and emergency procedures according to individual job duties and according to an approved plan of operation; and

(viii) Restrict access to the facility when the facility is closed.

(b) Inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges that may lead to the release of wastes to the environment or cause a threat to human health. The owner or operator must conduct these inspections as needed, but at least weekly, unless an alternate

schedule is approved by the jurisdictional health department as part of the permitting process.

(c) Maintain operating records of the following:

(i) Process monitoring data as described in the plan of operation;

(ii) The quantity in gallons or cubic yards, and types of feedstocks received;

(iii) Results of analysis for digestate that is sold or distributed, according to subsection (5)(e) of this section; and

(iv) Facility inspection reports. Significant deviations from the plan of operation must be noted in the operating record. Records must be kept for a minimum of five years and must be available upon request by the jurisdictional health department.

(d) Prepare and submit ~~((a copy of))~~ an annual report to the jurisdictional health department and the department by April 1st of each calendar year for activities during the previous calendar year. Annual reports must be submitted on forms provided by the department and must include:

(i) Annual quantity and type of feedstocks received;

(ii) Annual quantity of digestate distributed if applicable;

(iii) Annual summary of digestate analysis as applicable, if digestate is distributed off-site; and

(iv) Any additional information required by the department or the jurisdictional health department.

(e) If distributing digestate (solids, semi-solids, or liquids) off-site, produce and manage the product so that it does not harm human health or the environment; and:

(i) Test representative samples of digestate solids every 5,000 cubic yards to demonstrate it meets compost quality standards in WAC 173-350-220~~((4))~~ (6) (Table 220-B). An alternate testing frequency may be required or approved by the jurisdictional health department; or

(ii) Ensure digestate meets the conditions for a commercial fertilizer as applicable in chapter 15.54 RCW, Fertilizers, minerals, and limes; or

(iii) Send digestate to a permitted compost facility for further processing; or

(iv) Land apply digestate in accordance with WAC 173-350-230, Land application; or

(v) Use digestate in accordance with WAC 173-350-200, Beneficial use permit exemption; or

(vi) Apply digestate on agricultural lands at agronomic rates in accordance with a dairy nutrient management plan or a nutrient management plan; or

(vii) Manage digestate in an alternate manner as approved by the jurisdictional health department and the department.

(f) Develop, keep, and ~~((abide by))~~ follow a plan of operation approved as part of the permitting process. The plan must describe the facility's operation and must convey to site operating personnel the concept of operation intended by the facility designer. The plan of operation must be kept on-site and available for inspection at the request of the jurisdictional health department. When necessary, the plan must be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation must include the following:

(i) A description of the types of feedstocks to be handled at the facility. Feedstocks must be approved by the department or jurisdictional health department;

(ii) Procedures for ensuring that only feedstocks described will be accepted;

(iii) Procedures for handling unacceptable wastes;

(iv) A plan for processing digestate to meet the requirements of (e) of this subsection, if distributing digestate off-site;

(v) A nutrient management plan for agricultural lands and farm lands (as described in RCW 84.34.020) if using digestate on-site;

(vi) A description of how facility staff will be appropriately trained;

(vii) A calculation of monthly processing capacity based on maximum volume (cubic yards or gallons) of all materials on-site at any one time. All materials on-site include feedstocks, digesting materials and digestate;

(viii) A material flow plan describing general procedures to manage all materials on-site. All materials on-site include incoming feedstock, digesting materials, and digestate;

(ix) An odor management plan including, but not limited to, the following components:

(A) Methods for treating emissions to reduce odors, if any;

(B) A community relations plan to address odor issues should they arise; and

(C) A description of facility and operational improvements that could be made, if nuisance odors are identified beyond the facility's property boundary, as determined by the jurisdictional health department, the department, or the permitting air authority. The description of operational improvements must address feedstock receiving, processing, and digestate storage areas of the facility.

(x) A description of how equipment, structures, and other systems will be inspected and maintained, including frequency of inspection and inspection logs. This description must include, but is not limited to:

(A) The groundwater monitoring system, if required;

(B) The overfilling prevention equipment, including details of filling and emptying techniques; and

(C) The liners of surface impoundments and tanks, tank piping, and secondary containment, as applicable.

(xi) Safety, fire, and emergency plans including a spill prevention/response plan;

(xii) The forms used to record volumes (in cubic yards or gallons) of accepted feedstocks; and

(xiii) Other ~~((such))~~ details to demonstrate that the facility is operated in accordance with this chapter and as required by the jurisdictional health department.

~~((6))~~ (7) Anaerobic digesters - Permit requirements - Groundwater monitoring ~~((requirements (permit requirements)))~~. There are no specific groundwater monitoring requirements for anaerobic digestion facilities subject to this chapter; however, anaerobic digestion facilities must meet the ~~((requirements of other federal, state, or local laws and regulations that apply under))~~ performance standards of WAC 173-350-040~~((5))~~.

~~((7))~~ **(8) Anaerobic digesters - Permit requirements - Closure** (~~requirements~~). The owner or operator of an anaerobic digester facility must:

(a) Develop, keep, and follow a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan must include removing all organic materials, including digestate, from the facility. For planning purposes, assume the facility is at full permitted site capacity when it is closed; and

(b) Notify the jurisdictional health department sixty days in advance of closure. At closure, the facility is financially responsible for the removal of all organic materials including, but not limited to, raw or partially digested feedstocks, and digestate from the facility. The materials must be sent to another facility that complies with the applicable regulations for handling the waste.

~~((8))~~ **(9) Anaerobic digesters - Permit requirements - Financial assurance** (~~requirements (permit requirements)~~). There are no specific financial assurance requirements for anaerobic digestion facilities subject to this chapter; however, anaerobic digestion facilities must meet the ~~((requirements of other federal, state, or local laws and regulations that apply under))~~ performance standards of WAC 173-350-040~~((5))~~.

~~((9))~~ **(10) Anaerobic digesters - Permit requirements - Permit application contents** (~~(permit requirements)~~). The owner or operator of an anaerobic digestion facility not exempt under subsection (2) of this section must obtain a solid waste permit from the jurisdictional health department. All applications for permits must be in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each permit application must contain:

(a) Engineering reports, plans, and specifications that address the design standards of subsections (4) and (5) of this section;

(b) A plan of operation that addresses the requirements of subsection ~~((5))~~ (6) of this section; and

(c) A closure plan meeting the requirements of subsection ~~((7))~~ (8) of this section.

~~((10) Anaerobic digester - Construction records (permit requirements))~~. Facilities must not start operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report, plans, and specifications and has approved the construction documentation in writing and issued a permit. Within thirty days of completing construction, the owner or operator of an anaerobic digestion facility must provide the following materials to the jurisdictional health department and the department:

(a) Copies of the construction record drawings for engineered facilities at the site; and

(b) A report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan.)

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-300 On-site storage, collection, and transportation standards. (1) **On-site storage, collection and transportation standards - Applicability.** ~~((This section is applicable))~~ These standards apply to the temporary storage of solid waste in a container at a premises, business establishment, or industry and the collecting and transporting of the solid waste.

(2) **On-site storage.**

(a) The owner or occupant of any premises, business establishment, or industry ~~((shall be))~~ is responsible for the safe and sanitary storage of all containerized solid wastes accumulated at those premises.

(b) The owner, operator, or occupant of any premises, business establishment, or industry ~~((shall))~~ must store solid wastes in containers that meet the following requirements:

(i) Disposable containers ~~((shall))~~ must be sufficiently strong to allow lifting without breakage and ~~((shall))~~ must be thirty-two gallons in capacity or less where manual handling is practiced;

(ii) Reusable containers, except for detachable containers, ~~((shall))~~ must be:

(A) Rigid and durable;

(B) Corrosion resistant;

(C) Nonabsorbent and water tight;

(D) Rodent-proof and easily cleanable;

(E) Equipped with a close-fitting cover;

(F) Suitable for handling with no sharp edges or other hazardous conditions; and

(G) Equal to or less than thirty-two gallons in volume where manual handling is practiced;

(iii) Detachable containers ~~((shall))~~ must be durable, corrosion-resistant, nonabsorbent, nonleaking and have either a solid cover or screen cover to prevent littering.

(c) In compliance with WAC 173-345-040 and RCW 70.95.020, all sites where recyclable materials are generated and transported for recycling must provide a separate container for nonrecyclable materials (solid waste).

(3) **Collection and transportation standards.**

(a) All persons collecting or transporting solid waste ~~((shall))~~ must avoid littering at the loading point, during transport and during proper unloading of the solid waste.

(b) Vehicles or containers used for the collection and transportation of solid waste ~~((shall))~~ must be tightly covered or screened where littering may occur, durable and of easily cleanable construction. Where garbage is being collected or transported, containers ~~((shall))~~ must be cleaned as necessary to prevent nuisance odors and insect breeding and ~~((shall))~~ must be maintained in good repair.

(c) Vehicles or containers used for the collection and transportation of any solid waste ~~((shall))~~ must be loaded and moved in ~~((such))~~ a manner that the containers will not fail, and the contents will not spill or leak. Where such spillage or leakage does occur the waste ~~((shall))~~ must be picked up immediately by the collector or transporter and returned to the vehicle or container and the area properly cleaned.

(d) All persons commercially collecting or transporting solid waste ~~((shall))~~ must inspect collection and transportation vehicles at least monthly. Inspection records ~~((shall))~~

must be maintained at the facility normally used to park ((such)) vehicles or ((such)) other location that maintenance records are kept. ((Such)) Records ((shall)) must be kept for a period of at least two years, and be made available upon the request of the jurisdictional health department.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-310 ~~((Intermediate solid waste handling))~~ **Transfer stations and drop box facilities.** (1) ~~((Intermediate solid waste handling facilities))~~ **Transfer stations and drop box facilities - Applicability.** ~~((This section is applicable to any facility engaged in solid waste handling that provides intermediate storage and/or processing prior to transport for final disposal. This includes, but is not limited to, material recovery facilities, transfer stations, baling and compaction sites, and drop box facilities. This section is not applicable to:))~~

(a) These standards apply to transfer stations and drop box facilities as defined in WAC 173-350-100.

(b) These standards do not apply to:

(i) Storage((:)) or treatment ~~((or recycling))~~ of solid waste in outdoor piles ~~((which are))~~ subject to WAC 173-350-320;

~~((b))~~ (ii) Storage or recycling of solid waste in surface impoundments ~~((which are))~~ subject to WAC 173-350-330;

~~((e))~~ (iii) Composting facilities subject to WAC 173-350-220;

~~((d))~~ (iii) Recycling ~~((which is))~~ and material recovery facilities subject to WAC 173-350-210;

~~((e))~~ (iv) Storage of waste tires ~~((which is))~~ subject to WAC 173-350-350;

~~((f))~~ (v) Handling of moderate risk waste ~~((prior to recycling which is))~~ subject to WAC 173-350-360((:));

(g) Energy recovery or incineration of solid waste which is subject to WAC 173-350-240); and

~~((h))~~ (vi) Waste containers placed at the point of waste generation ~~((which is))~~ subject to WAC 173-350-300.

(2) ~~((Materials recovery facilities))~~ **Transfer stations and drop box facilities - Permit exemptions** ~~((and notification. (a))~~. In accordance with RCW 70.95.305, ~~((material recovery facilities))~~ drop boxes managed in accordance with the terms and conditions of ~~((b) of this subsection))~~ Table 310-A are exempt from solid waste handling permitting. ~~((An owner or operator that does not comply with the terms and~~

~~conditions of (b) of this subsection is required to obtain a permit from the jurisdictional health department as an intermediate solid waste handling facility and shall comply with the requirements of WAC 173-350-310.))~~ If a facility does not operate in compliance with the terms and conditions established for an exemption under this subsection, the facility may be subject to the permitting requirements for solid waste handling under this chapter. In addition, violations of the terms and conditions of ~~((b) of))~~ this subsection may be subject to the ~~((penalty))~~ enforcement provisions of RCW 70.95.315.

~~((b))~~ Material recovery facilities shall be managed according to the following terms and conditions to maintain their exempt status:

(i) Meet the performance standards of WAC 173-350-040;

(ii) ~~Accept only source separated recyclable materials and dispose of an incidental and accidental residual not to exceed five percent of the total waste received, by weight per year, or ten percent by weight per load;~~

(iii) ~~Allow inspections by the department or jurisdictional health department at reasonable times;~~

(iv) ~~Notify the department and jurisdictional health department, thirty days prior to operation, or ninety days from the effective date of the rule for existing facilities, of the intent to operate a material recovery facility in accordance with this section. Notification shall be in writing, and shall include:~~

(A) ~~Contact information for facility owner or operator;~~

(B) ~~A general description of the facility; and~~

(C) ~~A description of the types of recyclable materials managed at the facility;~~

(v) ~~Prepare and submit an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report shall detail facility activities during the previous calendar year and shall include the following information:~~

(A) ~~Name and address of the facility;~~

(B) ~~Calendar year covered by the report;~~

(C) ~~Annual quantities and types of waste received, recycled and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and~~

(D) ~~Any additional information required by written notification of the department.)~~

Table 310-A

Terms and Conditions for Solid Waste Permit Exemption

	<u>Waste Materials</u>	<u>Specific Requirements for Activity or Operation</u>
(1)	<u>Drop boxes used solely for collecting recyclable materials</u>	(a) Meet the performance standards of WAC 173-350-040; and (b) <u>Allow department and jurisdictional health department representatives to inspect the drop box at reasonable times for the purpose of determining compliance with this chapter.</u>

(3) ~~((Intermediate solid waste handling))~~ **Transfer stations and drop box facilities - Permit requirements - Location** ~~((standards))~~. There are no specific location standards for ~~((intermediate solid waste handling))~~ transfer stations or drop box facilities subject to this chapter; however, ~~((intermediate solid waste handling))~~ facilities must meet the ~~((requirements provided under))~~ performance standards of WAC 173-350-040~~((5))~~.

(4) ~~((Intermediate solid waste handling))~~ **Transfer stations and drop box facilities - Permit requirements - Design** ~~((standards))~~. ~~((The owner or operator of all intermediate solid waste handling facilities shall prepare engineering reports/plans and specifications to address))~~ Transfer stations and drop box facilities must be designed so that the facilities can be operated to meet the performance standards of WAC 173-350-040, and the following design standards:

(a) ~~((Material recovery facilities,))~~ Transfer stations~~((, baling and compaction sites shall))~~ must:

(i) Control public access, and prevent unauthorized vehicular traffic and illegal dumping of waste;

(ii) Be sturdy and constructed of easily cleanable materials;

(iii) Provide effective means to control rodents, insects, birds and other vectors;

(iv) Provide effective means to control litter including, but not limited to, orientation of the tipping floor in a manner that prevents prevailing winds from moving waste outside the collection area when other structures are not in place to prevent this;

(v) Provide ~~((protection of))~~ a tip floor made of impervious material such as concrete or asphalt to prevent soil and groundwater contamination. The surface must be durable enough to withstand damage from operating equipment. The jurisdictional health department may approve other types of surfaces if the applicant can demonstrate that it will prevent soil and groundwater contamination;

(vi) Cover the tipping floor to protect it from ~~((wind, rain or snow;~~

~~((vi))~~ Provide pollution control measures to protect surface and groundwaters, including runoff collection and discharge designed to handle a twenty-five year storm as defined in WAC 173-350-100, and equipment cleaning and washdown water)) precipitation;

(vii) Convey leachate from the tipping floor and any ancillary areas likely to collect leachate, such as wash down areas, to a surface impoundment, tank, or sanitary sewer, or use other methods approved by the jurisdictional health department to prevent uncontrolled discharges;

(viii) Provide for stormwater runoff collection and discharge from a twenty-five year storm;

(ix) Provide pollution control measures to protect air quality; and

~~((viii))~~ (x) Provide all-weather surfaces for vehicular traffic.

(b) Drop ~~((boxes shall be))~~ box facilities must:

(i) Control public access, and prevent unauthorized vehicular traffic and illegal dumping of waste;

(ii) Provide detachable containers constructed of durable, watertight materials with a lid or screen on top that pre-

vents litter, the loss of materials during transport, and access by ~~((rats))~~ rodents and other vectors~~((, and control litter.~~

~~((5))~~ ~~Intermediate solid waste handling facilities - Operating standards~~. When reliably watertight detachable containers cannot be assured, the containers may alternatively be placed on an impervious surface with run-on and runoff controls;

(ii) Be designed so that customers may easily place waste directly into drop boxes; and

(iv) Provide all-weather surfaces for vehicular traffic.

Transfer station and drop box facilities - Permit requirements - Documentation.

(a) The owner or operator must submit facility drawings and construction documents for, at a minimum, any proposed addition or modification of elements described in subsection (4) of this section to the jurisdictional health department for review and approval. The facility drawings and construction documents for proposed construction of engineered features must be prepared by a professional engineer registered in the state of Washington, and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features. The engineering report must demonstrate that the proposed design will meet the performance standards of WAC 173-350-040;

(ii) Scale drawings of the facility including the location and size of waste handling areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;

(iii) Design specifications for the engineered features of the facility as applicable; and

(iv) For new construction, a construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of the facility, to ensure the facility is constructed in accordance with the approved design.

(b) The owner or operator must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility construction, including the results of observations and any testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. The owner or operator must not commence operation in a newly constructed portion of the facility until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

Transfer stations and drop box facilities - Permit requirements - Operating. The owner or operator of ~~((an intermediate solid waste handling))~~ a transfer station or drop box facility ~~((shall))~~ must:

(a) Operate the ~~((facility to:~~

~~((i))~~ For material recovery facilities transfer stations, baling and compaction sites:

(A) Be protective of human health and the environment;

(B) Prohibit the disposal of)) site in compliance with the performance standards of WAC 173-350-040 and this subsection. In addition, the owner or operator must develop, keep, and follow a plan of operation approved as part of the

permitting process. The plan of operation must be available for inspection at the request of the jurisdictional health department. If necessary, the plan must be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation must include the following:

(i) A description of the types of waste materials to be handled at the facility;

(ii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

~~((C) Control rodents, insects, and other vectors;~~

~~((D))~~ (iii) A description of how waste materials are to be handled on-site including maximum site capacity, methods of adding or removing waste from the facility and equipment used, and how operators will ensure adequate dumping capacity at all times;

(iv) A description of how the owner or operator will ensure the facility is operated in a way to:

(A) Control litter, dust, and nuisance odors;

~~((E))~~ (B) Control rodents, insects and other vectors;

(C) Prohibit scavenging;

~~((F) Prohibit open burning;~~

~~(G) Control dust;~~

~~(H) For putrescible waste, control nuisance odors;~~

~~(I) Provide attendant(s) on-site during hours of operation;~~

~~(J) Have)~~ (D) Provide a sign at the site entrance that identifies the facility and shows at ((least)) a minimum the name of the site((, and, if applicable, hours during which the site is open for public use, what materials the facility does not accept and other necessary information posted at the site entrance)); and

~~((K) Have communication capabilities to immediately summon fire, police, or emergency service personnel in the event of an emergency.~~

~~((ii))~~ (E) Ensure that handling of waste capable of attracting birds does not pose an aircraft safety hazard.

(v) A description of how operators will inspect and maintain the facility to prevent deterioration or the release of wastes to the environment that could pose a threat to human health, including the inspection form operators will use. Inspections must be as needed, but at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

(vi) A description of how operators will maintain operating records on the amounts (weight or volume) and types of waste received or removed from the facility, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Facility inspection reports must be maintained in the operating record, including at least the date of inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation must be noted in the operating record. Records must be kept for a minimum of five years and must be available upon request by the jurisdictional health department;

(vii) Safety and emergency plans; and

(viii) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(b) For transfer stations, the plan of operations must also address how the operators will:

(i) Provide attendant(s) on-site during hours of operation. Materials may be transferred after hours without an attendant on-site if other controls approved by the jurisdictional health department are in place;

(ii) Immediately summon fire, police, or emergency service personnel in the event of an emergency;

(iii) Remove or otherwise manage leachate from containment structure(s) to prevent soil and/or groundwater contamination; and

(iv) Remove waste from the tipping floor at a frequency approved by the jurisdictional health department.

(c) For drop box facilities((:

~~(A) Be serviced)),~~ the plan of operations must also address how the operators will service the facility as often as necessary to ensure adequate dumping capacity at all times. Storage of waste outside the drop boxes is prohibited;

~~((B) Be protective of human health and the environ-~~

~~ment;~~

~~(C) Control rodents, insects, and other vectors;~~

~~(D) Control litter;~~

~~(E) Prohibit scavenging;~~

~~(F) Control dust;~~

~~(G) For putrescible waste, control nuisance odors; and~~

~~(H) Have a sign that identifies the facility and shows at least the name of the site, and, if applicable, hours during which the site is open for public use, what materials the facility does not accept and other necessary information posted at the site entrance;~~

~~(b) Inspect and maintain the facility to prevent deterioration or the release of wastes to the environment that could pose a threat to human health. Inspection shall be as needed, but at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;~~

~~(c) Maintain daily operating records on the weights and types of wastes received or removed from the facility. Facility inspection reports shall be maintained in the operating record. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be kept for a minimum of five years and shall be available upon request by the jurisdictional health department;))~~

~~(d) Prepare and submit ((a copy of)) an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report ((shall)) must detail the facility's activities during the previous calendar year and ((shall)) must include the following information:~~

~~(i) Name and address of the facility;~~

~~(ii) Calendar year covered by the report;~~

~~(iii) Annual quantity of each type of solid waste handled by the facility, in tons;~~

~~(iv) Destination of waste transported from the facility for processing or disposal; and~~

~~(v) Any additional information required by the jurisdictional health department as a condition of the permit.~~

~~((e)) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:~~

- ~~(i) A description of the types of solid wastes to be handled at the facility;~~
- ~~(ii) A description of how solid wastes are to be handled on-site during the facility's life, including maximum facility capacity, methods of adding or removing waste from the facility and equipment used;~~
- ~~(iii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;~~
- ~~(iv) Safety and emergency plans;~~
- ~~(v) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;~~
- ~~(vi) For putrescible wastes, an odor management plan describing the actions to be taken to control nuisance odors;~~
- ~~(vii) The forms used to record volumes or weights; and~~
- ~~(viii) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.~~

~~((6) Intermediate solid waste handling)) (7) **Transfer station and drop box facilities - Permit requirements - Groundwater monitoring** ((requirements)). There are no specific groundwater monitoring requirements for ((intermediate solid waste handling)) transfer station and drop box facilities subject to this chapter; however, ((intermediate solid waste handling)) facilities must meet the ((requirements provided under)) performance standards of WAC 173-350-040((5)).~~

~~((7) Intermediate solid waste handling)) (8) **Transfer stations and drop box facilities - Permit requirements - Closure** ((requirements)). The owner or operator of ((an intermediate solid waste handling facility shall)) a transfer station or drop box facility must develop, keep, and follow a closure plan that includes:~~

- ~~(a) ((Notify)) Notification to the jurisdictional health department ((one hundred eighty)) ninety days in advance of closure of a transfer station or drop box facility.~~
- ~~(b) Removal of all waste ((shall be removed)) to a facility that conforms with the applicable regulations for handling the waste((-~~
- ~~(b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include the methods of removing waste.~~

~~(8) Intermediate solid waste handling)); and~~

~~(c) Methods of removing waste.~~

~~(9) **Transfer station and drop box facilities - Permit requirements - Financial assurance.** There are no specific financial assurance requirements for ((intermediate solid waste handling)) transfer stations and drop box facilities subject to this chapter; however, ((intermediate solid waste han-~~

~~dling)) facilities must meet the ((requirements provided under)) performance standards of WAC 173-350-040((5)).~~

~~((9) Intermediate solid waste handling)) (10) **Transfer station and drop box facilities - Permit application contents.** The owner or operator of ((an intermediate solid waste handling)) a transfer station or drop box facility ((shall)) must obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:~~

- ~~(a) ((For material recovery facilities, transfer stations, baling and compaction sites:~~
- ~~(i)) Engineering reports/plans and specifications that address the ((design)) standards of subsections (4)((a)) and (5) of this section;~~

~~((ii)) (b) A plan of operation meeting the applicable requirements of subsection ((5)) (6) of this section; and~~

~~((iii)) (c) A closure plan meeting the requirements of subsection ((7)) (8) of this section(;~~

~~(b) For drop boxes:~~

~~(i) Engineering reports/plans and specifications that address the design standards of subsection (4)(b) of this section;~~

~~(ii) A plan of operation meeting the applicable requirements of subsection (5) of this section; and~~

~~(iii) A closure plan meeting the requirements of subsection (7) of this section)).~~

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-320 Piles used for storage or treatment. (1) Piles used for storage or treatment - Applicability.

~~(a) ((This section is applicable to solid waste stored or treated in piles where putrescible waste piles that do not contain municipal solid waste are in place for more than three weeks, nonputrescible waste and contaminated soils and dredged material piles are in place for more than three months and municipal solid waste piles are in place for more than three days. This section is not applicable to)) These standards apply to the outdoor storage or treatment of solid waste in piles.~~

~~(b) These standards do not apply to:~~

~~(i) ((Waste)) Piles of recyclable materials and other solid wastes stored indoors at recycling or material recovery facilities subject to WAC 173-350-210;~~

~~(ii) Piles located at composting facilities subject to WAC 173-350-220 that are an integral part of the facility's operation;~~

~~((ii) Piles of nonputrescible waste stored in enclosed buildings provided that no liquids or liquid waste are added to the pile; and)~~

~~(iii) Piles to be land applied subject to WAC 173-350-230;~~

~~(iv) Piles located at anaerobic digester sites subject to WAC 173-350-250;~~

(v) Piles of solid waste at transfer stations subject to design standards for tip floors in WAC 173-350-310;

(vi) Indoor storage of piles of contaminated soil or contaminated dredged material subject to WAC 173-350-310;

(vii) Piles of waste tires ~~((or used tires))~~ subject to WAC 173-350-350; and

(viii) Piles of contaminated soil or contaminated dredged materials stored and treated indoors subject to WAC 173-350-490.

~~((b))~~ **(2) Piles used for storage or treatment - Permit exemptions.** In accordance with RCW 70.95.305, ~~((storage piles of wood waste used for fuel or as a raw material, wood derived fuel, and agricultural wastes on farms, are subject solely to the requirements of (e)(i) through (iii)))~~ facilities managing solid wastes in piles meeting the conditions listed in Table 320-A and the conditions of (a) of this subsection ~~((and))~~ are exempt from solid waste handling permitting. ~~((An owner or operator that does not comply with the terms and conditions of (e)(i) through (iii) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of))~~ If a facility does not operate in compliance with the terms and conditions established for an exemption under this subsection, the facility may be subject to the permitting requirements for solid waste handling under this chapter. In addition, violations of the terms and conditions ~~((of (e)(i) through (iii)))~~ of this subsection may be subject to the ~~((penalty))~~ enforcement provisions of RCW 70.95.315.

~~((e))~~ Owners and operators of all storage piles that are categorically exempt from solid waste handling permitting in accordance with (b) of this subsection shall:

(i) Ensure that at least fifty percent of the material stored in the pile is used within one year and all material is used within three years;

~~(ii) Comply with the performance standards of WAC 173-350-040; and~~

~~(iii) Allow department and jurisdictional health department representatives to inspect the waste pile at reasonable times for the purpose of determining compliance with this chapter.~~

~~(d) In accordance with RCW 70.95.305, the storage of inert waste in piles is subject solely to the requirements of (e)(i) through (vi) of this subsection and are exempt from solid waste handling permitting. The storage of inert waste in piles at a facility with a total volume of two hundred fifty cubic yards or less is subject solely to the requirements of (e)(iv) of this subsection. An owner or operator that does not comply with the terms and conditions of (e)(i) through (vi) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter. In addition, violations of the terms and conditions of (e)(i) through (vi) may be subject to the penalty provisions of RCW 70.95.315.~~

~~(e) Owners and operators of all storage piles that are categorically exempt from solid waste handling permitting in accordance with (d) of this subsection shall:~~

~~(i) Implement and abide by a procedure that is capable of detecting and preventing noninert wastes from being accepted or mixed with inert waste;~~

~~(ii) Ensure that at least fifty percent of the material stored in the pile is used within one year and all the material is used within three years;~~

~~(iii) Control public access and unauthorized vehicular traffic to prevent illegal dumping of wastes;~~

~~(iv))~~

Table 320-A

Terms and Conditions for Solid Waste Permit Exemptions

	<u>Waste Materials</u>	<u>Volume, Storage Time, and Capacity Requirements</u>	<u>Specific Requirements for Activity or Operation</u>
(1)	<u>Wood waste, wood-derived fuel, nonferrous metals, brick, cured concrete, or asphaltic materials.</u>	<u>Up to 250 cubic yards of total material on-site.</u> <u>No storage time limit.</u>	<u>No notification or reporting requirements.</u>
(2)	<u>Agricultural waste and on-farm vegetative wastes stored on farms.</u>	<u>No volume limit.</u> <u>The duration of storage of the entire pile is limited to one year and limited to the amount that will be applied to a site during a one-year period. Subsequent accumulation under the same conditions is allowed at the same location after the entire pile has been used.</u>	<u>No notification or reporting requirements.</u>

	<u>Waste Materials</u>	<u>Volume, Storage Time, and Capacity Requirements</u>	<u>Specific Requirements for Activity or Operation</u>
(3)	<u>Wood waste, wood-derived fuel and non-ferrous metals.</u>	<p><u>Over 250 cubic yards up to 2,000 cubic yards total material on-site.</u></p> <p><u>At the end of each calendar year, the facility must have removed at least fifty percent of the sum of the volume of all waste present at the start of the calendar year and of the volume of all waste accepted during the calendar year.</u></p> <p><u>For example: A facility begins the calendar year with 300 CY of wood waste on hand. The facility accepts 400 CY during the calendar year. In order to meet this exemption requirement, at least $0.5 \times (300 + 400) = 350$ CY must be removed from the facility by the end of the calendar year, leaving no more than 350 CY on hand.</u></p>	<p><u>(a) Thirty days prior to operation, facilities must submit a notification of intent to operate as a conditionally exempt facility to the jurisdictional health department and the department. Notice of intent must be submitted on a form provided by the department and must be complete;</u></p> <p><u>(b) Maintain records on the volume of wastes received, processed, and moved off-site for five years; and</u></p> <p><u>(c) Prepare and submit an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report must detail the facility's activities during the previous calendar year and must include the following information:</u></p> <p><u>(i) Name and address of the facility;</u></p> <p><u>(ii) Calendar year covered by the report;</u></p> <p><u>(iii) Annual quantities and types of solid waste handled by the facility, including amounts received, amounts removed and where it went, and the amount of waste remaining at the facility at year's end, in cubic yards; and</u></p> <p><u>(iv) Any additional information required by the department.</u></p>
(4)	<u>Brick, cured concrete, or asphaltic material facilities with a water quality sand and gravel or construction storm-water general permit.</u>	<u>Over 250 cubic yards; no upper volume limit.</u>	<u>Facilities that recycle these wastes must comply with the recycling standards in WAC 173-350-210, including notification and reporting.</u>
(5)	<u>Temporary piles of contaminated soils and contaminated dredged material.</u>	<p><u>No volume limit.</u></p> <p><u>All contaminated soils and contaminated dredged materials are removed from the site within ninety days. If new materials are placed on site at any time after ninety days has elapsed from the first delivery, a permit is required.</u></p>	<u>No notification or reporting requirements.</u>
(6)	<u>Temporary piles of contaminated soils and contaminated dredged material with a construction storm-water general permit.</u>	<u>No volume limit.</u>	<u>No notification or reporting requirements.</u>

(a) Management of waste in piles identified in Table 320-A must meet the following terms and conditions to maintain their exempt status:

(i) Comply with the performance standards of WAC 173-350-040;

((+)) (ii) Manage the operation to prevent fugitive dust and the attraction of vectors; and

(iii) Allow the department ((and)) or jurisdictional health department ((representatives)) to inspect the ((waste pile)) site at reasonable times ((for the purpose of determining compliance with this chapter; and

(vi) Notify the department and jurisdictional health department thirty days prior to commencing operations of the

intent to store inert waste in accordance with this section. Notification shall be in writing, and shall include:

- (A) Contact information for the owner or operator;
- (B) A general description and location of the facility; and
- (C) A description of the inert waste handled at the facility).

~~((2))~~ **(3) Piles used for storage or treatment - Permit requirements - Location** (*standards*). There are no specific location standards for piles subject to this chapter; however, waste piles must meet the ~~((requirements provided under))~~ performance standards of WAC 173-350-040~~((5))~~.

~~((3))~~ **(4) Piles used for storage or treatment - Permit requirements - Design** (*standards*.

~~(a) The owner or operator of piles used for storage or treatment shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the design standards of this subsection)). Piles used for storage or treatment of solid waste must be designed so that the facility can be operated to meet the performance standards of WAC 173-350-040, and the following design standards:~~

~~(a) The maximum waste capacity, elevation and boundaries of the waste pile ((shall)) must be provided. All piles ((shall)) used for storage or treatment regulated under this section must be designed and constructed to meet the following requirements:~~

- ~~(i) Control public access to prevent illegal dumping and unauthorized access to the facility;~~
- ~~(ii) Comply with the ((uniform)) international fire code as implemented through the local fire control agency;~~
- ~~(iii) ((Minimize)) Control vectors ((harborage to the extent practicable)); and~~
- ~~(iv) Provide all-weather ((approach roads and exits)) surfaces for vehicles.~~

~~(b) In addition to the requirements of (a) of this subsection, the owner or operator of piles of putrescible waste, contaminated soils or contaminated dredged material or waste determined by the jurisdictional health department to ((be)) likely ((to)) produce leachate posing a threat to human health or the environment ((shall)) must prepare engineering reports/plans and specifications of the surface on which the pile(s) will be placed ((including)). This must include an analysis of the surface under the stresses expected during operations, and the design of the surface water management systems including run-on prevention and runoff conveyance, storage, and treatment. The ((piles shall)) facility must be designed and constructed to:~~

~~(i) Place waste on ((a sealed)) an impervious surface, such as concrete or asphaltic concrete, to prevent soil and groundwater contamination. The surface ((shall)) must be durable enough to withstand material handling practices. The jurisdictional health department may at the time of permitting:~~

~~(A) Approve other types of surfaces((, such as engineered soil,)) if the applicant can demonstrate that the proposed surface will prevent soil and groundwater contamination; and~~

~~(B) Waive the impervious surface requirement if the applicant can demonstrate how soil and groundwater will be protected by other design features.~~

~~(ii) Control run-on and runoff from a twenty-five-year storm((, as defined in WAC 173-350-100)).~~

~~((4))~~ **(5) Piles used for storage or treatment - Permit requirements - Documentation.**

~~(a) The owner or operator must submit construction documents for any proposed addition or modification of elements described in subsection (4) of this section to the jurisdictional health department for review and approval. The construction documents for proposed construction of engineered features addressed in subsection (4)(b) of this section must be prepared by a professional engineer registered in the state of Washington, and must include:~~

~~(i) An engineering report that presents the design basis and calculations for the engineered features of any impervious surface, such as concrete, asphaltic concrete, or other proposed surface; stormwater management features; and emission control features as required by the permitting air authority where applicable. The engineering report must demonstrate that the proposed design will meet the performance standards of this chapter;~~

~~(ii) Scale drawings of the facility including the location and size of waste handling areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;~~

~~(iii) Design specifications for the engineered features of the facility including any impervious or other proposed surface, run-on/runoff controls, stormwater management features, and aeration and emission management features as required by a permitting air authority where applicable; and~~

~~(iv) A construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of the facility to ensure the facility is constructed in accordance with the approved design.~~

~~(b) The owner or operator must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. The owner or operator must not commence operation in a newly constructed portion of the facility until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering reports/plans and specifications and has approved the construction documentation in writing.~~

~~(6) Piles used for storage or treatment - Permit requirements - Operating~~ (*standards*). The owner or operator of piles used for storage or treatment ~~((shall)) must:~~

~~(a) ((Operate the facility to:~~

~~(i) Control fugitive dust;~~

~~(ii)) Operate the site in compliance with the performance standards of WAC 173-350-040 and this subsection.~~

~~In addition, the owner or operator must develop, keep, and follow a plan of operation approved as part of the permitting process. The plan of operation must be available on-site for inspection at the request of the jurisdictional health department. If necessary, the plan may be modified with the approval, or at the direction of the jurisdictional health~~

department. Each plan of operation must include the following:

(i) A description of the types of waste materials to be handled at the facility;

(ii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

(iii) A description of how waste materials are to be handled on-site, including recycling or recovery, storage, maximum site capacity, methods of adding or removing waste materials from the facility and equipment used, and how operators will ensure adequate dumping capacity at all times;

(iv) A description of how the owner or operator will ensure the facility is operated in a way to:

(A) Control litter, dust, and nuisance odors;

(B) Control rodents, insects, and other vectors;

(C) Control access to the pile; and

~~((iii))~~ Ensure that nonpermitted waste is not accepted at the facility;

~~(iv)~~ Control vector harborage and implement vector control as necessary;

~~(v))~~ (D) Ensure that waste piles capable of attracting birds do not pose an aircraft safety hazard(~~;~~ and

~~(vi)~~ For piles of putrescible waste and contaminated soils or dredged material, control nuisance odors)).

~~((b))~~ (v) A description of how operators will inspect and maintain the facility to prevent malfunctions, deterioration, operator errors and discharges that may cause or lead to the release of wastes to the environment or a threat to human health. Inspections (~~shall~~) must include the (~~engineered~~) surface on which the piles are placed, and the leachate and stormwater control systems. Inspections (~~shall~~) must be as needed, but at least weekly, to ensure (~~it~~) the facility is meeting the operational standards, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

~~((e))~~ (vi) A description of how operators will maintain (~~daily~~) operating records on the amounts (weight(s) or volume) and the types of waste received (~~or~~) and removed from the facility, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Facility inspection reports (~~shall~~) must be maintained in the operating record, including at least the date of inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation (~~shall~~) must be noted in the operating record. Records (~~shall~~) must be kept for a minimum of five years and (~~shall~~) must be available upon request by the jurisdictional health department;

~~((d)~~ Shall prepare and submit a copy of) (vii) Safety and emergency plans;

(viii) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department;

(ix) If storing or treating contaminated soils or contaminated dredged materials each plan of operation must also include the following:

(A) Ensure that all soils and dredged materials are sufficiently characterized:

(I) Prior to storage or treatment so that contaminants not identified, or are at concentrations greater than those listed in the approved plan of operation are not accepted or handled at the facility; and

(II) Prior to removal to an off-site location so that all soils and dredged material that are not clean soils or clean dredged materials are delivered to a facility that meets the requirements of chapter 70.95 RCW, Solid waste management—Reduction and recycling;

(B) Maintain operating records that identify the source of contaminated soils and contaminated dredged material received at the facility, contaminants and concentrations contained, and any documentation used to characterize soils and dredged materials. Records must contain end uses, including the location of final placement, for any soils or dredged materials removed from the facility that contain residual contaminants;

(C) A description of contaminants and concentrations in soils and dredged materials that will be handled at the facility;

(D) A sampling and analysis plan and other procedures used to characterize soils and dredged materials; and

(E) Forms used to record the source of contaminated soils or contaminated dredged materials, contaminant concentration and other documentation used to characterize soils and dredged materials, and end uses and the location of final placement for any soils or dredged materials removed from the facility that contain residual contaminants.

(x) Treatment of contaminated soils and contaminated dredged materials must be performed using a process that reduces or eliminates contaminants and harmful characteristics. Contaminated soils and contaminated dredged materials must not be diluted to meet treatment goals or as a substitute for disposal, except for incidental dilution of minor contaminants.

(b) Prepare and submit an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report (~~shall~~) must detail the facility's activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual (~~quantity~~) quantities and types of solid waste handled by the facility, including amounts received, amounts removed and the amount of waste remaining at the facility at year's end, in tons or cubic yards; (~~and~~)

(iv) Destination of waste material transported from the facility for processing or disposal; and

(v) Any additional information required by the jurisdictional health department as a condition of the permit.

~~((e)~~ Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to the site operating personnel that concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of how solid wastes are to be handled on-site during the facility's life including:

(A) The maximum amount of waste to be stored or treated in pile(s) at the facility;

(B) Methods of adding and removing waste from the pile and equipment used;

(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety and emergency plans;

(v) Forms to record weights or volumes; and

(vi) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(f) Operate the facility in conformance with the following operating standards when storing or treating contaminated soils or dredged material:

(i) Ensure that all soils and dredged material are sufficiently characterized:

(A) Prior to storage or treatment so that contaminants not identified, or at concentrations greater than those provided in the approved plan of operation are not accepted or handled at the facility; and

(B) Prior to removal to an offsite location so that all soils and dredged material that are not clean soils or dredged material are delivered to a facility that meets the requirements of chapter 70.95 RCW, Solid waste management—Reduction and recycling;

(ii) In addition to the daily operating records in (e) of this subsection, a record of the source of contaminated soils and dredged material received at the facility, contaminants and concentrations contained, and any documentation used to characterize soils and dredged material. Records shall be maintained of end uses, including the location of final placement, for any soils or dredged material removed from the facility that contain residual contaminants;

(iii) In addition to the elements in (e) of this subsection, the plan of operation shall include:

(A) A description of contaminants and concentrations in soils and dredged material that will be handled at the facility;

(B) A sampling and analysis plan and other procedures used to characterize soils and dredged material; and

(C) Forms used to record the source of contaminated soils or dredged material, contaminant concentrations and other documentation used to characterize soils and dredged material, and end uses and the location of final placement for any soils or dredged material removed from the facility that contain residual contaminants;

(iv) Treatment of contaminated soils and dredged materials shall be performed using a process that reduces or eliminates contaminants and harmful characteristics. Contaminated soils and dredged materials shall not be diluted to meet treatment goals or as a substitute for disposal, except for incidental dilution of minor contaminants.

~~(5))~~ **(7) Piles used for storage or treatment - Permit requirements - Groundwater monitoring** (*requirements*). There are no specific groundwater monitoring requirements for piles used for storage and treatment subject to this chap-

ter; however, waste piles must meet the (~~requirements provided under~~) performance standards of WAC 173-350-040(~~(5)~~).

~~((6))~~ **(8) Piles used for storage or treatment - Permit requirements - Closure** (*requirements*). The owner or operator of piles used for storage or treatment (~~shall~~) must develop, keep, and follow a closure plan that addresses:

(a) (~~Notify~~) Notification to the jurisdictional health department sixty days in advance of closure(~~(-)~~);

(b) Remove of all waste (~~shall be removed from the pile at closure~~) to a facility that conforms with the applicable regulations for handling the waste(~~(-~~

(b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. As a minimum, the closure plan shall include the methods of removing waste.

~~(7))~~; and

(c) Methods for removing the waste.

(9) Piles used for storage or treatment - Permit requirements - Financial assurance (*requirements*). There are no specific financial assurance requirements for piles used for storage or treatment subject to this (~~regulation~~) chapter; however, waste piles must meet the (~~requirements provided under~~) performance standards of WAC 173-350-040(~~(5)~~).

~~((8))~~ **(10) Piles used for storage or treatment - Permit application contents.** The owner or operator of piles used for storage or treatment (~~shall~~) must obtain a permit from the jurisdictional health department. All applications for permits (~~shall~~) must be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit (~~shall~~) must contain:

(a) (~~The design of fire control features;~~

~~(b))~~ Engineering reports/plans and specifications that address the (~~design~~) standards of subsections (~~(3))~~ **(4) and (5)** of this section;

(b) A construction quality assurance plan that addresses the requirements of subsection (5) of this section;

(c) A plan of operation meeting the requirements of subsection (~~(4))~~ **(6)** of this section; and

(d) A closure plan meeting the requirements of subsection (~~(6))~~ **(8)** of this section.

~~((9))~~ **Piles used for storage or treatment - Construction records.** The owner or operator of piles used for storage or treatment shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.)

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-330 Surface impoundments and tanks. (1) Surface impoundments and tanks - Applicability.

(a) These standards ~~((are applicable))~~ apply to:

(i) Surface impoundments ~~((holding solid waste))~~ used to store or treat leachate, liquids, or semisolid wastes associated with solid waste facilities permitted under this chapter including, but not limited to, ~~((leachate lagoons associated with landfills permitted under this chapter and chapter 173-351 WAC, Criteria for municipal solid waste landfills, and surface impoundments associated with))~~ limited purpose landfills, recycling facilities, transfer stations, and piles used for storage or treatment, or with landfills permitted under chapter 173-351 WAC, Criteria for municipal solid waste landfills;

(ii) ~~((Above or below ground))~~ Tanks with a capacity greater than one thousand gallons ~~((holding solid waste associated with solid waste handling facilities))~~ used to store or treat leachate, liquids, or semisolid wastes ~~((or leachate))~~ associated with solid waste ~~((handling))~~ facilities permitted under this chapter including, but not limited to, limited purpose landfills, recycling facilities, transfer stations, and piles used for storage or treatment, or with landfills permitted under chapter 173-351 WAC, Criteria for municipal solid waste landfills; and

(iii) Piping systems within the boundaries of solid waste facilities that convey solid waste to or from surface impoundments and tanks as described in (a)(i) or (ii) of this subsection.

(b) These standards ~~((are not applicable))~~ do not apply to:

(i) ~~((or))~~ tanks ~~((whose facilities are regulated)), or piping systems that are elements of:~~

(A) Wastewater treatment systems permitted under local, state or federal water pollution control permits;

~~((or))~~, including stormwater permits, when those permits specify requirements equivalent to those of this section for surface impoundments, tanks and piping systems associated with the permitted system; and

(B) Leachate ~~((holding ponds))~~ management features at compost facilities regulated under WAC 173-350-220;

~~((or))~~, except that tanks used to store leachate must meet design standards in subsection (4)(b) of this section.

(ii) Septic tanks ~~((receiving))~~ regulated under chapter 246-272A WAC, On-site sewage systems, that receive only domestic sewage ~~((from facilities at the site))~~ generated at the solid waste facility;

(iii) Wastewater features that convey only domestic sewage generated at the solid waste facility to a domestic wastewater facility;

(iv) Agricultural waste ~~((managed according to))~~ operations conducted in accordance with a farm management plan written in conjunction with the local conservation district;

(v) Underground storage tanks subject to chapter 173-360 WAC, Underground storage tanks; ~~((and))~~

(vi) Tanks used to store moderate risk waste subject to WAC 173-350-360; and

(vii) Tanks with a capacity of five thousand gallons or less meeting the conditions for exemption under Table 220-A(1), Table 225-A(1), or Table 250-A(1).

(c) Specific elements of these standards apply to or are referenced as criteria for other activities that are primarily regulated under other sections of this chapter, or by other regulations. Those other activities include, but are not limited to:

(i) Beneficial use permit exemptions under WAC 173-350-200(3);

(ii) Composting facility design standards under WAC 173-350-220(4);

(iii) Land application operating criteria under WAC 173-350-230(6);

(iv) Anaerobic digester design standards under WAC 173-350-250(4); and

(v) Standards for facilities storing biosolids or sewage sludge under WAC 173-308-280.

(2) Surface impoundments and tanks - Permit exemptions. There are no exemptions for surface impoundments and tanks.

~~((2))~~ **(3) Surface impoundments and tanks - Permit requirement - Location** ~~((standards)).~~

(a) Surface impoundments and tanks ~~((shall))~~ must be located in unstable areas unless the owner or operator demonstrates that engineering measures have been incorporated in the facility's design to ensure that the integrity of the liners, monitoring system and structural components will not be disrupted. The owner or operator ~~((shall))~~ must place the demonstration in the application for a permit.

~~((3))~~ (b) No surface impoundment or tank regulated under this section may be located closer than one hundred feet to an existing drinking water supply well.

(4) Surface impoundments and tanks - Permit requirement - Design ~~((standards)).~~

(a) The owner or operator of a surface impoundment shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the design standards of this subsection. In determining pond capacity, volume calculations shall be based on the facility design, monthly water balance, and precipitation data. All surface impoundments shall). Surface impoundments and tanks must be designed so that the facility can be operated to meet the performance standards of WAC 173-350-040, and the following design standards:

(a) All surface impoundments regulated under this section must be designed and constructed to meet the following requirements:

(i) Have a liner consisting of a minimum 30-mil thickness geomembrane overlying a structurally stable foundation to support the liners and the contents of the impoundment. (HDPE geomembranes used as primary liners or leak detection liners ~~((shall))~~ must be at least 60-mil thick to allow for proper welding.) The jurisdictional health department may approve the use of alternative designs if the owner or operator can demonstrate during the permitting process that the proposed design will prevent migration of solid waste constituents or leachate into the ground or surface waters at least as effectively as the liners described in this subsection.

(ii) Have a groundwater monitoring system ~~((which))~~ that complies with the requirements of WAC 173-350-500 or

a leak detection layer. If a leak detection layer is used, it ~~((shall))~~ must consist of an appropriate drainage layer underlain by a geomembrane of at least 30-mil thickness.

(iii) Have embankments and slopes designed to maintain structural integrity under conditions of a leaking liner and capable of withstanding erosion from wave action, overfilling, or precipitation.

(iv) Have a minimum of eighteen inches of freeboard ~~((equal to or greater than eighteen inches))~~ above the design operating capacity to provide protection against wave action, overfilling, or precipitation. Impoundment operating capacity volume calculations must be based on the facility design, monthly water balance, and normal climatic precipitation and evaporation data for the location of the facility. During the permitting process the jurisdictional health department may reduce the freeboard requirement provided that other specified engineering controls are in place which prevent overtopping.

(v) Identify a leakage rate for the primary containment system that will trigger corrective action.

(vi) When a surface impoundment is constructed with a single geomembrane liner, the owner or operator must test the liner ~~((shall be tested))~~ using an electrical leak location evaluation capable of detecting a hole ~~((3))~~ three millimeters in its longest dimension or other equivalent postconstruction test method prior to being placed in service. Results of the test ~~((shall))~~ must be submitted with the construction record drawings~~(-~~

~~(vi) Surface impoundments that have the potential to impound more than ten-acre feet (three million two hundred fifty-nine thousand gallons) of liquid measured from the top of the embankment and which would be released by a failure of the containment embankment shall be reviewed and approved by the dam safety section of the department;))~~ and

(vii) ~~((No))~~ All surface impoundment liners ~~((shall))~~ must be ~~((constructed such))~~ designed so that the bottom of the lowest liner component is ~~((less than))~~ a minimum of five feet ~~((one and one-half meters))~~ above the seasonal high level of groundwater, unless the owner or operator can demonstrate during the permitting ~~((procedure))~~ process that the proposed liner design will not be affected by contact with groundwater. ~~((All surface impoundment liners shall be constructed such that the bottom of the lowest component is above the seasonal high level of groundwater.))~~ For the purpose of this section, groundwater includes any water-bearing unit ~~((which))~~ that is horizontally and vertically extensive, hydraulically recharged, and volumetrically significant.

(b) ~~((The owner or operator of a tank used to store or treat liquid or semisolid wastes meeting the definition of solid waste or leachate, shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the following design standards:))~~ Tanks must be designed and constructed to meet the following requirements:

(i) Tanks and ancillary equipment ~~((shall))~~ must be tested for leaks or tightness using a method acceptable to the jurisdictional health department prior to being covered, enclosed or placed in use. If a tank is found to leak or not to be tight, all repairs necessary to remedy the leak(s) in the system ~~((shall))~~ must be performed and verified to the satisfac-

tion of the jurisdictional health department prior to the tank being covered or placed in use~~((:))~~;

(ii) ~~((Below ground tanks and other tanks where all or portions of the tank are not readily visible shall be designed to resist buoyant forces in areas of high groundwater and shall either be:~~

~~(A) Retested for tightness at a minimum of once every two years; or))~~ Tanks that are constructed or installed to be wholly or partially below ground must:

(A) Be designed to resist buoyant forces in areas of high groundwater;

(B) Be equipped with a leak detection system capable of detecting a release from the tank; and

(C) Have a leakage rate identified for the primary containment system. Leakage above this rate will trigger corrective action.

(ii) For tanks or components in which the external shell of a metal tank or any metal component will be in contact with the soil or water, a determination ~~((shall))~~ must be made by a corrosion expert of the type and degree of external corrosion protection that is needed to ensure the integrity of the tank during its operating life. This determination ~~((shall))~~ must be included with design information submitted with the permit application;

(iv) Above ground tanks ~~((shall))~~ must be equipped with secondary containment ~~((constructed of, or lined with,))~~ This may be accomplished by use of a double-walled tank with leak detection, or construction of a separate containment structure using materials compatible with the waste being stored and capable of containing the volume of the largest tank within its boundary plus the precipitation from ~~((the))~~ a twenty-five-year storm ~~((event as defined in WAC 173-350-100))~~ if the containment structure is exposed to precipitation;

(v) Areas used to load or unload tanks ~~((shall))~~ must be designed to contain spills, ~~((drippage))~~ drips and accidental releases during loading and unloading of vessels;

(vi) Tanks and piping ~~((shall))~~ must be protected from impact by vehicles or equipment through use of curbing, grade separation, bollards or other appropriate means;

(vii) Tanks ~~((shall))~~ must be structurally suited for the proposed use; and

(viii) Tanks, valves, fittings and ancillary piping ~~((shall))~~ must be protected from failure caused by freezing.

~~((4))~~ (c) All facilities which include surface impoundments or tanks regulated under this section must provide controls to limit public access and prevent unauthorized vehicular traffic and illegal dumping of wastes. This must be accomplished by use of artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment. A lockable gate is required at each entry to the facility.

(5) Surface impoundments and tanks - Permit requirements - Documentation.

(a) The owner or operator must submit construction documents for, at a minimum, any proposed addition or modification of elements described in subsection (4) of this section to the jurisdictional health department for review and approval. The construction documents for proposed construction of engineered features must be prepared by a professional engineer registered in the state of Washington, and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features of the surface impoundment and tank systems, stormwater management features, and emission control features as required by the permitting air authority where applicable. The engineering report must demonstrate that the proposed design will meet the performance standards of this chapter;

(ii) Scale drawings of the facility including the location and size of waste handling areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;

(iii) Design specifications for the engineered features of the facility including any surface impoundment and tank systems, run-on/runoff controls, stormwater management features, and aeration and emission management features as required by a permitting air authority where applicable; and

(iv) A construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of the facility to ensure that facility is constructed in accordance with the approved design.

(b) The owner or operator must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. The owner or operator must not commence operation in a newly constructed portion of the facility until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

(6) Surface impoundments and tanks - Permit requirements - Operating ~~((standards))~~. The owner or operator of a surface impoundment or tank ~~((shall))~~ **must**:

~~((to:))~~

(i) in compliance with the performance standards of WAC 173-350-040 and this subsection. In addition, the owner or operator must develop, keep, and follow a plan of operation approved as part of the permitting process. The plan must describe the facility's operation and convey to site operating personnel the concept of operation intended by the designer. The plan of operation must be available for inspection at the request of the jurisdictional health department. If necessary, the plan may be modified with the approval, or at the direction, of the jurisdictional health department. Each plan of operation must include the following:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

(iii) A description of how wastes are handled on-site during the facility's active life, including:

(A) The equipment and procedures that will be used to prevent overfilling of surface impoundments or tanks ~~((and))~~;

(B) The equipment and procedures that will be used to maintain ~~((required))~~ a minimum of eighteen inches of free-board~~((;~~

~~((;))~~ in surface impoundments; and

(C) The equipment and procedures that will be used to control access to the site~~((;~~

~~((;~~ Control nuisance odors for wastes or liquids with the potential to create nuisance odors; and

(iv) Control birds at impoundments storing wastes capable of attracting birds.

(b) Inspect surface impoundments, tanks and associated piping, pumps and hoses as needed, but at least weekly, to ensure they are meeting the operational standards, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. In addition, surface impoundments shall have regular liner inspections. Their frequency and methods of inspection shall be specified in the plan of operation and shall be based on the type of liner, expected service life of the material, and the site-specific service conditions. The inspections shall be conducted at least once every five years, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. The jurisdictional health department shall be given sufficient notice and have the opportunity to be present during liner inspections.

(e) Maintain daily operating records on the quantity and the types of waste removed from the surface impoundment or tank~~((;))~~.

(iv) A description of how the owner or operator will ensure the facility is operated in a way to:

(A) Control litter, dust, and nuisance odors; and

(B) Control rodents, insects, and other vectors.

(v) A description of how operators will inspect and maintain the facility to prevent malfunctions, deterioration, operator errors and discharges that may cause or lead to the release of wastes to the environment that could pose a threat to human health, including the inspection form operators will use. Inspections must be conducted as needed, but at least weekly, to ensure that facility is meeting the operational standards unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. Facility inspection reports must be maintained in the operating record. The elements addressed in this description must include:

(A) The groundwater monitoring system, if required;

(B) The overfilling prevention equipment, including details of filling and emptying techniques;

(C) The liners and embankments, tank piping, and secondary containment;

(D) Procedures for cleaning containment structures, including removal of sediment, vegetation, and debris; and

(E) Procedures for testing surface impoundment liners, tanks, and piping systems for leaks.

(vi) A description of how the operators will maintain operating records on the amounts (weight or volume) and types of waste received and removed from the facility, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Facility inspection reports ~~((shall))~~ **must** be maintained in the operating record, including at least the

date of inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation shall be noted in the operating record. Records ~~((shall))~~ must be kept for a minimum of five years and shall be available ~~((for inspection))~~ upon request by the jurisdictional health department;

(vii) A description of safety planning and emergency activities, including:

(A) How on-site fire protection will be provided, as determined by the local and state fire control jurisdiction;

(B) How communications sufficient to handle emergencies will be provided between employees working at the facility and management offices, on-site and off-site;

(C) Response procedures in the event of fire, a description of fire protection equipment available on-site and actions to take if there is a fire or explosion; and

(D) Response procedures in the event leaks are detected, or other releases occur.

(viii) Acknowledgment that the owner or operator will inspect surface impoundments, tanks and associated piping, pumps and hoses as needed, but at least weekly, to ensure they are operating as designed and meeting the operational standards, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

(ix) Acknowledgment that the owner or operator will inspect surface impoundment liners for leaks no less frequently than every five years. The frequency and methods of inspection must be specified in the plan of operation and must be based on the type of liner, expected service life of the material, and the site-specific service conditions. The jurisdictional health department must be given sufficient notice and have the opportunity to be present during liner inspections;

(x) Acknowledgment that the owner or operator will conduct leak or tightness testing no less frequently than every two years on all below ground tanks and other tanks and piping that have not been equipped with a leak detection system capable of detecting a release from the tank or piping and where any portions of the tank or piping cannot be inspected visually. The jurisdictional health department must be given sufficient notice and have the opportunity to be present during leak or tightness testing events; and

(xi) Other details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

~~((d) Shall))~~ (b) Prepare and submit ((a copy of)) an annual report to the jurisdictional health department and the department by April 1st. The annual report ((shall)) must detail the facility's activities during the previous calendar year and ((shall)) must include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Results of groundwater monitoring in accordance with WAC 173-350-500, if applicable;

(iv) Results of leak detection system monitoring, if applicable; ~~((and))~~

(v) Results of liner inspections and piping tightness testing, if applicable; and

(vi) Any additional information required by the jurisdictional health department as a condition of the permit.

~~((e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:~~

~~(i) A description of the types of solid waste to be handled at the facility;~~

~~(ii) A description of how wastes are handled on site during the facility's active life;~~

~~(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs. This description shall include:~~

~~(A) The groundwater monitoring system, if required;~~

~~(B) The overfilling prevention equipment, including details of filling and emptying techniques;~~

~~(C) The liners and embankments, tank piping and secondary containment;~~

~~(D) Safety and emergency plans;~~

~~(E) The forms used to record weights and volumes; and~~

~~(F) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.~~

~~(5))~~ **(7) Surface impoundments and tanks - Permit requirements - Groundwater monitoring** ~~((requirements)).~~

(a) Surface impoundments not equipped with a leak detection layer are subject to the groundwater monitoring requirements of WAC 173-350-500.

(b) Surface impoundments equipped with a leak detection layer and tanks are not subject to the groundwater monitoring requirements of this chapter; however, surface impoundments must meet the ~~((requirements provided under))~~ performance standards of WAC 173-350-040~~((5))~~.

~~((6))~~ **(8) Surface impoundments and tanks - Permit requirements - Closure** ~~((requirements)).~~ The owner or operator of a surface impoundment or tank ~~((shall))~~ must

develop, keep, and follow a closure plan that includes:

(a) ~~((Notify))~~ Notification to the jurisdictional health department sixty days in advance of closure~~((:))~~;

(b) Removal of all waste material from the surface impoundment or tank ~~((shall be removed))~~ to a facility that conforms with the applicable regulations for handling the waste; and

(c) Methods of removing waste material.

~~((b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include the methods of removing waste.~~

~~(7))~~ **(9) Surface impoundments and tanks - Permit requirements - Financial assurance** ~~((requirements)).~~

There are no specific financial assurance requirements for surface impoundments or tanks subject to this chapter; however, surface impoundments and tanks must meet the

~~((requirements provided under))~~ performance standards of WAC 173-350-040~~((5))~~.

~~((8))~~ **(10) Surface impoundments and tanks - Permit application contents.** ~~((a))~~ The owner or operator of a surface impoundment or tank ~~((shall))~~ must obtain a solid waste permit from the jurisdictional health department, either as a separate permit or in compliance with subsection (11)(a) of this section. All applications for permits ~~((shall))~~ must be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit ~~((shall))~~ involving surface impoundments or tanks must contain:

~~((i))~~ (a) Engineering reports/plans and specifications that address the ~~((design))~~ standards of subsections ~~((3))~~ (4) and (5) of this section;

~~((ii))~~ (b) A construction quality assurance plan that addresses the requirements of subsection (5) of this section;

(c) A plan of operation meeting the requirements of subsection ~~((4))~~ (6) of this section;

~~((iii))~~ (d) For surface impoundments not equipped with a leak detection layer, hydrogeologic reports and plans that address the requirements of subsection ~~((5))~~ (7) of this section;

~~((iv))~~ (e) A closure plan meeting the requirements of subsection ~~((6))~~ (8) of this section; and

(f) Documentation that all owners of property located within one hundred feet of the surface impoundment or tank have been notified that the proposed facility may impact their ability to construct water wells, in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

~~((9))~~ **(11) Surface impoundments and tanks - Construction records.** The owner or operator of a surface impoundment or tank shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

(12) Surface impoundments and tanks - Relationship to other permits.

(a) Permits for other types of solid waste facilities with surface impoundments or tanks to which this section is applicable must address the applicable requirements of this section in addition to requirements for the other types of solid waste handling.

(b) Surface impoundments that have the potential to impound more than ten-acre feet (three million two hundred fifty-nine thousand gallons) of liquid measured from the top of the embankment and would be released by a failure of the containment embankment must also be reviewed and approved by the dam safety section of the department.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-350 Waste tire storage ~~((and transportation))~~ - Applicability. ~~((This section is applicable to all:))~~

(a) These standards apply to facilities that store waste tires in quantities ~~((of))~~ greater than:

(i) Eight hundred automobile tires or ~~((the combined weight equivalent of sixteen thousand pounds of all types))~~ eight tons of waste tires~~((This section is not applicable))~~ when each individual tire weighs less than five hundred pounds;

(ii) Twenty tons of heavy equipment tires when each individual tire weighs five hundred pounds or more.

(b) These standards do not apply to the storage of waste tires ~~((in an enclosed building or))~~ in mobile containers used to transport waste tires. For purposes of this section, mobile containers must be used primarily for the transport of tires and must be moved between the storage facility and off-site annually.

~~((b))~~ Persons engaged in the business of transporting waste tires except for:

(i) Any person transporting five tires or less;

(ii) Any person transporting used tires back to a retail outlet for repair or exchange;

(iii) Any waste hauler regulated by chapter 81.77 RCW, Solid waste collection companies;

(iv) The United States, the state of Washington or any local government, or contractors hired by these entities, when involved in the cleanup of illegal waste tire piles; and

(v) Tire retailers associated with retreading facilities who use company-owned vehicles to transport waste tires for the purposes of retreading or recycling.

~~(2) Waste tire storage and transportation—Transportation prohibitions and enforcement.~~

~~(a) No person shall enter into a contract for transportation of waste tires with an unlicensed waste tire transporter.~~

~~(b) Waste tires shall only be delivered to a facility that has obtained the required permits or licenses for storage, processing, or disposal of waste tires.~~

~~(c) Any person subject to this section who transports or stores waste tires without a valid waste tire carrier license or waste tire storage license issued by the Washington state department of licensing shall be subject to the penalty provisions of RCW 70.95.560.~~

~~(3) Waste tire storage and transportation—Carrier license requirements.~~

~~(a) All persons subject to this section engaged in the business of transporting waste tires are required to obtain a waste tire carrier license from the Washington state department of licensing.~~

~~(b) Application forms for a waste tire carrier license will be available at unified business identifier service centers located throughout the state. Unified business identifier service locations include:~~

~~(i) The field offices of the department of revenue and the department of labor and industries;~~

~~(ii) The tax offices of employment security;~~

~~(iii) The Olympia office of the secretary of state; and~~

(iv) The business license service office of the Washington state department of licensing.

(e) An application for a waste tire carrier license and a cab card for one vehicle shall include a two hundred fifty dollar application fee, fifty dollars of which shall be nonrefundable. Each additional vehicle cab card to be used by the licensee requires an additional fifty dollar fee. The application shall include:

(i) A performance bond in the sum of ten thousand dollars in favor of the state of Washington; or

(ii) In lieu of the bond, an applicant may submit other financial assurance acceptable to the department.

(d) The refundable portion of application fees may be returned to the applicant if the application is withdrawn before the department has approved or denied the application.

(e) A waste tire carrier license shall be valid for one year from the date of approval.

(4)) **(2) Waste tire storage - Permit exemptions.** There are no exemptions for waste tire storage.

(3) Waste tire storage ((and transportation)) - Permit requirements - Location ((standards)). There are no specific location standards for waste tire storage sites subject to this chapter; however, waste tire storage sites must meet the ((requirements provided under)) performance standards of WAC 173-350-040((5)).

((5)) (4) Waste tire storage ((and transportation)) - Permit requirements - Design ((standards. The owner or operator of a waste tire storage area shall prepare engineering reports/plans and specifications to address the design standards of this subsection)). Waste tire storage facilities must be designed so that the facility can be operated to meet the performance standards of WAC 173-350-040. The maximum number of tires to be stored on-site and the individual ((pile)) waste tire storage locations and ((sized shall)) sizes must be provided. ((The)) Facility ((shall be designed so that)) design requirements are as follows:

(a) Unless otherwise specified in fire code, waste tires stored inside an enclosed building or structure must be stored so that:

(i) Storage piles or racks adjacent to or along one wall do not extend beyond twenty-five feet from the wall, do not exceed fifty feet in length along the wall, and do not exceed thirty feet in height;

(ii) Storage piles or racks not adjacent to or along a wall do not exceed fifty feet in width and do not exceed thirty feet in height;

(iii) Aisles between storage piles or racks are no less than eight feet in width; and

(iv) Buildings and structures where the designated area for the storage of tires exceeds twenty thousand cubic feet in space are equipped throughout with an automatic sprinkler system.

(b) Unless otherwise specified in fire code, waste tires stored outside must be stored so that:

((a)) (i) The size of any individual pile of waste tires ((shall be)) is limited to:

((i)) (A) A maximum area of five thousand square feet;

((ii)) (B) A maximum volume of fifty thousand cubic feet; and

((iii)) (C) A maximum height of ten feet((;

(b)))).

(ii) A clear space of at least forty feet between each pile of waste tires ((shall be)) is provided. The clear space ((shall)) must not contain flammable or combustible material or vegetation;

((e)) (iii) Tire storage ((shall)) is not ((be)) located within ((ten)) fifty feet of any property line or building ((and shall not exceed six feet in height within twenty feet of any property line or building; and

(d)));

(iv) Tire storage is not located within one hundred feet of brush or forested areas;

(v) Where the total volume of waste tires stored on-site is more than one hundred fifty thousand cubic feet, storage arrangement must meet the following:

(A) Individual storage piles comply with size and separation requirements outlined in (b)(i) through (iv) of this subsection;

(B) Adjacent storage piles are considered a group, and the aggregate volume of storage piles in a group do not exceed one hundred fifty thousand cubic feet; and

(C) Separation between groups is at least seventy-five feet.

(vi) Waste tire storage is not located under bridges, elevated trestles, elevated roadways, or elevated railroads.

(c) Public access ((shall)) to any waste tire storage facility must be limited.

(d) When waste tires are stored and not processed on site, tires that weigh less than five hundred pounds must be segregated from tires that weigh five hundred pounds or more.

(5) Waste tire storage - Permit requirements - Documentation.

(a) The owner or operator must submit construction documents for, at a minimum, any proposed addition or modification of elements described in subsection (4) of this section to the jurisdictional health department for review and approval. The construction documents for proposed construction of engineered features must be prepared by a professional engineer registered in the state of Washington, and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features where applicable. The engineering report must demonstrate that the proposed design will meet the performance standards of WAC 173-350-040; and

(ii) Scale drawings of the facility including the location and size of waste handling areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation.

(6) Waste tire storage ((and transportation)) - Permit requirements - Operating ((standards)). The owner or operator of a waste tire storage facility ((shall)) must:

(a) Operate the ((facility to:

(i) Have communication capabilities to immediately summon fire, police, or other emergency service personnel in the event of an emergency;

(ii) Control public access in a manner sufficient to prevent arson, unauthorized vehicular traffic and illegal dumping of wastes;

(iii) Manage waste tires in such a way that it is protected from any material or conditions which may cause them to ignite;

(iv) Limit the total quantity of waste tires stored on-site at any time to the amount permitted by the jurisdictional health department;

(v) Provide on-site fire control equipment sufficient to extinguish any fire reasonably possible from one individual pile of waste tires. Fire control equipment may include, but is not limited to:

(A) Automatic sprinkler protection;

(B) Fire hydrants, hoses and ancillary equipment;

(C) Portable fire extinguishers; and

(D) Material handling equipment capable of moving tires during firefighting operations;

(vi) Provide vector control; and

(vii) site in compliance with the performance standards of WAC 173-350-040 and this subsection. In addition, the owner or operator must develop, keep, and follow a plan of operation approved as part of the permitting process. The plan of operation must be available for inspection at the request of the jurisdictional health department. If necessary, the plan may be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation must include the following:

(i) A description of the types of waste tires to be handled at the facility;

(ii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

(iii) A description of how waste tires are to be handled on-site during the facility's life, including:

(A) Routine storage;

(B) Procedures for ensuring that all waste tires received by the facility have been transported in accordance with the waste tire carrier section in WAC 173-350-355;

(C) Maximum site capacity; and

(D) Methods of adding or removing waste tires from the facility and equipment used.

(iv) A description of how the owner or operator will ensure the facility is operated in a way to:

(A) Control litter, dust, and nuisance odors;

(B) Control rodents, insects, and other vectors;

(C) Control public access in a manner sufficient to prevent arson, unauthorized vehicular traffic, illegal dumping of wastes, and to prohibit scavenging;

(D) Prohibit open burning and manage waste tires in a way to protect them from any material or conditions that may cause them to ignite;

(E) Provide attendant(s) on-site during hours of operation;

(F) Provide a sign at the site entrance that identifies the facility and shows at a minimum the name of the site;

(G) Immediately summon fire, police, or emergency service personnel in the event of an emergency;

(H) Limit the total quantity of waste tires stored on-site at any time to the amount permitted by the jurisdictional health department;

(I) Provide on-site fire control equipment sufficient to extinguish any fire reasonably possible from one individual

pile of waste tires. Fire control equipment may include, but is not limited to, automatic sprinkler protection, fire hydrants, fire hoses, ancillary firefighting equipment, portable fire extinguishers, and material-handling equipment capable of moving tires during firefighting operations; and

(J) Issue written or computer printed receipts upon receiving loads of waste tires(;

(b));

(v) A description of how operators will inspect and maintain the facility to prevent ((malfunctions,)) deterioration((; operator errors and discharges that may lead to)) or the release of wastes to the environment ((or cause)) that could pose a threat to human health, including the inspection form operators will use. Inspections ((shall)) must be as needed, but at least weekly, ((to ensure it is meeting the operational standards,)) unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process(;

(e)); Facility inspection reports must be maintained in the operating record;

(vi) A description of how operators will maintain ((daily)) operating records ((including:

(i) The numbers of tires received and removed from the site. Quantities may be measured by:

(A) Actual number of tires; or

(B) Weight, provided the operator documents the approximate number of tires included in each load; or

(C) Volume in cubic yards, provided the operator documents the approximate number of tires included in each load;

(ii) Facility inspection reports;

(iii) Significant deviations from the plan of operation;

(iv) Records shall be kept for a minimum of five years and shall be available upon request by the jurisdictional health department;

(d)) on the amounts (number of tires, weight of tires in tons, or volume of tires in cubic yards) and types of waste received and removed from the facility, including the form or computer printout used to record this information. Weight and volume are adequate measurements provided that the operator documents the approximate number of tires included in each load. Facility annual reports must be maintained in the operating record. Facility inspection reports must be maintained in the operating record, including at least the date of inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation must be noted in the operating record. Records must be kept for a minimum of five years and must be available upon request by the jurisdictional health department;

(vii) Safety, fire, and emergency plans addressing the following:

(A) Procedures for the use of communications equipment to immediately report emergencies to the fire department, police, or emergency service personnel;

(B) A list of all emergency equipment at the facility including the location and a brief description of its capabilities;

(C) Procedures for firefighting and the operation of fire control equipment;

(D) Employee training and emergency duty assignments; and

(E) Procedures for and frequency of fire drills;

(viii) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(b) Prepare and submit ~~((a copy of))~~ an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report ~~((shall))~~ must detail the ~~((facility))~~ facility's activities during the previous calendar year and ~~((shall))~~ must include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity of tires received, in tons;

(iv) Annual quantity of tires removed from the facility and ~~((end use))~~ where they went, in tons;

(v) Total tons of tires remaining at the facility at year's end;

(vi) Applicable financial assurance reviews and audit findings in accordance with WAC 173-350-600; and

(vii) Any additional information required by the jurisdictional health department as a condition of the permit~~(;~~

~~((e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:~~

~~((i) A description of how waste tires are to be handled on-site during the active life including:~~

~~((A) Transportation and routine storage; and~~

~~((B) Procedures for ensuring that all waste tires received by the facility have been transported in accordance with this section;~~

~~((ii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;~~

~~((iii) Safety, fire and emergency plans addressing the following:~~

~~((A) Procedures for the use of communications equipment to immediately report emergencies to the fire department, police, or emergency service personnel;~~

~~((B) A list of all emergency equipment at the facility including the location and a brief description of its capabilities;~~

~~((C) Procedures for firefighting and the operation of fire control equipment;~~

~~((D) Employee training and emergency duty assignments;~~

~~((E) Procedures for and frequency of fire drills;~~

~~((iv) The forms used to record weights and volumes; and~~

~~((v) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department)).~~

(7) Waste tire storage ~~((and transportation))~~ - Permit requirements - Groundwater monitoring ~~((requirements))~~.

There are no specific groundwater monitoring requirements

for waste tire storage sites; however, waste tire storage sites must meet the ~~((requirements provided under))~~ performance standards of WAC 173-350-040~~((5))~~.

(8) Waste tire storage ~~((and transportation))~~ - Permit requirements - Closure ~~((requirements))~~.

(a) The owner or operator of a facility that stores waste tires ~~((shall))~~ must develop, keep, and follow a closure plan that includes:

~~((a) Notify))~~ (i) Notification to the jurisdictional health department~~(;)~~ and ~~((where applicable))~~ the financial assurance instrument provider, one hundred eighty days in advance of closure;

~~((b) Commence implementation of the closure plan))~~ (ii) Commencement of closure, in part or whole, within thirty days after receipt of the final waste tires;

~~((c) Provide))~~ (iii) Projected time intervals that identify when partial closure is to be implemented;

(iv) Closure cost estimates and projected fund withdrawal intervals for the associated closure costs, from the approved financial assurance instrument;

(v) Methods of waste tire removal; and

(vi) Submittal of a certification that the site has been closed in accordance with the approved closure plan to the jurisdictional health department~~(; and~~

~~((d) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum the closure plan shall include:~~

~~((i) Projected time intervals that identify when partial closure is to be implemented, and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs, from the approved financial assurance instrument; and~~

~~((ii) Methods of waste tire removal)).~~

~~((e))~~ (b) The jurisdictional health department ~~((shall))~~ must notify the owner or operator, the department, and the financial assurance instrument provider, of the date when the jurisdictional health department has verified that the facility has been closed in accordance with the specifications of the approved closure plan.

(9) Waste tire storage ~~((and transportation))~~ - Permit requirements - Financial assurance ~~((requirements))~~.

(a) The owner or operator ~~((shall))~~ must establish a financial assurance mechanism in accordance with WAC 173-350-600 for closure in accordance with the approved closure plan. The funds ~~((shall))~~ must be sufficient for hiring a third party to remove the maximum number of tires permitted to be stored at the facility and deliver the tires to a facility permitted to accept the tires.

(b) Nothing in this section ~~((shall))~~ may prohibit the application of funds from an existing bond as required under RCW 70.95.555, to the total amount required for financial assurance, ~~((provided))~~ if the bond can be used for the activities described in (a) of this subsection.

(c) No owner or operator ~~((shall))~~ may commence or continue operations at the site until a financial assurance instrument has been provided for closure activities in conformance with WAC 173-350-600.

(10) Waste tire storage ~~((and transportation—Solid waste permit requirements. The owner or operator shall))~~ - Permit application contents. A person who stores an

amount of waste tires exceeding the regulatory threshold established in subsection (1)(a) of this section must obtain a solid waste permit from the jurisdictional health department. All applications for permits (~~shall~~) must be in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit (~~shall~~) must contain:

(a) Engineering reports/plans and specifications that address the design standards of subsections (4) and (5) of this section;

(b) A plan of operation addressing the requirements of subsection (6) of this section;

(c) A closure plan meeting the requirements of subsection (8) of this section; and

(d) Documentation as needed to meet the financial assurance requirements of subsection (9) of this section.

(11) Waste tire storage (~~and transportation~~) - Storage site license requirements.

(a) (~~In order to~~) An owner or operator of a waste tire storage facility must obtain a waste tire storage license(=). The facility owner or operator (~~shall~~) must first obtain a solid waste handling permit for the storage of waste tires from the jurisdictional health department.

(b) Application forms for a waste tire storage site owner license are available at unified business identifier service locations located throughout the state. Unified business identifier service locations include:

(i) The field offices of the Washington state department of revenue and the Washington state department of labor and industries;

(ii) The tax offices of Washington state department of employment security;

(iii) The Olympia office of the secretary of state; and

(iv) The business license service office of the Washington state department of (~~licensing~~) revenue.

(c) An application for a waste tire storage site owner license (~~shall~~) must include (~~(a two hundred fifty dollar)~~) an application fee determined by the Washington state department of revenue for each facility(=, fifty dollars of which shall be nonrefundable. The). A refundable portion of application fees may be returned to the applicant under the following conditions:

(i) The department determines that a solid waste permit would meet the substantive requirements of RCW 70.95.555 and determines that a license is not required; or

(ii) The applicant withdraws the application before the department has approved or denied the application.

(d) A waste tire storage site license (~~shall be~~) is valid for one year from the date of approval and must be renewed annually.

(12) Waste tire storage prohibitions and enforcement.

(a) Waste tires may only be delivered to a facility that has obtained the required permits or licenses for storage, processing, or disposal of waste tires.

(b) Any person subject to this section who stores waste tires without a valid waste tire storage license issued by the Washington state department of revenue is subject to the enforcement provisions of RCW 70.95.560.

NEW SECTION

WAC 173-350-355 Waste tire transportation. (1) Waste tire transportation - Applicability. These standards apply to persons engaged in the business of transporting waste tires except for:

(a) Any person transporting five tires or less;

(b) Any person transporting used tires back to a retail outlet for repair or exchange;

(c) Any waste hauler regulated by chapter 81.77 RCW, Solid waste collection companies;

(d) The United States, the state of Washington, or any local government, or contractors hired by these entities, when involved in the cleanup or collection of waste tires. This includes municipal contractors providing solid waste collection services under chapter 35.21 RCW, Miscellaneous provisions; and

(e) Tire retailers associated with retreading facilities who use company-owned vehicles to transport waste tires for the purposes of retreading or recycling.

(2) Waste tire transportation - Carrier license requirements.

(a) All persons subject to this section engaged in the business of transporting waste tires are required to obtain a waste tire carrier license from the Washington state department of revenue.

(b) Application forms for a waste tire carrier license will be available at unified business identifier service centers located throughout the state. Unified business identifier service locations include:

(i) The field offices of the Washington state department of revenue and the Washington state department of labor and industries;

(ii) The tax offices of Washington state department of employment security;

(iii) The Olympia office of the secretary of state; and

(iv) The business license service office of the Washington state department of revenue.

(c) An application for a waste tire carrier license and a cab card for one vehicle must include an application fee determined by the Washington state department of revenue. Each additional vehicle cab card to be used by the licensee requires an additional fee determined by the Washington state department of revenue. The application must include:

(i) A performance bond in the sum of ten thousand dollars in favor of the state of Washington; or

(ii) In lieu of the bond, an applicant may submit other financial assurance acceptable to the department.

(d) A refundable portion of application fees may be returned to the applicant if the application is withdrawn before the department has approved or denied the application.

(e) A waste tire carrier license is valid for one year from the date of approval and must be renewed annually.

(3) Waste tire transportation - Prohibitions and enforcement.

(a) No person may enter into a contract for transportation of waste tires with an unlicensed waste tire transporter.

(b) Waste tires may only be delivered to a facility that has obtained the required permits or licenses for storage, processing, or disposal of waste tires.

(c) Any person subject to this section who transports waste tires without a valid waste tire carrier license issued by the Washington state department of revenue is subject to the enforcement provisions of RCW 70.95.560.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-360 Moderate risk waste handling. (1) Moderate risk waste handling - Applicability.

(a) ~~((This section is applicable))~~ These standards apply to:

(i) Any facility that accepts segregated solid waste categorized as moderate risk waste (MRW), as defined in WAC 173-350-100;

(ii) Persons transporting MRW ~~((using only a bill of lading (MRW that is not shipped using a uniform hazardous waste manifest)))~~ who store MRW for more than ten days at a single location; and

(iii) Mobile systems and collection events, as defined in WAC 173-350-100.

(b) ~~((This section is not applicable))~~ These standards do not apply to:

(i) Persons transporting MRW managed in ~~((accordance))~~ compliance with the requirements for shipments of manifested dangerous waste under WAC 173-303-240;

(ii) Universal waste regulated under chapter 173-303 WAC, Dangerous waste regulations; and

(iii) Conditionally exempt small quantity generators managing their own wastes in compliance with the performance standards of WAC 173-350-040 and 173-303-070 (8)(b).

(2) ~~((Mobile systems and collection events.))~~ **Moderate risk waste handling - Permit exemptions.** In accordance with RCW 70.95.305, the operation of mobile systems ~~((and)),~~ collection events ~~((are subject solely to the requirements of (a) through (n) of this subsection and)),~~ limited MRW facilities and product take-back centers managed in accordance with the terms and conditions in Table 360-A of this section are exempt from solid waste handling permitting. ~~((An owner or operator that does not comply))~~ If a facility does not operate in compliance with the terms and conditions ~~((of))~~ established for an exemption under this subsection ~~((is required to obtain a permit from the jurisdictional health department and shall comply with the applicable requirements for a moderate risk waste handling facility)),~~ the facility may be subject to the permitting requirements for solid waste handling under this chapter. In addition, violations of the terms and conditions of Table 360-A and this subsection may be subject to the ~~((penalty))~~ enforcement provisions of RCW 70.95.315. ~~((Owners and operators of mobile systems and collection events shall:~~

(a) Notify the department and the jurisdictional health department of the intent to operate a mobile system or collection event at least thirty days prior to commencing operations. The notification shall include a description of the types and quantities of MRW to be handled;

(b) Manage mobile systems or collection events in compliance with the performance standards of WAC 173-350-040;

~~((e) Record the weights or gallons of each type of MRW collected, number of households and conditionally exempt small quantity generators served, and type of final disposition (e.g., reuse, recycled, treatment, energy recovery, or disposal). Records shall be maintained for a period of five years and will be made available to the department or jurisdictional health department on request;~~

~~((d) Ensure that the MRW at a mobile system or collection event is handled in a manner that:~~

~~((i) Prevents a spill or release of hazardous substances to the environment;~~

~~((ii) Prevents exposure of the public to hazardous substances; and~~

~~((iii) Results in delivery to a facility that meets the performance standards of WAC 173-350-040;~~

~~((e) Ensure that incompatible wastes are not allowed to come into contact with each other;~~

~~((f) Ensure that containers holding MRW remain closed except when adding or removing waste in order to prevent a release of MRW through evaporation or spillage if overturned;~~

~~((g) Ensure that containers holding MRW have legible labels and markings that identify the waste type;~~

~~((h) Ensure that containers holding MRW are maintained in good condition (e.g., no severe rusting or apparent structural defects);~~

~~((i) Ensure that personnel are familiar with the chemical nature of the materials and the appropriate mitigating action necessary in the event of fire, leak or spill;~~

~~((j) Control public access and prevent unauthorized entry;~~

~~((k) Prepare and submit a copy of an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report shall detail the collection activities during the previous calendar year and shall include the following information:~~

~~((i) Name of owner or operator, and locations of all collection sites;~~

~~((ii) Calendar year covered by the report;~~

~~((iii) Annual quantity and type of MRW, in pounds or gallons by waste type;~~

~~((iv) Number of households and CESQGs served;~~

~~((v) Type of final disposition (e.g., reuse, recycled, treatment, energy recovery, or disposal); and~~

~~((vi) Any additional information required by written notification of the department;~~

~~((l) Allow inspections by the department or the jurisdictional health department at reasonable times;~~

~~((m) Notify the department and the jurisdictional health department of any failure to comply with the terms and conditions of this subsection within twenty four hours; and~~

~~((n) Mobile collection systems using truck or trailers with concealed construction, permanently attached to a chassis may require a commercial coach insignia if subject to chapter 296-150C WAC, administered by the department of labor and industries.~~

~~((3) Limited MRW facilities and product take-back centers. In accordance with RCW 70.95.305, the operation of limited MRW facilities is subject solely to the requirements of (a) through (i) of this subsection and is exempt from solid waste handling permitting. Product take-back centers are~~

only subject to (b), (c) and (f) of this subsection. An owner or operator that does not comply with the terms and conditions of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with the applicable requirements for an MRW facility. In addition, violations of the terms and conditions of this subsection may be subject to the penalty provisions of RCW 70.95.315. Owners and operators of limited MRW facilities shall:

(a) Notify the department and the jurisdictional health department within thirty days prior to operation of the intent to operate a limited MRW facility with a description of the type and quantity of MRW to be handled;

(b) Ensure waste at a limited MRW facility or product take-back center is handled in a manner that:

(i) Prevents a spill or release of hazardous substances to the environment;

(ii) Prevents exposure of the public to hazardous substances; and

(iii) Results in delivery to a facility that meets the performance standards of WAC 173-350-040;

(c) Ensure that containers and tanks holding MRW are maintained in good condition (e.g., no severe rusting or apparent structural defects);

(d) Provide secondary containment for containers and tanks capable of storing fifty five gallons or more of liquid MRW;

(e) Ensure the facility meets the performance standards of WAC 173-350-040;

(f) Notify the department and the jurisdictional health department of any failure to comply with the terms and conditions of this subsection within twenty-four hours of knowledge of an incident;

(g) Allow inspections by the department and jurisdictional health department at reasonable times;

(h) Maintain records of the amount and type of MRW received, and the final disposition of the MRW by amount and type; and

(i) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall cover the facility's activities during the previous calendar year and shall include the following information:

(A) Name and address of the facility;

(B) Calendar year covered by the report;

(C) Annual quantity and type of MRW, in pounds or gallons by waste type;

(D) Number of households and CESQGs served;

(E) Type of final disposition (e.g., reuse, recycled, treatment, energy recovery, or disposal); and

(F) Any additional information required by written notification of the department.

(4))

Table 360-A

Terms and Conditions for Solid Waste Permit Exemptions

Terms and Conditions for Permit Exemption	Mobile System	Collection Event	Limited MRW Facility	Product Take-Back Center
<u>(a) Notify the department and jurisdictional health department of the intent to operate at least thirty days prior to commencing operations. The notification must include a description of the types and quantities of MRW to be handled;</u>	X	X	X	
<u>(b) Manage MRW in compliance with the performance standards of WAC 173-350-040;</u>	X	X	X	X
<u>(c) Maintain records of the amount and type of MRW received, number of households and/or conditionally exempt small quantity generators served, and the type of final disposition (e.g., reuse, recycled, treatment, energy recovery, incineration, or landfilling). Records must be maintained for five years and must be made available to the department or jurisdictional health department on request;</u>	X	X	X*	
<u>(d) Ensure MRW is handled in a manner that:</u> <u>(i) Prevents a spill or release of hazardous substances to the environment;</u> <u>(ii) Prevents exposure of the public to hazardous substances; and</u> <u>(iii) Results in delivery to a facility that meets the performance standards of WAC 173-350-040;</u>	X	X	X	X
<u>(e) Ensure that incompatible wastes are not allowed to come into contact with each other;</u>	X	X		X

<u>Terms and Conditions for Permit Exemption</u>	<u>Mobile System</u>	<u>Collection Event</u>	<u>Limited MRW Facility</u>	<u>Product Take-Back Center</u>
<u>(f) Ensure that containers holding MRW remain closed except when adding or removing waste in order to prevent a release of MRW through evaporation or spillage if overturned;</u>	X	X	X	
<u>(g) Ensure that containers holding MRW have legible labels and markings that identify the waste type;</u>	X	X	X	X
<u>(h) Ensure that containers holding MRW are maintained in good condition (e.g., no severe rusting or apparent structural defects);</u>	X	X	X	X
<u>(i) Ensure that designated personnel are familiar with the chemical nature of the materials and the appropriate mitigating action necessary in the event of fire, leak, or spill;</u>	X	X		X
<u>(j) Control public access and prevent unauthorized entry;</u>	X	X	X	X
<u>(k) Prepare and submit an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report must detail the collection activities during the previous calendar year and must include the following:</u> <u>(i) Name and addresses of all collection sites;</u> <u>(ii) Calendar year covered by the report;</u> <u>(iii) Annual quantity and type of MRW collected, in pounds or gallons, by waste type;</u> <u>(iv) Number of households and CESQGs served annually;</u> <u>(v) Type of final disposition (for example, reuse, recycled, treatment, energy recovery, incineration, or landfilling) by waste type of MRW; and</u> <u>(vi) Any additional information required by the department;</u>	X	X	X*	
<u>(l) Allow inspections by the department or jurisdictional health department at reasonable times;</u>	X	X	X	X
<u>(m) Notify the jurisdictional health department and the department of any spills or discharges of MRW to the environment within twenty-four hours of knowledge of an incident;</u>	X	X	X	X
<u>(n) Mobile collection systems using trucks or trailers with concealed construction, permanently attached to a chassis may require a commercial coach insignia if subject to chapter 296-150C WAC, Commercial coaches, administered by the department of labor and industries; and</u>	X	X		
<u>(o) Provide secondary containment for containers and tanks capable of storing fifty-five gallons or more of liquid MRW.</u>	X	X	X	X

* Limited MRW facilities are NOT required to keep track of number of households and CESQGs served annually.

(3) Moderate risk waste facilities - Permit requirements - Location (~~(standards)~~). There are no specific location standards for moderate risk waste facilities subject to this chapter; however, moderate risk waste facilities must meet the ~~(requirements provided under)~~ performance standards of WAC 173-350-040(~~(5)~~).

~~((5))~~ **(4) Moderate risk waste facilities - Permit requirements - Design** (~~(standards)~~). ~~((a) The owner or operator of a moderate risk waste facility shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the following design standards. Each MRW facility shall:)~~ Moderate risk waste facilities (MRW) must be designed and constructed so that the facility can be operated to meet the performance standards of WAC 173-350-040, and the following design standards:

(a) All MRW facilities regulated under this subsection must be designed and constructed to meet the following requirements:

(i) Be surrounded by a fence, walls, or natural features and provided with a lockable door or gate to control public and animal access;

(ii) Be constructed of materials that are chemically compatible with the MRW handled;

(iii) Provide secondary containment to capture and contain releases and spills, and facilitate timely cleanup in areas where MRW is handled. All secondary containment ~~(shall)~~ must:

(A) Have sufficient capacity to:

(I) Contain ten percent of the volume of all containers or tanks holding liquid or the total volume of the largest container holding liquids in the area, whichever is greater;

(II) Provide additional capacity to hold the precipitation from a twenty-five-year storm ~~(as defined in WAC 173-350-100)~~, in uncovered areas; and

(III) Provide additional capacity to hold twenty minutes of flow from an automatic fire suppression system ~~(, where such a suppression system exists;)~~ in areas of the facility as required by state and local fire or building codes.

(B) Be segregated ~~(for)~~ to prevent incompatible wastes from coming into contact with one another; and

(C) ~~(Have a base underlying the containers which is)~~ For a floor or other structure that serves as the secondary containment, be free of cracks or gaps and ~~(is)~~ sufficiently impervious to contain leaks, spills, accumulated precipitation, or fire suppression materials until the collected material is detected and removed. The ~~(base shall)~~ floor must be sloped or the containment system ~~(shall)~~ must otherwise be designed and operated to drain and remove liquids resulting from leaks, spills, precipitation, or fire suppression unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(iv) Be accessible by all-weather roads;

(v) Prevent run-on and control runoff from a twenty-five-year storm ~~(, as defined in WAC 173-350-100)~~;

(vi) Provide a sign at the site entrance that identifies the facility and shows at ~~(least)~~ a minimum the name of the site~~(, and if applicable, hours during which the site is open for public use, and acceptable materials)~~);

(vii) Provide sufficient ventilation to remove toxic vapors and dust from the breathing zone of workers and prevent the accumulation of flammable or combustible gases or fumes that could present a threat of fire or explosion;

(viii) Be constructed with explosion-proof electrical wiring, fixtures, lights, motors, switches and other electrical components as required by local fire code or the department of labor and industries;

(ix) Provide electrical grounding in areas where flammable and combustible liquids are consolidated to allow for bonding to consolidation equipment; and

(x) Provide protection of ~~(the)~~ MRW ~~(handling areas)~~ from wind ~~(, rain or snow)~~ and precipitation through structural or operational measures.

(b) The owner or operator of a tank used to store or treat MRW ~~(shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to)~~ must address the following design standards:

(i) Tanks and ancillary equipment ~~(shall)~~ must be tested for tightness using a method acceptable to the jurisdictional health department prior to being covered, enclosed or placed in use. If a tank is found not to be tight, all repairs necessary to remedy the leak(s) in the system ~~(shall)~~ must be performed and verified to the satisfaction of the jurisdictional health department prior to the tank being covered or placed in use;

(ii) Below ground tanks ~~(shall)~~ must be designed to resist buoyant forces in areas of high groundwater and ~~(shall)~~ must either be:

(A) Retested for tightness at a minimum of once every two years; or

(B) Equipped with a leak detection system capable of detecting a release from the tank ~~(;)~~.

(iii) For tanks or components in which the external shell of a metal tank or any metal component will be in contact with the soil or water, a determination ~~(shall)~~ must be made by a corrosion expert of the type and degree of external corrosion protection that is needed to ensure the integrity of the tank during its operating life. This determination ~~(shall)~~ must be included with design information submitted with the permit application;

(iv) Areas used to load or unload tanks ~~(shall)~~ must be designed to contain spills, ~~(drippage)~~ drips and accidental releases during loading and unloading of vessels;

(v) Tanks and piping ~~(shall)~~ must be protected from impact by vehicles or equipment through use of curbing, grade separation, bollards, or other appropriate means;

(vi) Tanks ~~(shall)~~ must be structurally suited for the proposed use; and

(vii) Tanks, valves, fittings and ancillary piping ~~(shall)~~ must be protected from failure caused by freezing.

(c) Prefabricated structures with concealed construction ~~(shall)~~ must meet the requirements of chapter 296-150F WAC, Factory-built housing and commercial structures, administered by the department of labor and industries.

(5) Moderate risk waste facilities - Permit requirements - Documentation.

(a) The owner or operator must submit construction documents for, at a minimum, any proposed addition or modification of elements described in subsection (4) of this section

to the jurisdictional health department for review and approval. The construction documents for proposed construction of engineered features must be prepared by a professional engineer registered in the state of Washington and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features of moderate risk waste facilities and tank systems, secondary containment areas, ventilation systems, stormwater management features, and emission control features as required by the permitting air authority where applicable. The engineering report must demonstrate that the proposed design will meet the performance standards of this chapter;

(ii) Scale drawings of the facility including the location and size of waste handling areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;

(iii) Design specifications for the engineered features of the facility including any tank systems, run-on/runoff controls, stormwater management features, and aeration and emission management features as required by a permitting air authority where applicable; and

(iv) A construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of the facility to ensure the facility is constructed in accordance with the approved design.

(b) The owner or operator must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. The owner or operator must not commence operation in a newly constructed portion of the facility until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

(6) **Moderate risk waste facilities - Permit requirements - Operating** (~~standards~~). The owner or operator of (a) an MRW facility (~~shall~~) must:

(a) (~~Manage~~) Operate the site in compliance with the performance standards of WAC 173-350-040 and this subsection. In addition, the owner or operator must develop, keep, and follow a plan of operation approved as part of the permitting process. The plan must describe the facility's operation and convey to site operating personnel the concept of operation intended by the designer. The plan of operation must be available on-site for inspection at the request of the jurisdictional health department. If necessary, the plan may be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation must include the following:

(i) A description of the types of solid wastes to be handled at the facility;

(ii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

(iii) A description of how MRW will be handled on-site during the active life of the facility including:

(A) Methods for managing and/or identifying unknown wastes;

(B) Procedures for managing wastes that arrive in corroded or leaking containers or when MRW is left at the gate when the facility is unattended;

(C) Protocol for sorting, processing, and packaging MRW;

(D) Maximum quantities of MRW to be safely stored in each area at any time;

(E) Waste acceptance protocol to preclude and redirect fully regulated dangerous waste and any unacceptable waste types, such as explosives and/or radioactive waste; and

(F) For facilities that offer material exchanges, a procedure for determining what MRW is suitable for exchange and how the materials exchange will be operated.

(iv) A description of how the owner or operator will ensure MRW handling activities and facilities will be managed so that:

((+)) (A) Each storage area is marked with signs to clearly show the type of MRW to be stored in that area;

((+)) (B) Incompatible MRW and materials (~~shall~~) are not be mixed together or allowed to come into contact with each other;

((+)) (C) MRW (~~shall be~~) is compatible with the containment system;

((+)) (D) Unless otherwise approved by the jurisdictional health department, containers or tanks are closed except when actively adding or removing MRW in order to prevent a release of MRW through evaporation or spillage if overturned;

((+)) (E) All containers or tanks have visible and legible labels or markings that identify the MRW type and are visible for inspection;

((+)) (F) Containers of MRW (~~shall be~~) are stored in a manner that allows for easy access and inspection. Drums containing MRW (~~shall~~) must have at least one side with a minimum of thirty inches clear aisle space;

((+)) (G) Containers holding MRW are maintained in good condition including, but not limited to, no severe rusting or apparent structural defects;

((+)) Uniform hazardous waste manifests are prepared and used at the point where possession of the MRW is given to a commercial registered dangerous waste transporter for shipments of MRW destined for out-of-state locations. This shall be completed in accordance with WAC 173-303-180;

((+)) (H) A shipment of MRW transported is documented on a shipping paper in accordance with 49 C.F.R. Subpart C, Shipping Paper, Parts 172.200 through 172.204, except shipping papers are not required for:

(I) Transportation of HHW in a private motor vehicle or vessel including a leased or rented motor vehicle or vessel by a homeowner for noncommercial purposes to an MRW facility;

(II) Transportation of MRW or HHW in a motor vehicle, aircraft, or vessel operated by a federal, state, or local government employee solely for noncommercial federal, state, or local government purposes.

(I) Public access is restricted to areas identified in the plan of operation and unauthorized entry is prevented;

~~((x))~~ (J) Communication capabilities are provided to summon fire, police, or emergency service personnel;

~~((xi))~~ (K) Flammable or explosive gases do not exceed ten percent of the lower explosive limit in the area where flammable liquid MRW is ~~((handled))~~ consolidated. An explosive gas monitoring ~~((program shall))~~ alarm system must be implemented to ensure that this standard is achieved;

~~((xii))~~ MRW is delivered to a facility that meets the performance standards of WAC 173-350-040;

~~((xiii))~~ (L) Electrical grounding is provided and bonding occurs in areas where flammable and combustible liquids are consolidated;

(M) Personnel ~~((responsible for routine inspections and operations are familiar with the chemical nature of the materials and the appropriate mitigating action necessary in the event of fire, leak or spill; and~~

~~((xiv))~~ trained to manage MRW in accordance with this section and the plan of operation approved during the permitting process are present at all times when MRW is accepted and handled; and

(N) The jurisdictional health department and the department are notified of any spills or discharges of MRW to the environment within twenty-four hours of knowledge of an incident.

~~((b))~~ (v) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs. The operator must ensure that routine and annual inspections are conducted as follows:

~~((i))~~ (A) Routine inspections ~~((shall))~~ must be conducted at least weekly or once each operating day, whichever is more frequent, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. Routine inspections ~~((shall))~~ must be performed for:

~~((A))~~ (I) Operating hazards;

~~((B))~~ (II) Presence of operable safety equipment;

~~((C))~~ (III) Container integrity; and

~~((D))~~ (IV) General facility condition~~((;))~~;

~~((i))~~ (B) Annual inspections ~~((shall))~~ must be conducted to determine the condition of:

~~((A))~~ (I) Secondary containment systems including all readily accessible below floor space, sumps, and tanks for deterioration and evidence of containment failure; and

~~((B))~~ (II) All ventilation and flammable vapor monitoring systems.

~~((e))~~ Maintain daily operating records of the weights or gallons of each type of MRW collected and the number of households and CESQGs served. Facility inspection reports shall be maintained in the operating record, including at least the date and time of the inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be kept for a minimum of five years and shall be available for inspection at the request of the jurisdictional health department.

~~((d))~~ (vi) A description of how operators will maintain operating records on the amounts (weight or volume) and the

types of waste received and removed from the facility, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Facility inspection reports must be maintained in the operating record, including at least the date of inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation must be noted in the operating record. Records must be kept for a minimum of five years, and must be available upon request by the jurisdictional health department;

(vii) Safety and emergency plans including:

(A) A list of all on-site emergency equipment with its capability, purpose, and training requirements;

(B) A description of actions to take if leaks in containers, tanks, or containment structures are suspected or detected and for other releases (e.g., failure of runoff containment system, gases generated due to chemical reactions or rapid volatilizations).

(viii) A description of employee training requirements; and

(ix) Other details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(b) Prepare and submit ~~((a copy of))~~ an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report ~~((shall))~~ must detail the facility's activities during the previous calendar year and must include the following information:

(i) Name and address of the facility and locations of all collection sites;

(ii) Calendar year covered by the report;

(iii) Annual ~~((quantity))~~ quantities and types of MRW, in pounds or gallons;

(iv) Number of households and CESQGs served;

(v) Type of final disposition ~~((e.g.))~~ for example, reuse, recycled, treatment, energy recovery, incineration, or ~~((disposal))~~ landfilling by waste type of MRW;

(vi) Applicable financial assurance reviews and audit findings in accordance with WAC 173-350-600; and

(vii) Any additional information required by the jurisdictional health department as a condition of the permit.

~~((e))~~ Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of the types of solid wastes to be handled at the facility;

(ii) A description of how MRW will be handled on-site during the active life of the facility including:

(A) Methods for managing and/or identifying unknown wastes;

(B) Procedures for managing wastes that arrive in corroded or leaking containers or when MRW is left at the gate when the facility is unattended;

(C) Protocol for sorting, processing and packaging MRW;

(D) Procedures to protect containers of MRW susceptible to damage from weather and temperature extremes;

(E) Maximum quantities of MRW to be safely stored in each area at any time;

(F) Waste acceptance protocol to preclude and redirect fully regulated dangerous waste and any unacceptable waste types, such as explosives and/or radioactives; and

(G) For facilities that offer material exchanges, a procedure for determining what MRW is suitable for exchange and how the materials exchange will be operated;

(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety and emergency plans including:

(A) A list of all on-site emergency equipment with its capability, purpose, and training requirements;

(B) A description of actions to take if leaks in containers, tanks, or containment structures are suspected or detected and for other releases (e.g., failure of runoff containment system, gases generated due to chemical reactions or rapid volatilization);

(v) The forms used to record weights and volumes; and

(vi) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.)

(7) **Moderate risk waste facilities - Permit requirements - Groundwater monitoring** (~~(requirements)~~). There are no specific groundwater monitoring requirements for MRW facilities subject to this chapter; however, moderate risk waste facilities must meet the ~~(requirements provided under)~~ performance standards of WAC 173-350-040 ~~(5)~~.

(8) **Moderate risk waste facilities - Permit requirements - Closure** (~~(requirements)~~).

(a) The owner or operator of a moderate risk waste facility ~~(shall)~~ must develop, keep, and follow a closure plan that includes:

~~((a) Notify)~~ (i) Notification to the jurisdictional health department, and where applicable, the financial assurance instrument provider, no later than one hundred eighty days prior to the projected date of the final receipt of MRW, of the intent to ~~(implement the closure plan)~~ close the facility in part or whole ~~(-The facility shall close in a manner that:~~

(i) ~~Minimizes the need for further maintenance)~~;

(ii) ~~(Removes)~~ Removal of all MRW ~~(and ensures delivery of the MRW)~~ to a facility that conforms with the applicable regulations for handling the waste;

(iii) ~~(Decontaminates)~~ Decontamination of all areas where MRW has been handled, including, but not limited to, secondary containment, buildings, tanks, equipment, and property; ~~(and~~

(iv) Prepares the facility for remedial measures after closure, if required.

~~(b) Commence)~~

(iv) Commencement of closure activities in part or whole within thirty days following the receipt of the final volume of

MRW ~~(-Waste shall not be accepted for disposal or for use in closure.~~

(e) ~~At facility closure completion, in part or whole, submit the following to the jurisdictional health department:~~

~~(i)):~~

(v) Submittal of a certification by the owner or operator, and a professional engineer ~~((licensed))~~ registered in the state of Washington that the site has been closed in accordance with ~~((the approved closure plan; and~~

~~(ii)) closure procedures;~~

(vi) Submittal of a closure report signed by the facility owner or operator and the certifying engineer that describes:

(A) Actions taken to determine if there has been a release to the environment; and

(B) The results of all inspections conducted as part of the closure procedure.

~~((d) Keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include:~~

~~(i) A description of the activities and procedures that will be used to ensure compliance with this subsection;~~

~~(ii))~~ (vii) An estimate of the maximum volume of MRW on-site at any time during the active life of the facility; and

~~((iii))~~ (viii) Closure cost estimates and projected fund withdrawal intervals from the financial assurance instrument, if ((such) an instrument is required by subsection (9) of this section.

~~((e))~~ (b) The jurisdictional health department ((shall)) will notify the owner or operator, the department, and the financial assurance instrument provider, of the date when the jurisdictional health department has verified that the facility has been closed in accordance with the specifications of the approved closure plan.

(9) **Moderate risk waste facilities - Permit requirements - Financial assurance** (~~(requirements)~~).

(a) The owner or operator of any fixed moderate risk waste facility that stores more than nine thousand gallons of MRW on-site, excluding used oil, is required to establish financial assurance in accordance with WAC 173-350-600.

(b) Proof of financial assurance ~~((shall))~~ must be provided to the jurisdictional health department prior to the acceptance of any MRW. The financial assurance instrument ~~((shall))~~ must provide sufficient funds to guarantee that all closure requirements are met. In the event that hazardous substances are released to the environment and site remediation is necessary, additional financial assurance ~~((shall))~~ must be provided ~~((in order that))~~ so site remediation can be accomplished.

(c) Nothing in this section ~~((shall))~~ prevents an owner or operator from including the cost of MRW facility financial assurance in an instrument established for a collocated permitted solid waste facility so long as there are adequate funds available for both closure activities and the instrument identifies the commitment of funds for both activities.

(10) **Moderate risk waste facilities - Permit application contents.** The owner or operator of ~~((a))~~ an MRW facility ~~((shall))~~ must obtain a solid waste permit from the jurisdictional health department. All applications for permits ~~((shall))~~ must be submitted in accordance with the requirements established in WAC 173-350-710. In addition to the

requirements of WAC 173-350-710 and 173-350-715, each application for a permit ~~((shall))~~ must contain:

(a) Engineering reports/plans and specifications that address the design standards of subsections (4) and (5) of this section;

~~(b) A construction quality assurance plan that addresses the requirements of subsection (5) of this section;~~

~~(c) A plan of operation meeting the requirements of subsection (6) of this section;~~

~~((e))~~ (d) A closure plan meeting the requirements of subsection (8) of this section; and

~~((d))~~ (e) Documentation as needed to meet the financial assurance requirements of subsection (9) of this section.

~~((11) Moderate risk waste facilities — Construction records. The owner or operator of a moderate risk waste facility shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.))~~

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-400 Limited purpose landfills. (1) Limited purpose landfills - Applicability.

(a) These standards apply to ~~((a))~~ limited purpose landfills ~~((except:~~

~~(a) Municipal solid waste)). Landfills in this category include facilities which may encompass considerable variations in waste types, site conditions, and operational controls. The primary characteristic of a limited purpose landfill is that it is not allowed to receive municipal solid waste.~~

(b) These standards do not apply to:

(i) Landfills regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills;

~~((b) Inert waste))~~ (ii) Landfills regulated under WAC 173-350-410 Inert waste landfills;

~~((c) Special incinerator ash))~~ (iii) Landfills regulated under chapter 173-306 WAC, Special incinerator ash management standards;

~~((d) Dangerous waste))~~ (iv) Landfills regulated under chapter 173-303 WAC, Dangerous waste regulations; and

~~((e) Chemical waste landfills used for the disposal of polychlorinated biphenyls (PCBs))~~ (v) Landfills regulated under Title 40 C.F.R. Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

(2) Limited purpose landfills - Permit exemptions. There are no permit exemptions for limited purpose landfills.

(3) Limited purpose landfills - Permit requirements - Location ~~((standards)).~~ All limited purpose landfills ~~((shall))~~ must be located to meet the following requirements:

(a) No landfill ~~((shall))~~ may be located over a Holocene fault, in subsidence areas, or on or adjacent to an unstable

slope or other geologic features which could compromise the structural integrity of the facility~~((:))~~;

~~(b) No landfill's active area ((shall)) may be located closer than one thousand feet to ((a down-gradient drinking)) an existing water supply well((, unless the owner or operator can demonstrate that a minimum of ninety days will occur between the time that a contaminant is detected and the time the contaminant can reach the nearest down-gradient drinking water supply well. Such demonstrations shall be prepared by a licensed professional in accordance with the requirements of chapter 18.220 RCW and shall be included in the permit application. The demonstration shall be based on the details of the sampling and analysis plan and the hydrogeologic properties of the hydrostratigraphic unit.))~~

~~(c) No landfill's active area ((shall)) may be located in a channel migration zone ((as defined in WAC 173-350-100)) or within two hundred feet, measured horizontally, of a stream, lake, pond, river, ((or)) saltwater body, ((nor)) or in any wetland ((nor any public land that is being used by a public water system for watershed control for municipal drinking water purposes in accordance with WAC 248-54-660(4))). All facilities ((shall)) must conform to location restrictions established in local shoreline management plans adopted pursuant to chapter 90.58 RCW((:)), Shoreline Management Act of 1971;~~

~~(d) No landfill ((shall)) may be located within ten thousand feet of any airport runway currently used by turbojet aircraft or five thousand feet of any airport runway currently used by only piston-type aircraft unless the federal aviation administration grants a waiver. This requirement is only applicable where ((such)) a landfill is used for disposing of wastes where a bird hazard to aircraft would be created((:))~~ and

~~(e) All landfills ((shall)) must comply with the location standards specified in RCW 70.95.060.~~

~~((3))~~ **(4) Limited purpose landfills - Permit requirements - Design** ~~((standards:~~

~~(a) This section applies to landfills with considerable variations in waste types, site conditions, and operational controls)). All landfills ((shall)) must be designed and constructed to meet the design standards of this subsection, the performance standards of WAC 173-350-040, and ((shall)) must be appropriate for and compatible with the waste, the site, and the operation. ((The owner or operator of a limited purpose landfill shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the design standards of this subsection. An owner or operator shall be able to demonstrate during the permitting process that the design of a proposed landfill will mitigate threats to human health and the environment. When evaluating a landfill design, the jurisdictional health department shall consider the following factors:))~~

(a) Landfill design must consider:

(i) Waste characterization;

(ii) Soil conditions;

(iii) Hydrogeologic conditions;

(iv) Hydraulic conditions;

(v) Contaminant fate and transport;

(vi) Topography;

(vii) Climate;

- (viii) Seismic conditions;
- (ix) The ~~((total))~~ site capacity ~~((of the facility))~~ and each landfill unit;
- (x) Anticipated leachate characteristics and quantity;
- (xi) Operational controls; and
- (xii) Environmental monitoring systems.

(b) Landfill gas control. Limited purpose landfills must be designed to control methane and other explosive gases to ensure they do not exceed:

(i) Twenty-five percent of the lower explosive limit for the gases in facility structures (excluding the gas control or recovery system components);

(ii) The lower explosive limit for gases in soil or in ambient air at the property boundary or beyond; and

(iii) One hundred parts per million by volume of hydrocarbons (expressed as methane) in off-site structures.

(c) Liner system design.

(i) Liner system performance standard. Limited purpose landfills ~~((shall))~~ must be constructed in accordance with a design that:

(A) Will prevent the contamination of the hydrostratigraphic units identified in the hydrogeologic assessment of the facility at the ~~((relevant))~~ point of compliance as specified during the permitting process; and

(B) ~~((Controls methane and other explosive gases generated by the facility to ensure they do not exceed:~~

(I) Twenty five percent of the lower explosive limit for the gases in facility structures (excluding the gas control or recovery system components);

(II) The lower explosive limit in soil gases or in ambient air for the gases at the property boundary or beyond; and

(III) One hundred parts per million by volume of hydrocarbons (expressed as methane) in offsite structures.

(ii) The jurisdictional health department may allow a limited purpose landfill to be designed and constructed without a liner system if the owner or operator can demonstrate during the permitting process that:

~~((A))) Will meet the landfill gas control requirements of (b) of this subsection.~~

(ii) Liner system design and construction. The owner or operator of a limited purpose landfill must select one of the three options for liner system design and construction described in (c)(ii)(A), (B), and (C) of this subsection. The options described in (B) and (C) of this subsection require that the owner or operator must demonstrate to the satisfaction of the jurisdictional health department during the permitting process that the proposed liner design will comply with the liner performance standard of (c)(i) of this subsection and the specific requirements of this item.

(A) Presumptive liner design. Limited purpose landfills designed and constructed with the following composite liner are presumed to meet the performance standard of (c)(i) of this subsection. The presumptive liner design consists of the following two components:

(I) A lower component consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-2} cm/sec; and

(II) An upper component consisting of a high-density polyethylene (HDPE) geomembrane with a minimum of 60-

mil thickness. The geomembrane must be installed in direct and uniform contact with the lower component.

(B) Facility-specific liner design. Limited purpose landfills may be designed and constructed with an engineered liner system that the owner or operator demonstrates will meet the performance standard of (c)(i) of this subsection. The final liner system must be appropriate for and compatible with the characteristics of the site, the wastes that are specified in a solid waste permit as allowed for disposal in the landfill, and the operation of the facility.

(C) Operation without an engineered liner. Limited purpose landfills may be designed and constructed without an engineered liner system, if the owner or operator demonstrates to the satisfaction of the jurisdictional health department during the permitting process that:

(I) The contaminant levels in the waste and leachate are unlikely to pose an adverse impact to the environment; and

~~((B))) (II) The ability of natural soils to provide a barrier or reduce the concentration of contaminants provides sufficient protection to meet the performance standards of WAC 173-350-040; and~~

~~((C)) Explosive gases generated by the facility will not exceed:~~

(I) Twenty five percent of the lower explosive limit for the gases in facility structures (excluding the gas control or recovery system components);

(II) The lower explosive limit in soil gases or in ambient air for the gases at the property boundary or beyond; and

(III) One hundred parts per million by volume of hydrocarbons (expressed as methane) in offsite structures.) (III) The landfill will meet the landfill gas control requirements of (b) of this subsection.

(ii) Liner separation from groundwater. No landfill liner system ~~((shall))~~ may be constructed ~~((such that))~~ with the bottom of the lowest component ~~((is))~~ less than ten feet ~~((three meters))~~ above the seasonal high level of groundwater, unless a hydraulic gradient control system has been installed which prevents groundwater from contacting the liner. For the purpose of this section, groundwater includes any water-bearing unit which is horizontally and vertically extensive, hydraulically recharged, and volumetrically significant as to harm or endanger the integrity of the liner at any time.

(iv) Hydraulic gradient control system performance standard. When ~~((a hydraulic gradient control system is to be))~~ incorporated into a landfill design, a demonstration ~~((shall))~~ must be made during the permit process that the hydraulic gradient control system can ~~((be installed to))~~ control groundwater fluctuations and maintain separation between the controlled seasonal high level of groundwater ~~((in the identified water-bearing unit))~~ and the bottom of the ~~((lowest))~~ liner system ~~((component))~~. The ~~((hydraulic gradient control))~~ system ~~((shall))~~ must not ~~((have negative impacts on))~~ negatively impact waters of the state or impede the ~~((capability))~~ ability to collect representative samples ~~((representative))~~ of the ~~((quality of))~~ groundwater at the ~~((relevant))~~ point of compliance. The demonstration ~~((shall))~~ must include:

(A) A discussion in the geologic and hydrogeologic site characterization showing the effects from subsoil settlement, changes in surrounding land uses, climatic trends or other

impacts affecting groundwater levels during the active life(~~(s)~~) and post-closure period(~~(s)~~) of the landfill;

(B) A discussion (~~(showing potential impacts)~~) of the gradient control (~~(operation to existing)~~) system's potential impacts on quality and quantity of groundwater or surface water(~~(s)~~). This discussion (~~(shall)~~) must include potential impacts to water users and instream flow and levels of surface waters in direct hydrologic contact (~~(or continuity)~~) with the hydraulic gradient control system. Any (~~(currently)~~) available ground or surface water quality data for hydrostratigraphic units, springs, or surface waters in direct hydrologic contact (~~(or continuity)~~) with the hydraulic gradient control system (~~(shall)~~) must be included;

(C) (~~(Conceptual engineering drawings of the proposed landfill and)~~) A discussion (~~(as to)~~) of how the hydraulic gradient control system will protect or impact the structural integrity and performance of the liner system; and

(D) (~~(Preliminary engineering drawings of the hydraulic gradient control system;~~

~~(E))~~) Design specifications for the proposed ground and surface water monitoring systems(~~(s) and~~

~~(F) A discussion of the potential impacts from the gradient control system on the capability of collecting groundwater samples that will represent the quality of groundwater passing the relevant point of compliance.~~

~~(v) Presumptive liner design. Limited purpose landfills designed and constructed with the following composite liner are presumed to meet the performance standard of (b)(i) of this subsection. An alternative liner system design shall be used when the nature of the waste, the disposal facility, or other factors are incompatible with the presumptive liner. The presumptive liner design consists of the following two components:~~

~~(A) A lower component consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.~~

~~(B) An upper component consisting of a high-density polyethylene (HDPE) geomembrane with a minimum of 60-mil thickness. The geomembrane shall be installed in direct and uniform contact with the lower component.~~

~~(e)):~~

(d) Leachate collection and control system design. Except (as provided in (b)(ii)) when a landfill is designed and constructed without an engineered liner under (c)(ii)(C) of this (section) subsection, limited purpose landfills (shall) must be constructed in accordance with a design that:

(i) Provides for collection and removal of leachate generated in the landfill;

(ii) Is capable of maintaining a leachate head of less than ((a)) one-foot ((head of leachate)) over the liner system and less than ((a two-foot head)) two feet in leachate sump areas;

(iii) Includes a monitoring system capable of collecting representative samples of leachate generated in the landfill; and

(iv) Provides for leachate storage, treatment, or pretreatment to meet the requirements ((for permitted discharge under)) of WAC 173-350-330 Surface impoundments and tanks, chapter 90.48 RCW, Water pollution control, and the

Federal Clean Water Act, as appropriate when leachate is to be discharged from the facility.

~~((d)) (e) Run-on/runoff control system design. Limited purpose landfills (shall) must be constructed in accordance with a design that:~~

~~(i) Will prevent flow onto the active portion of the landfill during the peak discharge from a twenty-five-year storm((, as defined in WAC 173-350-100));~~

~~(ii) Will prevent unpermitted discharges from the active portion of the landfill resulting from a twenty-five-year storm((, as defined in WAC 173-350-100)); and~~

~~(iii) When located in a one hundred-year flood plain, the entrance and exit roads((s)) and landfill practices do not restrict the flow of the base flood, reduce the temporary water storage capacity of the flood plain, or result in washout of solid waste((, to pose a hazard to human life, wildlife, land or water resources)).~~

~~((e)) (f) Final closure system design.~~

~~(i) Final closure performance standard. Limited purpose landfills (shall) must be closed in accordance with a design that:~~

~~(A) Prevents exposure of waste;~~

~~(B) Minimizes infiltration (at a minimum, the design will prevent the generation of significant quantities of leachate to eliminate the need for leachate removal by the end of the post-closure period);~~

~~(C) Prevents erosion from wind and water;~~

~~(D) Is capable of sustaining native vegetation;~~

~~(E) Addresses anticipated settlement, with a goal of achieving no less than two to five percent slope after settlement;~~

~~(F) Provides sufficient stability and mechanical strength and addresses potential freeze-thaw and desiccation;~~

~~(G) Provides for the management of run-on and runoff, preventing erosion or otherwise damaging the closure cover;~~

~~(H) Minimizes the need for post-closure maintenance;~~

~~(I) Provides for collection and removal of methane and other gases generated in the landfill to meet the requirements of (b) of this subsection. Landfill gas (shall) must be purified for sale, used for its energy value, or flared when the quantity and quality of landfill gases will support combustion. Landfill gases may be vented when they will not support combustion. The collection and removal system (shall) must include a monitoring system capable of collecting representative samples of gases generated in the landfill; and~~

~~(J) Meets the requirements of regulations, permits and policies administered by the jurisdictional air pollution control authority or the department under chapter 70.94 RCW, Washington Clean Air Act and Section 110 of the Federal Clean Air Act.~~

(ii) Final cover design and construction. The owner or operator of a limited purpose landfill must select one of the two options for final cover system design and construction described in (e)(ii)(A) and (B) of this subsection. The option described in (e)(ii)(B) of this subsection requires that the owner or operator must demonstrate to the satisfaction of the jurisdictional health department during the permitting process that the proposed final cover design will comply with the final cover performance standards of (f)(i) of this subsection and the specific requirements of this item.

(A) Presumptive final closure cover design. Limited purpose landfills designed and constructed with the following final closure cover are presumed to meet the performance standards in ~~((e))~~ (f)(i)(A) through (D) of this subsection. ~~((An alternative final closure cover shall be used when the nature of the waste, the disposal facility or other factors are incompatible with the presumptive final closure cover system.))~~ The presumptive final closure cover consists of the following components:

~~((A))~~ (I) An antierosion layer consisting of a minimum of two feet ~~((60 cm))~~ of earthen material of which at least twelve inches ~~((30 cm))~~ of the uppermost layer is capable of sustaining native vegetation, seeded with grass or other shallow rooted vegetation; and

~~((B))~~ (II) A geomembrane with a minimum of 30-mil ~~((.76 mm))~~ thickness, or a greater thickness that is commensurate with the ability to join the geomembrane material and site characteristics such as slope, overlaying a competent foundation.

~~((F))~~ (B) Facility-specific final cover. Limited purpose landfills may be designed and constructed with an engineered final cover system that the owner or operator demonstrates will meet the performance standards of (f)(i) of this subsection. The final cover system must be appropriate for and compatible with: The characteristics of the site, the wastes that are specified in a solid waste permit as allowed for disposal in the landfill, and the operation of the facility.

(g) Water balance and groundwater contaminant fate and transport modeling. Any modeling performed for evaluating a landfill design ~~((shall))~~ must meet the following performance standards:

(i) All water balance analysis ~~((shall))~~ must be performed using:

(A) The Hydrologic Evaluation of Landfill Performance (HELP) Model; or

(B) Alternate methods approved by the jurisdictional health department. Alternate methods ~~((shall))~~ must have supporting documentation establishing its ability to accurately represent the water balance within the landfill unit.

(ii) Any groundwater and contaminant fate and transport modeling ~~((shall))~~ must be conducted by a licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, and meet the following performance standards:

(A) The model ~~((shall))~~ must have supporting documentation that establishes the ability of those methods to represent groundwater flow and contaminant transport under the conditions at the site;

(B) The model ~~((shall))~~ must be calibrated against site-specific field data;

(C) A sensitivity analysis ~~((shall))~~ must be conducted to measure the model's response to changes in the values assigned to major parameters, specific tolerances, and numerically assigned space and time discretizations;

(D) The value of the model's parameters requiring site-specific data ~~((shall))~~ must be based upon actual field or laboratory measurements; and

(E) The values of the model's parameters that do not require site-specific data ~~((shall))~~ must be supported by labo-

ratory test results or equivalent methods documenting the validity of the chosen parameter values.

~~((g))~~ (h) Seismic impact zones. Limited purpose landfills located in seismic impact zones ~~((shall))~~ must be designed and constructed so that all containment structures, including liners, leachate collection systems, surface water control systems, gas management, and closure cover systems are able to resist the maximum horizontal acceleration in ~~((lithified))~~ earth materials for the site.

~~((h))~~ (i) The owner or operator of limited purpose landfills located in an unstable area ~~((shall))~~ must demonstrate that engineering measures have been incorporated into the landfill's design to ensure that the integrity of the structural components of the landfill will not be disrupted. The owner or operator ~~((shall))~~ must place the demonstration in the application for a permit. The owner or operator ~~((shall))~~ must consider the following factors, at a minimum, when determining whether an area is unstable:

(i) On-site or local soil conditions that may result in significant differential settling, surface rupture, or liquefaction;

(ii) On-site or local geologic or geomorphologic features indicating differential settling, surface rupture, or liquefaction; and

(iii) On-site or local human-made features or events (both surface and subsurface) indicating differential settling, surface rupture, or liquefaction.

~~((i))~~ (j) Setback requirements. Limited purpose landfills ~~((shall))~~ must be designed to provide a setback of at least one hundred feet between the active area and the property boundary. The setback ~~((shall))~~ must be increased if necessary to:

(i) Control nuisance odors, dust, and litter;

(ii) Provide a space for the placement of monitoring wells, gas probes, run-on/runoff controls, and other design elements; or

(iii) Provide sufficient area to allow proper operation of the landfill and access to environmental monitoring systems and facility structures.

~~((k))~~ (k) Access control and traffic requirements. All limited purpose landfills must:

(i) Provide controls to limit public access and prevent unauthorized vehicular traffic, illegal dumping of wastes, and keep animals out, by use of artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment. A lockable gate is required at each entry to the landfill;

(ii) Provide approach and exit roads of all-weather construction, with traffic separation and traffic control on-site, and at the site entrance; and

(iii) Provide a sign at the entrance that identifies the facility and provides emergency contact information.

(5) Limited purpose landfills - Permit requirements - Documentation.

(a) The owner or operator must submit construction documents for, at a minimum, any proposed addition or modification of elements of the landfill described in subsection (4) of this section to the jurisdictional health department for review and approval. The construction documents for proposed construction of engineered features must be prepared

by a professional engineer registered in the state of Washington, and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features of the facility including, but not limited to: Liners, final closure covers, impoundments, stormwater management features, leachate management features, and aeration and emission control features as required by the permitting air authority where applicable. The engineering report must demonstrate that the proposed design will meet the performance standards of this chapter;

(ii) Scale drawings of the facility including the location and size of waste storage and disposal areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;

(iii) Design specifications for the engineered features of the facility including, but not limited to, liners, final closure covers, stormwater management features, leachate management features, and aeration and emission management features as required by a permitting air authority where applicable; and

(iv) A construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of the facility to ensure the facility is constructed in accordance with the approved design.

(b) The owner or operator of a limited purpose landfill must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. The owner or operator must not commence operation in a newly constructed portion of the facility until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

(6) Limited purpose landfills - Permit requirements - Operating ((standards)). The owner or operator of a limited purpose landfill ((shall)) must:

(a) Operate the facility ((to:

(i) ~~Control public access and prevent unauthorized vehicular traffic, illegal dumping of wastes, and keep animals out by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment. A lockable gate shall be required at each entry to the landfill;~~

(ii) ~~Provide approach and exit roads of all-weather construction, with traffic separation and traffic control on-site, and at the site entrance;~~

(iii) ~~Ensure that no liquid waste or liquids are placed in disposal facilities;~~

(iv) ~~Provide on-site fire protection as determined by the local and state fire control jurisdiction. Landfills disposing of wastes that can support combustion shall have a method to control subsurface fires;~~

(v) ~~Ensure that at least two landfill personnel are on-site with one person at the active face when the site is open to the~~

~~public for disposal facilities with a permitted capacity of greater than fifty thousand cubic yards per year;~~

(vi) ~~Provide communication between employees working at the landfill and management offices, on-site and off-site, sufficient to handle emergencies;~~

(vii) ~~Control fugitive dust;~~

(viii) ~~Perform no open burning unless permitted by the jurisdictional air pollution control agency or the department under chapter 70.94 RCW, Washington Clean Air Act;~~

(ix) ~~Collect scattered litter as necessary to prevent vector harborage, a fire hazard, aesthetic impacts, or adversely affect wildlife or its habitat;~~

(x) ~~Prohibit scavenging;~~

(xi) ~~Ensure that reserve operational equipment shall be available to maintain and meet these standards; and~~

(xii) ~~Ensure that operations do not endanger any containment or monitoring structures such as liners, leachate collection systems, surface water control systems, gas management, cover systems and monitoring wells.~~

(b) ~~Operate the facility in compliance with the following operating standards unless a demonstration can be made during the permitting process that due to the nature, source of the waste, or quality of the leachate generated, these standards are not necessary for the protection of human health or the environment:~~

(i) ~~Implement a program at the facility for detecting and preventing the disposal of dangerous waste fully regulated under chapter 173-303 WAC, municipal solid waste and other prohibited wastes. This program shall include, at a minimum:~~

(A) ~~Random inspections of incoming loads unless the owner or operator takes other steps (for example, instituting source controls restricting the type of waste received) to ensure that incoming loads do not contain prohibited wastes. Random inspections shall include:~~

(I) ~~Discharging a random waste load onto a suitable surface, or portion of the tipping area. A suitable surface shall be chosen to avoid interference with operations, so that sorted waste can be distinguished from other loads of uninspected waste, to avoid litter, and to contain runoff;~~

(II) ~~The contents of the load shall be visually inspected prior to actual disposal of the waste. The facility owner or operator shall return prohibited waste to the hauler, arrange for disposal of prohibited wastes at a facility permitted to manage those wastes, or take other measures to prevent disposal of the prohibited waste at the facility;~~

(B) ~~Maintaining records of inspections, or the results of other procedures if appropriate;~~

(C) ~~Training facility personnel to recognize regulated dangerous waste, prohibited polychlorinated biphenyls (PCB) wastes and other prohibited wastes; and~~

(D) ~~Immediate notification of the department and the jurisdictional health department if a regulated dangerous waste or prohibited PCB waste is discovered at the facility.~~

(ii) ~~Thoroughly compact the solid waste before succeeding layers are added except for the first lift over a liner.~~

(iii) ~~Cover disposed waste to control disease vectors, fires, nuisance odors, blowing litter, and scavenging. Putrescible waste shall be covered at the end of each operating day, or at more frequent intervals if necessary. The jurisdictional~~

health department may grant a temporary waiver, not to exceed three months, from the requirement of this subsection if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical. Materials used for cover shall be:

(A) At least six inches (15 cm) of earthen material, such as soils; or

~~(B) Alternative materials or an alternative thickness other than at least six inches (15 cm) of earthen material as approved by the jurisdictional health department when the owner or operator demonstrates that the alternative material or thickness will control vectors, fires, nuisance odors, blowing litter, scavenging, provide adequate access for heavy vehicles, and will not adversely affect gas or leachate composition and controls.~~

~~(iv) Prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment; and~~

~~(v) Implement a program at the facility to control and monitor explosive gases and to respond to the detection of explosive gases in a manner that ensures protection of human health. This program shall include, at a minimum:~~

~~(A) Ensure that explosive gases generated by the facility do not exceed:~~

~~(I) Twenty five percent of the lower explosive limit for the gases in facility structures (excluding the gas control or recovery system components);~~

~~(II) The lower explosive limit in soil gases or in ambient air for the gases at the property boundary or beyond; and~~

~~(III) One hundred parts per million by volume of hydrocarbons (expressed as methane in offsite structures)) in compliance with the performance standards of WAC 173-350-040 and this subsection. In addition, the owner or operator must develop, keep, and follow a plan of operation approved as part of the permitting process. The plan must describe the facility's operation and convey to site operating personnel the concept of operation intended by the designer. The plan of operation must be available for inspection at the request of the jurisdictional health department. If necessary, the plan may be modified with the approval, or at the direction, of the jurisdictional health department. Each plan of operation must include the following:~~

~~(i) A description of the types of solid waste to be handled at the facility;~~

~~(ii) A description of the criteria and procedures used to ensure that dangerous waste and other unacceptable waste, including liquid waste, are not accepted at the facility;~~

~~(iii) A description of how solid wastes are to be handled on-site, including identification of unloading and staging area, transportation practices, and housekeeping activities;~~

~~(iv) A description of how the owner or operator will ensure the facility is operated to:~~

~~(A) Protect containment and monitoring structures such as liners, leachate collection systems, surface water control systems, gas management, cover systems, and monitoring wells;~~

~~(B) Control litter, dust, and nuisance odors;~~

~~(C) Control rodents, insects, and other vectors;~~

~~(D) Provide attendant(s) on-site during hours of operation; and~~

~~(E) Prevent scavenging.~~

~~(v) If the landfill's capacity is greater than fifty thousand cubic yards per year, acknowledgment that at least two landfill personnel will be on-site with one person at the active face when the site is open to the public;~~

~~(vi) A description of how waste will be landfilled, including:~~

~~(A) How solid waste will be compacted before succeeding layers are added, except that the first lift over a liner may be left uncompacted to act as a cushion for subsequent lifts;~~

~~(B) How cover of disposed waste will be managed. Putrescible waste must be covered at the end of each operating day, or at more frequent intervals if necessary. The jurisdictional health department may grant a temporary waiver, not to exceed three months, from this cover requirement if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting these requirements impractical. Materials used for cover must be:~~

~~(I) At least six inches of earthen material, such as soils; or~~

~~(II) Alternative materials or an alternative thickness other than at least six inches of earthen material as approved by the jurisdictional health department when the owner or operator demonstrates that the alternative material or thickness will control vectors, fires, nuisance odors, blowing litter, scavenging, provide adequate access for heavy vehicles, and will not adversely affect gas or leachate composition and controls.~~

~~(vii) A description of how any explosive gases generated at the facility will be monitored and controlled, and how the owner or operator will respond to the detection of explosive gases in a manner that ensures protections of human health. This element of the plan must include, at a minimum:~~

~~(A) Controls to ensure that explosive gases generated by the facility do not exceed the criteria of subsection (4)(b) of this section;~~

~~(B) A routine explosive gas-monitoring program to ensure that all standards are met. The minimum frequency for monitoring is quarterly. The type and frequency of monitoring ((shall)) must be determined based on the following factors:~~

~~(I) Soil conditions;~~

~~(II) The hydrogeologic conditions surrounding the facility;~~

~~(III) The hydraulic conditions surrounding the facility; and~~

~~(IV) The location of facility structures and property boundaries;~~

~~(C) If explosive gas levels exceed ((those of this)) the limits identified in subsection (4)(b) of this section, take all necessary steps to ensure protection of human health including:~~

~~(I) Notifying the jurisdictional health department;~~

~~(II) Notifying the local fire authority;~~

~~(III) Monitoring ((offsite)) off-site structures;~~

~~((III)) (IV) Monitoring explosive gas levels daily, unless otherwise authorized by the jurisdictional health department;~~

~~((IV) Evacuation of) (V) Evacuating buildings affected by landfill gas until determined to be safe for occupancy;~~

~~((V))~~ (VI) Within seven calendar days of the explosive gas levels detection, placing in the operating record the explosive gas levels detected and a description of the steps taken to protect human health and ~~((provide))~~ providing written notification to the jurisdictional health department; ~~((and~~ (V))

(VII) Within sixty days of the explosive gas levels detection, implementing a remediation plan for the explosive gas releases, describing the nature and extent of the problem and the remedy. This ~~((shall))~~ plan must be sent to the jurisdictional health department for approval as an amendment to the plan of operation. A copy of the remediation plan shall be placed in the operating record; and

~~((D) Construction))~~ (VIII) When constructing and decommissioning ~~((of all))~~ gas monitoring and extraction wells, do so in a manner that protects groundwater and meets the requirements of chapter 173-160 WAC, Minimum standards for construction and maintenance of wells~~((s))~~;

~~((e) Inspect and maintain the facility to prevent malfunctions and deterioration, operator errors, and discharges that may cause or lead to the release of wastes to the environment or cause a threat to human health.))~~ (viii) A description of how equipment, structures and other systems, including leachate collection, gas collection, run-on/runoff controls, and hydraulic gradient control systems, are to be inspected and maintained, including the frequency of inspection and inspection logs. The inspections ~~((shall))~~ must be at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process~~((The owner or operator shall keep an inspection report or summary))~~;

(ix) A description of how operators will maintain operating records on the amounts (weight or volume) and types of waste received and removed from the facility, and the number of vehicles delivering waste to the facility, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Facility inspection reports must be maintained in the operating record, including at least the date ((and time)) of inspection, the ((printed)) name and ((the)) signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or ((corrective actions;

~~((d) Maintain daily operating records on the weights (or volumes), number of vehicles entering and the types of wastes received. Facility inspection reports shall be maintained in the operating record))~~ remedial action. Significant deviations from the plan of operation ~~((shall))~~ must be noted ~~((on))~~ in the operating record. Records ~~((shall))~~ must be ~~((maintained))~~ kept for a minimum of five years and ~~((shall))~~ must be available upon request by the jurisdictional health department;

~~((e))~~ (x) A description of safety planning and emergency activities, including:

(A) On-site fire protection, as determined by the local and state fire control jurisdiction. Landfills disposing of wastes that can support combustion must have a method to control subsurface fires;

(B) Communications sufficient to handle emergencies will be provided between employees working at the landfill and management offices, on-site and off-site;

(C) Response procedures in the event of fire (including subsurface fires), a description of fire protection equipment available on-site and actions to take if there is a fire or explosion; and

(D) Response procedures in the event leachate or gas leaks are detected, or other releases occur.

(xi) Other details to demonstrate that the landfill will be operated in accordance with this subsection and as required by the jurisdictional health department.

(b) Prepare and submit a monitoring plan to the jurisdictional health department describing all gas, leachate, surface water, and groundwater monitoring to be conducted in order to meet the requirements of subsections (4) and (5) of this section, as well as WAC 173-350-500 for groundwater. This plan must be approved by the jurisdictional health department before being implemented. The jurisdictional health department may specify a periodic review schedule for the plan. This monitoring plan must:

(i) Provide appropriate, consistent sampling and analysis procedures designed to produce representative results. As appropriate, the plan must include procedures for:

(A) Sample collection and handling;

(B) Sample preservation and shipment;

(C) Analytical procedures;

(D) Chain-of-custody control;

(E) Quality assurance and quality control; and

(F) Decontamination of equipment.

(ii) The sampling and analytical methods must provide sufficient sensitivity, precision, selectivity and limited bias so that changes in conditions can be detected and quantified. All laboratory analyzed samples must be sent to an accredited laboratory for analyses according to chapter 173-50 WAC, Accreditation of environmental laboratories.

(c) Prepare and submit a ((copy of an)) landfill annual status report and an annual monitoring report to the jurisdictional health department and the department by April 1st of each year on forms provided by the department. ((The)) These annual reports ((shall)) must cover landfill activities during the previous calendar year and ((shall)) must include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual ((quantity)) quantities and types of waste accepted in tons or cubic yards with an estimate of density in pounds per cubic yard;

(iv) ~~((Results of groundwater monitoring in accordance with WAC 173-350-500;~~

~~((v))~~ Applicable financial assurance reviews and audit findings in accordance with WAC 173-350-600; and

~~((vi))~~ (v) Any additional information required by the jurisdictional health department as a condition of the permit((;

(f) ~~Develop, keep, and abide by a plan of operation approved as part of the permitting process. The plan shall describe the operation of the facility and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at~~

the direction of the jurisdictional health department. Each plan of operation shall contain:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of how solid wastes are to be handled on-site during its active life including:

(A) The acceptance criteria that will be applied to the waste;

(B) Procedures for ensuring only the waste described will be accepted;

(C) Procedures for handling unacceptable wastes; and

(D) Unloading and staging areas, transportation, routine filling, compaction, grading, cover or other vector controls, and housekeeping;

(iii) A description of how equipment, structures and other systems, including leachate collection, gas collection, run-on/runoff controls, and hydraulic gradient control systems, are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety and emergency plans including;

(A) Procedures for fire (including subsurface fires) prevention, a description of fire protection equipment available on-site and actions to take if there is a fire or explosion;

(B) Actions to take if leaks are detected or for other releases, such as failure of runoff containment system, if such systems are required;

(v) The forms for recording weights and volumes; and

(vi) Other such details to demonstrate that the landfill will be operated in accordance with this subsection and as required by the jurisdictional health department).

~~((5))~~ **(7) Limited purpose landfills - Permit requirements - Groundwater monitoring** (*requirements*). Limited purpose landfills are subject to the groundwater monitoring requirements of WAC 173-350-500.

~~((6))~~ **(8) Limited purpose landfills - Permit requirements - Closure** (*requirements*). The following (~~closure~~) requirements apply (~~in full~~) to facilities with limited purpose landfills:

(a) The owner or operator must develop, keep, and follow a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan must include the following information:

(i) A description of the final closure cover, designed in accordance with subsection (4)(e) of this section, the methods and procedures to be used to install the closure cover, sources of borrow materials for the closure cover, and a schedule or description of the time required for completing closure activities;

(ii) Projected time intervals at which sequential partial closure and final closure are to be implemented;

(iii) A description of the activities and procedures that will be used to ensure compliance with (b) through (f) of this subsection; and

(iv) Identify closure cost estimated and projected fund withdrawal intervals for the associated closure costs, from the approved financial assurance instrument.

(b) When the facility is ending active disposal operations the owner or operator ((shall)) **must** notify the jurisdictional health department, and where applicable, the financial assurance instrument provider, one hundred eighty days in

advance of closure of the facility, or any portion thereof. The facility, or any portion thereof, ((shall)) **must** close in a manner that:

(i) Minimizes the need for further maintenance;

(ii) Controls, minimizes, or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated runoff, or waste decomposition products to the ground, groundwater, surface water, and the atmosphere; and

(iii) Prepares the facility, or any portion thereof, for the post-closure period.

~~((b))~~ **(c)** The owner or operator ((shall)) **must** commence implementation of the closure plan in part or whole within thirty days after receipt of the final volume of waste and/or attaining the final landfill elevation at part of or at the entire landfill as identified in the approved facility closure plan unless otherwise specified in the closure plan(:

(e) ~~The owner or operator shall not accept waste, including inert wastes, for disposal or for use in closure except as identified in the closure plan approved by the jurisdictional health department.~~

(d) ~~The owner or operator shall develop, keep, and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include the following information:~~

~~(i) A description of the final closure cover, designed in accordance with subsection (3)(e) of this section, the methods and procedures to be used to install the closure cover, sources of borrow materials for the closure cover, and a schedule or description of the time required for completing closure activities;~~

~~(ii) Projected time intervals at which sequential partial closure and final closure are to be implemented;~~

~~(iii) A description of the activities and procedures that will be used to ensure compliance with (a) through (g) of this subsection; and~~

~~(iv) Identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs, from the approved financial assurance instrument.~~

~~(e) The owner or operator shall submit final engineering closure plans, in accordance with the approved closure plan and all approved amendments, for review, comment, and approval by the jurisdictional health department.~~

~~(f));~~

~~(d) When landfill closure is completed in part or whole, the owner or operator ((shall)) **must** submit ((the following)) to the jurisdictional health department(:~~

~~(i) Landfill closure plan sheets signed by a professional engineer registered in the state of Washington and modified as necessary to represent as-built changes to final closure construction for the landfill, or a portion thereof, as approved in the closure plan; and~~

~~(ii) Certification by the owner or operator, and a professional engineer registered in the state of Washington, that the landfill, or a portion thereof has been closed in accordance with the approved closure plan.~~

~~(g) The owner or operator shall record maps and a statement of fact concerning the location of the disposal facility as part of the deed with the county auditor not later than three months after closure.~~

~~(h))~~ a certification by a professional engineer registered in the state of Washington, that the landfill, or a portion thereof, has been closed in accordance with the approved closure plan;

(e) Environmental covenant. Following closure of a limited purpose landfill, the owner operator must file an environmental covenant conforming to the procedures and requirements of chapter 64.70 RCW, Uniform Environmental Covenants Act. Unless waived in writing by the department, the environmental covenant must be in a form approved by the department and include at a minimum the following provisions:

(i) State that the document is an environmental covenant executed pursuant to chapter 64.70 RCW, Uniform Environmental Covenants Act;

(ii) Contain a legally sufficient description of the real property subject to the covenant;

(iii) Designate the department, or other person approved by the department, as the holder of the covenant;

(iv) Be signed by the department, every holder, and, unless waived by the department, every owner of a fee simple interest in the real property subject to the covenant;

(v) Identify the name and location of the administrative record for the property subject to the environmental covenant;

(vi) Describe with specificity the activity or use limitations on the real property subject to the covenant. At a minimum, this must prohibit uses and activities that:

(A) Threaten the integrity of any cover, waste containment, stormwater control, gas leachate, public access control, or environmental monitoring systems;

(B) May interfere with the operation and maintenance, monitoring, or other measures necessary to assure the integrity of the landfill and continued protection of human health and the environment; and

(C) May result in the release of solid waste constituents or otherwise exacerbate exposures.

(vii) Grant the department and the jurisdictional health department the right to enter the property at reasonable times for the purpose of evaluating compliance with the environmental covenant, including the right to take samples.

(f) The jurisdictional health department (~~shall~~) will notify the owner or operator, the department, and the financial assurance instrument provider, of the date when the jurisdictional health department has verified that the facility, or a portion thereof, has been closed in accordance with the specifications of the approved closure plan and the closure requirements of this section, at which time the post-closure period (~~shall~~) commences.

~~((7) Limited purpose landfills—Post closure requirements. The following post-closure requirements apply in full to facilities with limited purpose landfills:~~

~~(a) The owner or operator shall provide post-closure activities to allow for continued facility maintenance and monitoring of air, land, and water for a period of twenty years, or as long as necessary for the landfill to stabilize and to protect human health and the environment. For disposal facilities, post-closure care includes at least the following:~~

~~(i) Maintaining the integrity and effectiveness of any final closure cover, including making repairs to the closure~~

~~cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, maintaining the vegetative cover, and preventing run-on and runoff from eroding or otherwise damaging the final closure cover;~~

~~(ii) General maintenance of the facility and facility structures for their intended use;~~

~~(iii) Monitoring groundwater, surface water, leachate, or other waters in accordance with the requirements of WAC 173-350-500 and the approved monitoring plan, including remedial measures if applicable, and maintaining all monitoring systems;~~

~~(iv) Monitoring landfill gas and maintaining and operating the gas collection and control systems;~~

~~(v) Maintaining, operating, and monitoring hydraulic gradient controls systems if applicable;~~

~~(vi) Monitoring settlement; and~~

~~(vii) Any other activities deemed appropriate by the jurisdictional health department.~~

~~(b) The owner or operator shall commence post-closure activities for the facility, or portion thereof, after completion of closure activities outlined in subsection (6) of this section. The jurisdictional health department may direct that post-closure activities cease until the owner or operator receives a notice to proceed with post-closure activities.~~

~~(c) The owner or operator shall develop, keep, and abide by a post-closure plan approved by the jurisdictional health department as a part of the permitting process. The post-closure plan shall:~~

~~(i) Address facility maintenance and monitoring activities for at least a twenty-year period or until the landfill becomes stabilized (i.e., little or no settlement, gas production or leachate generation), and monitoring of groundwater, surface water, gases and settlement can be safely discontinued; and~~

~~(ii) Project time intervals at which post-closure activities are to be implemented, and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.~~

~~(d) The owner or operator shall complete post-closure activities for the facility, or portion thereof, in accordance with the approved post-closure plan and schedule, or the plan shall be so amended with the approval of the jurisdictional health department. The jurisdictional health department may direct facility post-closure activities, in part or completely, to cease until the post-closure plan has been amended and has received written approval by the health department.~~

~~(e) When post-closure activities are complete, the owner or operator shall submit a certification to the jurisdictional health department, signed by the owner or operator, and a professional engineer registered in the state of Washington stating why post-closure activities are no longer necessary.~~

~~(f) If the jurisdictional health department finds that post-closure monitoring has established that the landfill is stabilized, the health department may authorize the owner or operator to discontinue post-closure maintenance and monitoring activities.~~

~~(g) The jurisdictional health department shall notify the owner or operator, the department, and the financial assurance instrument provider, of the date when the jurisdictional~~

health department has verified that the facility has completed post-closure activities in accordance with the specifications of the approved post-closure plan.

~~((8))~~ (9) Limited purpose landfills - Permit requirements - Financial assurance (~~requirements~~).

(a) Financial assurance is required for all limited purpose landfills.

(b) Each owner or operator (~~shall~~) must establish a financial assurance mechanism in accordance with WAC 173-350-600 that will accumulate funds equal to the closure and post-closure cost estimates over the life of the landfill, or over the life of each landfill unit if closed discretely.

(c) No owner or operator (~~shall~~) may commence or continue disposal operations in any part of a facility subject to this section until a financial assurance instrument has been provided for closure and post-closure activities in (~~conformance~~) accordance with WAC 173-350-600.

~~((9))~~ (10) Limited purpose landfills - Permit application contents. The owner or operator (~~shall~~) must obtain a solid waste permit from the jurisdictional health department. All applications for permits (~~shall~~) must be in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit (~~shall~~) must contain:

(a) Demonstrations that the facility meets the location standards of subsection (~~((2))~~) (3) of this section;

(b) Documentation that all owners of property located within one thousand feet of the (~~facility property~~) boundary of the landfill as it is proposed to be located in the solid waste permit application have been notified that the proposed facility may impact their ability to construct water supply wells, in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells;

(c) Engineering (~~reports/plans~~) reports, plans, and specifications that address the (~~design~~) standards of subsections (~~((3))~~) (4) and (5) of this section;

(d) A construction quality assurance plan that addresses the requirements of subsection (5) of this section;

(e) A plan of operation meeting the requirements of subsection (~~((4))~~) (6) of this section;

(~~((e))~~) (f) Hydrogeologic reports and plans that address the requirements of subsection (~~((5))~~) (7) of this section;

(~~((f))~~) (g) A closure plan meeting the requirements of subsection (~~((6))~~) (8) of this section;

(~~((g))~~) (h) A post-closure plan meeting the requirements of subsection (~~((7))~~) (11) of this section; and

(~~((h))~~) (i) Documentation as needed to meet the financial assurance requirements of subsection (~~((8))~~) (9) of this section.

~~((10) Limited purpose landfills - Construction records.~~ The owner or operator of a limited purpose landfill shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering

report/plans and specifications and has approved the construction documentation in writing.) (11) Limited purpose landfills - Post-closure care requirements.

(a) The owner or operator must conduct post-closure care for as long as necessary for the landfill to become functionally stable. A landfill is functionally stable when it does not present a threat to human health or the environment at the point of exposure for humans or environmental receptors. The point of exposure is identified as the closest location at which a receptor could be exposed to contaminants and receive a dose by a credible pathway from the landfill. Potential threats to human health or the environment are assessed by considering leachate quality and quantity, landfill gas production rate and composition, cover system integrity, and groundwater quality. The post-closure care period may be adjusted under (b) of this subsection. Post-closure care must consist of at least the following:

(i) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, maintaining the vegetative cover (including cutting of vegetation when needed) or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;

(ii) Monitoring the groundwater, surface water, leachate, landfill gas, and landfill settlement according to the monitoring plan described in subsection (6)(b) of this section, including any monitoring of remedial measures if applicable, and maintaining all monitoring systems;

(iii) Maintaining and operating the leachate collection system under subsection (4)(d) of this section, if applicable. The jurisdictional health department may recommend to the department, and the department may, under its authority in chapter 90.48 RCW, Water pollution control, allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(iv) Maintaining and operating the landfill gas collection and control system under subsections (4)(f)(i)(I) and (6)(a)(vii) of this section; and

(v) Maintaining, operating and monitoring hydraulic gradient control systems if applicable;

(vi) Maintaining the facility and facility structures for their intended uses; and

(vii) Performing any other activities deemed appropriate by the jurisdictional health department.

(b) The jurisdictional health department and owner or operator will consider at least the following factors when determining when a landfill unit is functionally stable or whether to decrease or increase the post-closure care period:

(i) Leachate. The landfill's production and quality of leachate must have attained a state where maintenance and operation of the leachate collection system can be discontinued without posing a threat to human health or the environment;

(ii) Landfill gas. The landfill's production and composition of gas must have attained a state where maintenance and operation of the gas collection system can be discontinued while meeting the criteria in subsection (4)(b) of this section

and not pose a threat to human health or the environment from methane or nonmethane compounds;

(iii) Settlement and cover integrity. The cover system must attain geotechnical stability for slope and settlement. Vegetation and other erosion controls must prevent exposing waste or otherwise threaten integrity of the cover system. The cover system must have attained a state where no additional care is required to ensure its integrity from settlement or erosion; and

(iv) Groundwater quality. Groundwater quality must remain in compliance with the performance standards of WAC 173-350-040 at the point of compliance.

(c) The owner or operator must commence post-closure activities for the facility, or portion thereof, after completion of closure procedures and activities outlined in subsection (8) of this section;

(d) The owner or operator must develop, keep, and follow a post-closure plan approved by the jurisdictional health department as a part of the permitting process. The post-closure plan must:

(i) Address facility maintenance and monitoring activities for the duration of the post-closure care period; and

(ii) Project time intervals at which post-closure activities are to be implemented, and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(e) The owner or operator must complete post-closure activities for the facility, or portion thereof, in accordance with the approved post-closure plan and schedule, or the plan must be so amended with the approval of the jurisdictional health department;

(f) When post-closure activities are complete, the owner or operator must submit a certification to the jurisdictional health department, signed by the owner or operator, and a professional engineer registered in the state of Washington stating why post-closure activities are no longer necessary;

(g) If the jurisdictional health department finds that post-closure monitoring has established that the landfill is functionally stable, the health department may authorize the owner or operator to discontinue post-closure maintenance and monitoring activities; and

(h) The jurisdictional health department must notify the owner or operator, the department, and the financial assurance instrument provider, of the date when the jurisdictional health department has verified that the facility has completed post-closure activities in accordance with the specifications of the approved post-closure plan.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-410 Inert waste landfills. (1) **Inert waste landfills - Applicability.** These standards apply to landfills that receive only (~~inert wastes, as identified pursuant to WAC 173-350-990, including facilities that use inert wastes as a component of fill~~) the following types of solid waste if the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

- (a) Cured concrete;
- (b) Asphaltic materials;
- (c) Brick and masonry;
- (d) Ceramic materials produced from fired clay or porcelain;
- (e) Glass; and
- (f) Stainless steel and aluminum.

(2) **Inert waste landfills - Permit exemptions.** In accordance with RCW 70.95.305, inert waste landfill facilities ((with a total capacity of two hundred fifty cubic yards or less of inert wastes are categorically)) meeting the terms and conditions of Table 410-A are exempt from solid waste handling permitting ((and other requirements of this section, provided that the inert waste landfill is operated in compliance with the performance standards of WAC 173-350-040. An owner or operator that does not comply with the performance standards of WAC 173-350-040 is required to obtain a permit from the jurisdictional health department, and)). If a facility does not operate in compliance with the terms and conditions established for an exemption under this subsection, the facility may be subject to the permitting requirements for solid waste handling under this chapter. In addition, violations of the terms and conditions of this subsection may be subject to the ((penalty)) enforcement provisions of RCW 70.95.315. ((2))

Table 410-A

Terms and Conditions for Solid Waste Permit Exemption

<u>Waste Material</u>	<u>Volume</u>	<u>Specific Requirements for Activity or Operation</u>
<u>Inert wastes as listed in WAC 173-350-410 (1)(a)</u>	<u>250 cubic yards or less</u>	<u>Meet the performance standards of WAC 173-350-040; No notification or reporting requirements.</u>

(3) **Inert waste landfills - Permit requirements - Location** (~~standards~~). All inert waste landfills (~~shall~~) must be located to meet the following requirements. No inert waste landfill's active area (~~shall~~) may be located:

- (a) On an unstable slope;
- (b) Closer than ten feet from the facility property line;
- (c) Closer than one ((hundred)) thousand feet to ((a drinking)) an existing water supply well; or

(d) In a channel migration zone ((as defined in WAC 173-350-100;)) or within one hundred feet measured horizontally, of a stream, lake, pond, river, or saltwater body, ((not)) or in any wetland ((nor any public land that is being used by a public water system for watershed control for municipal drinking water purposes in accordance with WAC 248-54-660(4))).

~~((3))~~ **(4) Inert waste landfills - Permit requirements - Design** (~~standards~~). ~~The owner or operator of an inert waste landfill shall prepare engineering reports/plans and specifications to address~~, Inert waste landfills must be designed so that the facility can be operated to meet the performance standards of WAC 173-350-040, and the design standards of this subsection. The existing site topography, including the location and approximate thickness and nature of any existing waste, the vertical and horizontal limits of excavation and waste placement, final closure elevation and grades, and the design capacity of each landfill unit, total design capacity, and future use of the facility after closure, ~~(shall)~~ must be included. Inert waste landfills ~~(shall)~~ must be designed and constructed to:

(a) Ensure that all waste is above the seasonal high level of groundwater. For the purpose of this section, groundwater includes any water-bearing unit which is horizontally and vertically extensive, hydraulically recharged, and volumetrically significant;

(b) Maintain a stable site; ~~(and)~~

(c) Manage surface water, including run-on prevention and runoff conveyance, storage, and treatment, to protect the waters of the state; and

~~((4))~~ (d) Provide controls to limit public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by use of artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment. A lockable gate is required at each entry to the landfill.

(5) Inert waste landfills - Permit requirements - Documentation.

(a) The owner or operator must submit construction documents for, at a minimum, any proposed addition or modification of elements of the landfill described in subsection (4) of this section to the jurisdictional health department for review and approval. The construction documents for proposed construction of engineered features must be prepared by a professional engineer registered in the state of Washington, and must include:

(i) An engineering report that presents the design basis and calculations for the engineered features of the facility including any run-on/runoff controls, impoundments, stormwater management features, and emission control features as required by the permitting air authority where applicable. The engineering report must demonstrate that the proposed design will meet the performance standards of this chapter;

(ii) Scale drawings of the facility including the location and size of waste storage and disposal areas, fixed equipment, buildings, stormwater management features where applicable, access roads, traffic patterns, and other constructed areas and buildings integral to facility operation;

(iii) Design specifications for the engineered features of the facility including any run-on/runoff controls, impoundments, stormwater management features, and aeration and emission management features as required by a permitting air authority where applicable; and

(iv) A construction quality assurance plan that describes monitoring, testing, and documentation procedures that will be performed during construction of the facility to ensure the facility is constructed in accordance with the approved design.

(b) The owner or operator of an inert waste landfill must provide copies of the construction record drawings for engineered features at the facility and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. The owner or operator must not commence operation in a newly constructed portion of the facility until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

(6) Inert waste landfills - Permit requirements - Operating (~~standards~~). The owner or operator of an inert waste landfill ~~(shall)~~ must:

(a) Operate the facility ~~((to:~~

~~(i) Control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes;~~

~~(ii) Implement a program at the facility capable of detecting and preventing noninert wastes from being accepted or mixed with inert waste;~~

~~(iii) Handle all inert waste in a manner that is in compliance with the performance standards of WAC 173-350-040;~~

~~(iv) Handle all inert waste in a manner that controls fugitive dust and is protective of waters of the state; and~~

~~(v) Prevent unstable conditions resulting from their activities;~~

~~(b) Inspect and maintain the facility to prevent malfunctions and deterioration, operator errors and discharges that may cause a threat to human health.)~~ in compliance with the performance standards of WAC 173-350-040 and this subsection. In addition, the owner or operator must develop, keep, and follow a plan of operation approved as part of the permitting process. The plan must describe the facility's operation and convey to site operating personnel the concept of operation intended by the designer. The plan of operation must be available for inspection at the request of the jurisdictional health department. If necessary, the plan may be modified with the approval, or at the direction, of the jurisdictional health department. Each plan of operation must include the following:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

(iii) A description of how waste materials are to be handled on-site, including tipping procedures, routine filling and grading, maximum site capacity, and equipment used;

(iv) A description of how the owner or operator will ensure the facility is operated in a way to:

(A) Control litter and dust;

(B) Control runoff;

(C) Prevent unstable conditions during landfilling; and

(D) Control unauthorized vehicular traffic and prevent illegal dumping.

(v) A description of how equipment, structures, run-on/runoff controls, and other systems are to be inspected and maintained, including the frequency of inspection and inspections logs. The inspections ~~(shall)~~ must be ~~((as~~

needed, but) at least weekly, ((to ensure meeting operational standards,)) unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

((e)) (vi) A description of how operators will maintain ((daily)) operating records of the ((quantities)) amounts (weight or volume) and types of ((inert)) waste ((disposed. In addition, record and retain information that documents that all wastes landfilled meet the criteria for inert waste)) received, including the form or computer printout used to record this information. Facility annual reports must be maintained in the operating record. Facility inspection reports ((shall)) must be maintained in the operating record, including at least the date of inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation ((shall)) must be noted in the operating record. Records ((shall)) must be ((maintained)) kept for a minimum of five years and ((shall)) must be available upon request by the jurisdictional health department;

((d)) (vii) Safety and emergency plans; and

(viii) Other details to demonstrate that the facility will meet the requirements of this subsection and as required by the jurisdictional health department.

(b) Prepare and submit ((a copy of)) an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall detail the facility's activities during the previous calendar year and ((shall)) must include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual ((quantity)) quantities and types of waste ((disposed in tons or cubic yards with an estimate of density in pounds per cubic yard)) received; and

(iv) Any additional information required by the jurisdictional health department as a condition of the permit((;

(e) Develop, keep, and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of how solid wastes are to be handled on-site during its active life including:

(A) Acceptance criteria that will be applied to the waste;

(B) Procedures for ensuring only the waste described will be accepted;

(C) Procedures for handling unacceptable wastes; and

(D) Procedures for transporting and routine filling and grading;

(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety and emergency plans;

(v) The forms used to record weights and volumes; and

((vi) Other such details to demonstrate that the facility will meet the requirements of this subsection and as required by the jurisdictional health department)).

((5)) (7) **Inert waste landfills - Permit requirements - Groundwater monitoring** ((standards)). There are no specific groundwater monitoring requirements for inert waste landfills subject to this chapter; however, inert waste landfills must meet the ((requirements provided under)) performance standards of WAC 173-350-040((5)).

((6)) (8) **Inert waste landfills - Permit requirements - Closure** ((requirements)). The owner or operator of an inert waste landfill ((shall)) must develop, keep, and follow a closure plan that includes:

(a) ((Notify)) **Notification** to the jurisdictional health department sixty days in advance of closure of the facility;

(b) ((Close)) **Closure** of the inert waste landfill unit by leveling the wastes to the extent practicable, or as appropriate for the proposed future use, and fill all voids which could pose a physical threat for persons, or which provide disease vector harborages((-The));

(c) **Closure** of inert waste landfills ((shall be closed)) in a manner ((to)) that will control fugitive dust and protect the waters of the state; and

((e) Record) (d) **Recording** of maps and a statement of fact concerning the location of the landfill as part of the deed with the county auditor not later than three months after closure.

((7)) (9) **Inert waste landfills - Permit requirements - Financial assurance** ((requirements)). There are no specific financial assurance requirements for inert waste landfills subject to this chapter; however, inert waste landfills must meet the ((requirements provided under)) performance standards of WAC 173-350-040((5)).

((8)) (10) **Inert waste landfills - Permit application contents**. The owner or operator ((shall)) must obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(a) Engineering reports/plans and specifications that address the design standards of subsections ((3)) (4) and (5) of this section;

(b) A plan of operation that meets the requirements of subsection ((4)) (6) of this section; ((and))

(c) A closure plan that meets the requirements of subsection (8) of this section; and

(d) Documentation that all owners of property located within one thousand feet of the ((facility property)) boundary of the landfill as it is proposed to be located in the solid waste permit application have been notified that the proposed facility may impact their ability to construct water ((supply)) wells, in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-490 Other methods of solid waste handling. (1) **Other methods of solid waste handling - Applicability.** ~~((This section applies))~~ These standards apply to other methods of solid waste handling not specifically identified elsewhere in this regulation, nor excluded from this regulation.

(2) **Other methods of solid waste handling - Permit requirements.** Owners and operators of solid waste handling facilities subject to this section ~~((shall))~~ must:

(a) Comply with the ~~((requirements in))~~ performance standards of WAC 173-350-040; and

(b) Obtain a permit in accordance with the provisions of WAC 173-350-700 from the jurisdictional health department. Permit applications ~~((shall))~~ must be submitted in accordance with the provisions of WAC 173-350-710 and ~~((shall))~~ must include information required in WAC 173-350-715, and any other information as may be required by the jurisdictional health department.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-500 Groundwater monitoring. (1) **Groundwater monitoring - ((Professional qualifications)) General provisions.**

(a) Applicability. This section applies to limited purpose landfills subject to WAC 173-350-400 and surface impoundments that do not have a leak detection layer subject to WAC 173-350-330. Subsections (1), (3), (4) and (5) of this section apply to all such facilities, and subsection (2) of this section applies to WAC 173-350-400 Limited purpose landfills, only.

(b) Jurisdictional health departments are responsible for regulation of groundwater monitoring at landfills and other solid waste handling facilities they permit, except in instances where responsibility is shared with the department.

(c) All reports, plans, procedures, and design specifications required by this section ~~((shall))~~ must be prepared by a licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists.

(2) **Groundwater monitoring - Site characterization for landfill sites.** A site proposed for ~~((solid waste))~~ limited purpose landfill activities ~~((shall))~~ subject to WAC 173-350-400 must be characterized for its geologic and hydrogeologic properties and suitability for constructing, operating, and monitoring ~~((a solid waste))~~ the facility in accordance with all applicable requirements of this chapter. The site characterization report ((shall)) must be submitted with the permit application and ~~((shall))~~ must include at a minimum the following:

(a) A summary of local and regional geology and hydrology, including:

(i) Faults;

(ii) ~~((Zones of joint concentrations;))~~ Joints and fractures;

(iii) Unstable slopes and subsidence areas on-site;

(iv) Areas of groundwater recharge and discharge;

(v) Stratigraphy; and

(vi) Erosional and depositional environments ~~((and facies interpretation(s)));~~

(b) A site-specific borehole program ~~((including))~~ that includes a description of lithology, soil/bedrock types and properties, preferential groundwater flow paths or zones of higher hydraulic conductivity, the presence of confining unit(s) and geologic features such as fault zones, cross-cutting structures, ((etc., and)) the target hydrostratigraphic unit(s) to be monitored, and other relevant information. All procedures conducted must follow current applicable ASTM procedures. A list of procedures that were followed must be identified in subsequent report(s). Requirements of the borehole program include:

(i) Each boring will be of sufficient depth below the proposed grade of the bottom liner to identify soil, bedrock, and hydrostratigraphic unit(s);

(ii) Boring samples ~~((shall))~~ must be collected from five-foot intervals at a minimum and at changes in lithology. Representative samples ~~((shall))~~ must be described using the unified soil classification system ~~((following ASTM D2487-85));~~ and tested for the following, if appropriate:

(A) Particle size distribution by sieve and hydrometer analyses ~~((in accordance with approved ASTM methods (D422 and D1120); and));~~

(B) Atterburg limits ~~((following approved ASTM method D4318));~~

~~((iii))~~ Each lithologic unit on site will be analyzed for:

~~((A))~~ (C) Moisture content sufficient to characterize the unit ~~((using ASTM method D2216));~~

~~((D))~~ Shear strength and consolidation testing on soft or potentially weak layers, for use in stability and settlement analyses; and

~~((B))~~ (E) Hydraulic conductivity by an in situ field method or laboratory method. ~~((All samples collected for the determination of permeability shall be collected by standard ASTM procedures;~~

~~((iv))~~

(iii) All boring logs ~~((shall))~~ must be submitted with the following information:

(A) Soil and rock descriptions and classifications;

(B) Method of sampling;

(C) Sample depth, interval and recovery;

(D) Date of boring;

(E) Water level measurements;

(F) Standard penetration number ~~((following approved ASTM method D1586-67));~~

(G) Boring location; and

(H) Soil test data~~((;~~

~~((+))~~ (in report text or on log).

(iv) All borings not converted to monitoring wells or piezometers shall be carefully backfilled, plugged, and recorded in accordance with WAC 173-160-420;

~~((+))~~ (v) During the borehole drilling program, any on-site drilling and lithologic unit identification ~~((shall))~~ must be performed under the direction of a licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, who is trained to sample and identify soils and bedrock lithology;

~~((+))~~ (vi) An on-site horizontal and vertical reference datum ~~((shall))~~ must be established during the site character-

ization. The standards for land boundary surveys and geodetic control surveys and guidelines for the preparation of land descriptions ~~((shall))~~ must be used to establish borehole and monitoring well coordinates and casing elevations from the reference datum; and

~~((viii))~~ (vii) Other methods, including geophysical techniques, may be used to supplement the borehole program to ensure that a sufficient hydrogeologic site characterization is accomplished~~((:))~~.

(c) A site-specific flow path analysis that includes:

(i) The depths to groundwater and hydrostratigraphic unit(s) including transmissive and confining units; and

(ii) Potentiometric surface elevations and contour maps, direction and rate of horizontal and vertical groundwater flow~~((:))~~.

(d) Identification of the quantity, location, and construction (where available) of private and public wells within a two thousand-foot radius, measured from the ~~((site boundaries))~~ edge of the solid waste handling unit;

(e) Tabulation of all water rights for groundwater and surface water within a two thousand-foot ~~((610 m))~~ radius, measured from site boundaries;

(f) Identification and description of all surface waters within a one-mile ~~((1.6 km))~~ radius, measured from ~~((site boundaries))~~ the edge of the solid waste handling unit;

(g) A summary of all previously collected site groundwater and surface water analytical data, and for expanded facilities, identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges to date;

(h) Calculation of a site water balance;

(i) Conceptual design of groundwater and surface water monitoring systems, and where applicable ~~((a))~~ surface water and vadose zone monitoring systems, including proposed construction and installation methods for these systems;

(j) Description of land use in the area, including nearby residences;

(k) A topographic map of the site and drainage patterns, including an outline of the ~~((waste management area))~~ solid waste handling unit, property boundary, the proposed location of groundwater monitoring wells, and township and range designations; and

(l) Geologic cross sections.

(3) Groundwater monitoring - System design.

(a) The groundwater monitoring system design and report ~~((shall))~~ must be submitted with the permit application and ~~((shall))~~ must meet the following criteria:

(i) A sufficient number of monitoring wells ~~((shall))~~ must be installed at appropriate locations and depths to yield representative groundwater samples from those hydrostratigraphic units which have been identified ~~((in the))~~ during site characterization as the earliest potential contaminant flow-paths;

(ii) Represent the quality of groundwater at the point of compliance, and include at a minimum:

(A) A groundwater flow path analysis which supports why the chosen hydrostratigraphic unit is capable of providing an early warning detection of any groundwater contamination~~((:))~~;

(B) Documentation and calculations of all of the following information:

(I) Hydrostratigraphic unit thickness including confining units and transmissive units;

(II) Vertical and horizontal groundwater flow directions including seasonal, man-made, or other short-term fluctuations in groundwater flow;

(III) Stratigraphy and lithology;

(IV) Hydraulic conductivity; and

(V) Porosity and effective porosity.

(b) Upgradient monitoring wells (background wells) ~~((shall))~~ must meet the following performance criteria:

(i) ~~((shall))~~ Must be installed in groundwater that has not been affected by leakage from a ~~((landfill))~~ solid waste handling unit; or

(ii) If hydrogeologic conditions do not allow for the determination of an upgradient monitoring well, then sampling at other monitoring wells which provide representative background groundwater quality may be allowed.

(c) Downgradient monitoring wells (compliance wells) ~~((shall))~~ must meet the following performance criteria:

(i) Represent the quality of groundwater at the point of compliance;

(ii) Be installed as close as practical to the point of compliance; and

(iii) When physical obstacles preclude installation of groundwater monitoring wells at the ~~((relevant))~~ point of compliance ~~((at the landfill unit or solid waste facility))~~, the downgradient monitoring system may be installed at the closest practical distance hydraulically downgradient from the ~~((relevant))~~ point of compliance that ensures detection of groundwater contamination in the chosen hydrostratigraphic unit.

(d) All monitoring wells ~~((shall))~~ must be constructed in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells, and chapter 173-162 WAC, Regulation and licensing of well contractors and operators.

(e) The owner or operator ~~((shall))~~ must notify the jurisdictional health department and the department of any proposed changes to the design, installation, development, and decommission of any monitoring wells, piezometers, and other measurement, sampling, and analytical devices. Proposed changes ~~((shall))~~ must not be implemented prior to the jurisdictional health department's written approval. Upon completing changes, all documentation, including date of change, new monitoring well location maps, boring logs, and monitoring well diagrams, ~~((shall))~~ must be submitted to the jurisdictional health department and ~~((shall))~~ must be placed in the operating record.

(f) All monitoring wells, piezometers, and other measurement, sampling, and analytical devices ~~((shall))~~ must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(4) Groundwater monitoring - Sampling and analysis plan.

(a) The groundwater monitoring program ~~((shall))~~ must include consistent sampling and analysis procedures that are designed to provide monitoring results that are representative of groundwater quality ~~((at the upgradient and downgradi-~~

ent)) within site monitoring wells. In addition to monitoring wells, facilities with hydraulic gradient control and/or leak detection systems will provide representative groundwater samples from those systems. The owner or operator ((shall)) must submit a compliance sampling and analysis plan as part of the permit application. The plan ((shall)) must include procedures and techniques for:

- (i) Sample collection and handling;
- (ii) Sample preservation and shipment;
- (iii) Analytical constituents and procedures;
- (iv) Chain-of-custody control;
- (v) Quality assurance and quality control;
- (vi) Decontamination of drilling and sampling equipment;
- (vii) Procedures to ensure employee health and safety during well installation and monitoring; ((and))
- (viii) Well operation and maintenance procedures; and
- (ix) Statistical analysis methods.

(b) Facilities collecting leachate ((shall)) must include leachate sampling and analysis as part of ((~~compliance monitoring~~)) the plan in (a) of this subsection.

(c) The groundwater monitoring program ((shall)) must include sampling and analytical methods that are appropriate for groundwater samples. The sampling and analytical methods ((shall)) must provide sufficient sensitivity, precision, selectivity and limited bias ((such)) so that changes in groundwater quality can be detected and quantified. All samples ((shall)) must be sent to an accredited laboratory for analyses in accordance with chapter 173-50 WAC, Accreditation of environmental laboratories.

(d) Groundwater elevations ((shall)) must be measured in each monitoring well immediately prior to sampling purging, each time groundwater is sampled. The owner or operator ((shall)) must determine the rate and direction of groundwater flow each time groundwater is sampled. All groundwater elevations ((shall)) must be determined by a method that ensures measurement to the one hundredth of a foot ((~~±~~ mm)) relative to the top of the well casing.

(e) Groundwater elevations in monitored wells ((~~that monitor the same landfill unit shall~~)) must be measured within a period of time short enough to avoid any groundwater fluctuations which could preclude the accurate determination of groundwater flow rate and direction.

(f) The owner or operator ((shall)) must establish background groundwater quality in ((each)) all upgradient ((~~and downgradient~~)) monitoring wells, and all future downgradient monitoring wells at landfill sites where waste has not yet been deposited. Background groundwater quality ((shall)) must be based upon a minimum of eight independent samples. Samples ((shall)) must be collected for each monitoring well and ((shall)) must be analyzed for parameters required in the permit for the first year of groundwater monitoring. Each independent sampling event ((shall)) must be no ((less)) later than one month after the previous sampling event.

(g) Groundwater quality ((shall)) must be determined at each monitoring well at least quarterly during the active life of the ((~~solid waste facility, including closure~~)) landfill or impoundment, and the post-closure period of the landfill. More frequent monitoring may be required to protect down-gradient water supply wells. Groundwater monitoring

((shall)) must begin after background groundwater quality has been established. Laboratory analysis methods must have sufficiently low detection limits, when practical, to determine whether constituent concentrations exceed chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington, criteria. The owner or operator may propose an alternate groundwater monitoring frequency((-)); however, groundwater monitoring frequency must be no less than semiannually. The owner or operator must apply for a permit modification or must apply during the renewal process for changes in groundwater monitoring frequency making a demonstration based on the following information:

(i) A characterization of the hydrostratigraphic unit(s) including the unsaturated zone, transmissive and confining units and include the following:

- (A) Hydraulic conductivity; and
- (B) Groundwater flow rates((~~±~~)).

(ii) Minimum distance between upgradient edge of the solid waste ((~~handling unit~~)) landfill and/or the impoundment and downgradient monitoring wells (minimum distance of travel); and

(iii) Contaminant fate and transport characteristics.

(h) All facilities ((shall)) must test for the following parameters:

(i) Field parameters:

- (A) pH;
- (B) Specific conductance;
- (C) Temperature; and
- (D) Static water level((~~±~~)).

(ii) Geochemical indicator parameters:

- (A) Alkalinity (as Ca CO₃);
- (B) Bicarbonate (HCO₃);
- (C) Dissolved calcium (Ca);
- (D) Chloride (Cl);
- (E) Total and dissolved iron (Fe);
- (F) Total and dissolved magnesium (Mg);
- (G) Total and dissolved manganese (Mn);
- (H) Nitrate (NO₃);
- (I) Dissolved potassium;
- (J) Dissolved sodium (Na); and
- ((~~(K)~~)) (K) Sulfate (SO₄((~~±~~))).

(iii) Leachate indicators:

- (A) Ammonia (NH₃-N);
- (B) Total organic carbon (TOC); and
- (C) Total dissolved solids (TDS).

(i) If other pertinent constituents are identified based upon the site specific waste profile ((and also the)) and/or leachate characteristics for lined facilities, if tested, the owner or operator ((shall)) must propose those additional constituents to include in the monitoring program. The jurisdictional health department ((shall)) will specify the additional constituents in the solid waste permit.

(j) Testing ((shall)) must be performed in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," U.S. EPA Publication SW-846, or other testing methods approved by the jurisdictional health department.

(k) Maximum contaminant levels (MCL) for groundwater are those specified in chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington.

(5) Groundwater monitoring - Data analysis, notification and reporting.

(a) The results of monitoring well sample analyses as required by subsection (4)(h) and (i) of this section ~~((shall))~~ must be evaluated using an appropriate statistical procedure(s), as approved by the jurisdictional health department ~~((during the permitting process, to determine if)).~~ Statistical procedure(s) used must be proposed in the sampling and analysis plan, and must be capable of determining whether a significant increase over background has occurred. ~~((The statistical procedure(s) used shall be proposed in the sampling and analysis plan and be designed specifically for the intended site, or prescriptive statistical procedures from appropriate state and federal guidance may be used.))~~ Selection of parameters undergoing statistical analysis, as specified in the solid waste permit, must be based on site-specific leachate analyses, synthetic precipitation leaching procedure (SPLP) results, or toxicity characteristic leaching procedure (TCLP) results, if available, and typically at least include pH, specific conductance, chloride, iron, manganese, nitrate, sulfate, ammonia, and total dissolved solids.

(b) If statistical analyses determine a significant increase over background:

(i) The owner or operator ~~((shall))~~ must:

(A) Notify the jurisdictional health department and the department of this finding within thirty days of receipt of the sampling data. The notification ~~((shall))~~ must indicate what parameters or constituents have shown statistically significant increases;

(B) ~~((Immediately resample the groundwater for the))~~ Within thirty days, resample parameter(s) showing statistically significant ~~((increase))~~ increase(s) in the monitoring well(s) where the statistically significant increase has occurred; and

(C) Establish a groundwater protection standard ~~((using))~~ based on the groundwater quality criteria of chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington. ~~((Constituents for which the background concentration level is higher than the protection standard, the owner or operator shall use background concentration for constituents established in the facility's monitoring record.))~~ If the background concentration level established in the facility's monitoring record for a constituent is greater than the numeric criterion for the constituent in chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington, the owner or operator must use the background concentration as the protection standard.

(ii) The owner or operator may demonstrate that a source other than a landfill unit or ~~((solid waste facility))~~ surface impoundment caused the contamination, or the statistically significant increase resulted from error in sampling, analyses, statistical evaluation, or natural variation in groundwater quality. If ~~((such))~~ a demonstration cannot be made and the concentrations or levels of the constituents exceed the criteria established by chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington, the owner or operator must:

(A) ~~((Meet the criteria established by chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington, the owner or operator shall:~~

~~((I) Assess and evaluate sources of contamination; and~~

~~((II) Implement remedial measures in consultation with the jurisdictional health department and the department.~~

~~((B) Exceed the criteria established by chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington, the owner or operator shall:~~

~~((H))~~ Characterize the chemical composition of the release and the contaminant fate and transport characteristics by installing additional monitoring wells;

~~((HH))~~ (B) Assess and, if necessary, implement appropriate intermediate measures to remedy the release. The measures ((shall)) must be approved by the jurisdictional health department and the department; and

~~((HH))~~ (C) Evaluate, select, and implement remedial ((measures as required by)) actions in accordance with chapter 173-340 WAC, ((the)) Model Toxics Control Act—Cleanup ((regulation, where applicable)). The roles of the jurisdictional health department and the department in remedial action are further defined by WAC 173-350-900.

(c) The owner or operator ~~((shall))~~ must submit ~~((a copy of))~~ an annual report to the jurisdictional health department and the department by April 1st of each year. ~~((The jurisdictional health department may require))~~ However, more frequent reporting ((based on the results of groundwater monitoring)) may be required. Reports may be submitted to the department in either digital format or hard copy. The annual report ((shall)) must summarize and interpret the following information:

(i) All groundwater monitoring data, including laboratory and field data for the sampling periods;

(ii) Statistical results and/or any statistical trends including any findings of any statistical increases for the year and time/concentration series plots;

(iii) A summary of concentrations above the maximum contaminant levels of chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington;

(iv) Static water level readings for each monitoring well for each sampling event;

(v) Potentiometric surface elevation maps depicting ~~((groundwater))~~ flow ((rate and)) direction for each sampling event ((, noting any trends or changes during the year));

(vi) Groundwater flow velocity calculations for each sampling event, and a discussion of any trends or changes during the year;

(vii) Geochemical evaluation including cation-anion balancing and trilinear and/or stiff diagramming for each sampling event noting any changes or trends in water chemistry for each well during the year; and

~~((viii))~~ (viii) Leachate ((analyses where appropriate)), hydraulic gradient control and/or leak detection system results, if applicable, for each sampling event.

(d) All groundwater monitoring data must be submitted consistent with procedures specified by the department. Unless otherwise specified by the department, all groundwater monitoring data for the previous year must be submitted by April 1st of each year in an electronic form capable of

being transferred into the department's data management system.

AMENDATORY SECTION (Amending WSR 03-03-043 and 03-04-103, filed 1/10/03 and 2/4/03, effective 3/7/03 and 3/31/03)

WAC 173-350-600 Financial assurance requirements. (1) **Financial assurance requirements - Applicability.** This section is applicable to:

(a) Waste tires storage facilities (~~(regulated under)~~) subject to WAC 173-350-350;

(b) Moderate risk waste facilities (~~(regulated under)~~) storing more than nine thousand gallons of MRW on-site, excluding used oil, subject to WAC 173-350-360; and

(c) Limited purpose landfills (~~(regulated under)~~) subject to WAC 173-350-400.

(2) (~~Financial assurance requirements—Definitions.~~ For the purposes of this section, the following definitions apply:

(a) ~~Public facility means a publicly or privately owned facility that accepts solid waste generated by other persons.~~

(b) ~~Private facility means a privately owned facility maintained on private property solely for the purpose of managing waste generated by the entity owning the site.~~

(3) **Financial assurance requirements - Instrument options.** Financial assurance options are available, based on facility type as (~~(defined)~~) specified in (~~(WAC 173-350-600(2), ownership and permittee)~~) subsection (3) of this section. Contents of all instruments must be acceptable to the jurisdictional health department. The following instrument options exist:

(a) Reserve accounts (~~(that are managed as either:~~ (i) consisting of cash and investments accumulated (~~(and)~~) in a reserve fund restricted for (~~(activities identified in)~~) the purpose of closure or post-closure (~~(plans, with the equivalent amount of fund balance reserved in the fund; or~~ (ii) care;

(b) Cash and investments (~~(held in a nonexpendable trust fund.~~

(b) ~~Trust funds~~) in a trust fund to receive, manage, and disburse funds for activities identified in the approved closure and post-closure plans. Trust funds (~~(shall)~~) must be established with an entity that has authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency(;-);

(c) Surety bond(s) issued by a surety company listed as acceptable in Circular 570 of the United States Treasury Department. A standby trust fund for closure or post-closure (~~(shall)~~) must also be established by the owner or operator to receive any funds that may be paid by the operator or surety company. The surety (~~(shall)~~) must become liable for the bond obligation if the owner or operator fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least one hundred twenty days after the owner or operator, the jurisdictional health department, and the department have received notice of cancellation. If the owner or operator has not provided alternate financial assurance acceptable under this section within ninety days of the cancellation notice, the surety (~~(shall)~~) must pay the amount of

the bond into the standby closure or post-closure trust account. The following types of surety bonds are options:

(i) Surety bond; or

(ii) Surety bond guaranteeing that the owner or operator will perform final closure or post-closure activities.

(d) Irrevocable letter of credit issued by an entity (~~(which)~~) that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. Standby trust funds for closure and post-closure (~~(shall)~~) must also be established by the owner or operator to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit (~~(shall)~~) must be irrevocable and issued for a period of at least one year, and automatically renewed annually, unless the issuing institution notifies the owner or operator, the jurisdictional health department, and the department at least one hundred twenty days before the current expiration date. If the owner or operator fails to perform activities according to the closure or post-closure plan and permit requirements, or if the owner or operator fails to provide alternate financial assurance acceptable to the jurisdictional health department within ninety days after notification that the letter of credit will not be extended, the jurisdictional health department may require that the financial institution provide the funds from the letter of credit to the jurisdictional health department to be used to complete the required closure and post-closure activities;

(e) Insurance policies issued by an insurer who is licensed to transact the business of insurance or is eligible as an excess or surplus line insurer in one or more states, (~~(the content of which)~~) and meeting the following:

(i) Guarantees that the funds will be available to complete those activities identified in the approved closure or post-closure plans;

(ii) Guarantees that the insurer will be responsible for paying out funds for those activities;

(iii) Provides that the insurance is automatically renewable and that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium;

(iv) Provides that if there is a failure to pay the premium, the insurer may not terminate the policy until at least one hundred twenty days after the notice of cancellation has been received by the owner or operator, the jurisdictional health department and the department;

(v) Provides that termination of the policy may not occur and the policy (~~(shall)~~) must remain in full force and effect if:

(A) The jurisdictional health department determines the facility has been abandoned;

(B) Closure has been ordered by the jurisdictional health department or a court of competent jurisdiction;

(C) The owner or operator has been named as debtor in a voluntary or involuntary proceeding under Title 11 U.S.C., Bankruptcy; or

(D) The premium due is paid(;-).

(vi) The owner or operator is required to maintain the policy in full force and until an alternative financial assurance guarantee is provided or when the jurisdictional health department has verified that closure, and/or post-closure, as appropriate, have been completed in accordance with the approved closure or post-closure plan; and

(vii) For purposes of this rule, "captive" insurance companies as defined in WAC 173-350-100, are not an acceptable insurance company.

(f) Financial Test/corporate guarantee allows for a private corporation meeting the financial test to provide a corporate guarantee those activities identified in the closure and post-closure plans will be completed((-);

(i) To qualify, a private corporation owner or operator shall meet the criteria of either option A or B:

(A) Option A - To pass the financial test under this option the private corporation ((shall)) must have:

(I) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates;

(III) Tangible net worth of at least ten million dollars; and

(IV) Assets in the United States amounting to at least ninety percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates.

(B) Option B - To pass this alternative financial test, the private corporation ((shall)) must have:

(I) A current rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates;

(III) Tangible net worth of at least ten million dollars; and

(IV) Assets in the United States amounting to at least ninety percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator's chief financial officer ((shall)) must provide a corporate guarantee that the corporation passes the financial test at the time the closure plan is filed. This corporate guarantee ((shall)) must be reconfirmed annually ninety days after the end of the corporation's fiscal year by submitting to the jurisdictional health department a letter signed by the chief financial officer that:

(A) Provides the information necessary to document that the owner or operator passes the financial test;

(B) Guarantees that the funds to finance closure and post-closure activities according to the closure or post-closure plan and permit requirements are available;

(C) Guarantees that closure and post-closure activities will be completed according to the closure or post-closure plan and permit requirements;

(D) Guarantees that within thirty days if written notification is received from the jurisdictional health department that the owner or operator no longer meets the criteria of the financial test, the owner or operator ((shall)) must provide an alternative form of financial assurance consistent with the requirements of this section;

(E) Guarantees that the owner or operator's chief financial officer will notify in writing the jurisdictional health department and the department within fifteen days any time

that the owner or operator no longer meets the criteria of the financial test or is named as debtor in a voluntary or involuntary proceeding under Title 11 U.S.C., Bankruptcy;

(F) Acknowledges that the corporate guarantee is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guarantee;

(G) Attaches a copy of the independent certified public accountant's report on examination of the owner or operator's financial statements for the latest completed fiscal year; and

(H) Attaches a special report from the owner or operator's independent certified public accountant (CPA) stating that the CPA has reviewed the information in the letter from the owner or operator's chief financial officer and has determined that the information is true and accurate.

(iii) The jurisdictional health department may, based on a reasonable belief that the owner or operator no longer meets the criteria of the financial test, require reports of the financial condition at any time in addition to the annual report. The jurisdictional health department will specify the information required in the report. If the jurisdictional health department finds, on the basis of ((such)) the reports or other information, that the owner or operator no longer meets the criteria of the financial test, the owner or operator ((shall)) must provide an alternative form of financial assurance consistent with the requirements of this section, within thirty days after notification by the jurisdictional health department((-);

(iv) If the owner or operator fails to perform final closure and, where required, provide post-closure care of a facility covered by the guarantee in accordance with the approved closure and post-closure plans, the guarantor will be required to complete the appropriate activities((-);

(v) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator, the jurisdictional health department, and the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the owner or operator, the jurisdictional health department, and the department.

(vi) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of ((such)) alternate assurance from the jurisdictional health department within ninety days after receipt of a notice of cancellation of the guarantee from the guarantor, the guarantor will provide ((such)) alternative financial assurance in the name of the owner or operator.

~~((4))~~ **(3) Financial assurance requirements - Eligible financial assurance instruments.** The financial assurance instruments identified in subsection ~~((3))~~ **(2)** of this section are available for use based on facility category and whether the permittee is a public or private entity as follows:

(a) For a public facility, ~~((as defined in subsection (2) of this section,))~~ when the permittee is a public entity, the following options are available:

(i) Reserve account;

(ii) Trust ~~((account))~~ fund;

(iii) Surety bond (payment or performance); or

(iv) Insurance((-);

(b) For a public facility (~~as defined in subsection (2) of this section, where~~), when the permittee is a private entity, the following options are available:

- (i) Trust (~~account~~) fund;
- (ii) Surety bond (payment or performance);
- (iii) Letter of credit; or
- (iv) Insurance(=);

(c) For private facilities (~~as defined in subsection (2) of this section~~), the following options are available:

- (i) Trust (~~account~~) fund;
- (ii) Surety bond (payment or performance);
- (iii) Letter of credit;
- (iv) Insurance; or
- (v) Financial test/corporate guarantee.

~~((5))~~ **(4) Financial assurance requirements - Cost estimate for closure.** The owner or operator (~~shall~~) must:

(a) Prepare a detailed written closure cost estimate as part of the facility closure plan. The closure cost estimate (~~shall~~) must:

(i) Be stated in current dollars and represent the cost of (~~closing the facility~~);

~~((ii) Provide a detailed written estimate, in current dollars, of the cost of)~~ hiring a third party under a contract subject to chapter 39.12 RCW, Prevailing wages on public works, to close the facility at any time during the active life when the extent and manner of its operation would make closure the most expensive in accordance with the approved closure plan;

~~((iii))~~ (ii) Project (~~intervals~~) a schedule for withdrawal of closure funds from the closure financial assurance instrument to complete the activities identified in the approved closure plan; and

~~((iv))~~ (iii) Not (~~reduce by allowance for salvage value of equipment, solid waste, or the resale value of property or land;~~) use any sale value of salvage, equipment, or property or land to offset or reduce the estimated costs of activities conducted in compliance with the approved closure plan.

(b) Prepare a new closure cost estimate in accordance with (a) of this subsection whenever:

(i) Changes in (~~operating~~) plans of operation or facility design affect the closure plan; or

(ii) There is a change in the expected year of closure that affects the closure plan(=);

(c) Review the closure cost estimate (~~by March 1st of each calendar year~~) annually. The review (~~shall~~) must be submitted to the jurisdictional health department, with a copy to the department, by April 1st of each calendar year stating that the review was completed and the findings of the review. The review will examine all factors, including inflation, involved in estimating the closure cost. Any cost changes (~~shall~~) must be factored into a revised closure cost estimate and (~~submit the revised cost estimate~~) submitted to the jurisdictional health department for review and approval. The jurisdictional health department (~~shall~~) must evaluate each cost estimate for completeness, and may accept, or require a revision of the cost estimate in accordance with its evaluation. If the jurisdictional health department approves a change in the closure cost estimate, the financial assurance instrument must be revised accordingly and submitted to the

jurisdictional health department and a copy sent to the department.

~~((6))~~ **(5) Financial assurance requirements - Cost estimate for post-closure.** The owner or operator (~~shall~~) must:

(a) Prepare a detailed written post-closure cost estimate as part of the facility post-closure plan. The post-closure (~~cost~~) estimate (~~shall~~) must:

(i) Be stated in current dollars and represent the (~~total~~) cost of (~~completing~~) hiring a third party under a contract subject to chapter 39.12 RCW, Prevailing wages on public works, to conduct post-closure care activities in compliance with the approved post-closure plan for the facility (~~for a twenty year post closure period or a time frame determined by the jurisdictional health department~~);

(ii) Provide a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the facility in compliance with the post-closure plan);

~~((iii))~~ (ii) Project (~~intervals~~) a schedule for withdrawal of post-closure funds from the post-closure financial assurance instrument to complete the activities identified in the (~~approved~~) post-closure plan; and

~~((iv))~~ (iii) Not (~~reduce by allowance for~~) use the sale value of salvage, (~~value of~~) equipment, or (~~resale value of~~) property or land to offset or reduce the estimated costs of activities conducted in compliance with the post-closure plan.

(b) Prepare a new post-closure cost estimate for the remainder of the post-closure care period in accordance with (a) of this subsection, whenever a change in the post-closure plan increases or decreases the cost of post-closure care(-); and

(c) During the operating life of the facility, the owner or operator must review the post-closure cost estimate (~~by March 1st of each calendar year~~) annually. The review (~~will~~) must be submitted to the jurisdictional health department, with a copy to the department, by April 1st of each calendar year stating that the review was completed and the finding of the review. The review (~~shall~~) must examine all factors, including inflation, involved in estimating the post-closure cost estimate. Any cost changes (~~in costs shall~~) must be factored into a revised post-closure cost estimate (~~The new estimate shall be~~) and submitted to the jurisdictional health department for review and approval. The jurisdictional health department (~~shall~~) will evaluate each cost estimate for completeness, and may accept, or require a revision of the cost estimate in accordance with its evaluation. If the jurisdictional health department approves a change in the post-closure cost estimate, the financial assurance instrument must be revised accordingly and submitted to the jurisdictional health department and a copy sent to the department.

~~((7))~~ **(6) Financial assurance requirements - Closure/post-closure financial assurance account establishment and reporting.**

(a) Closure and post-closure financial assurance funds generated (~~shall~~) must be provided to the selected financial assurance instrument at the schedule specified in the closure and post-closure plans, such that adequate closure and post-closure funds will be (~~generated~~) available to ensure full

implementation of the approved closure and post-closure plans.

(b) The facility owner or operator with systematic deposits ~~((shall))~~ must establish a procedure with the financial assurance instruments trustee for notification of nonpayment of funds to be sent to the jurisdictional health department and the department.

(c) ~~Except for item (i) of this subdivision, the owner or operator ((shall)) satisfying the requirements of this section using a reserve or trust fund must file with the jurisdictional health department and the department, no later than April 1st of each year, an annual audit report of the financial assurance accounts established for closure and post-closure activities, and a statement of the percentage of user fees, as applicable, diverted to the financial assurance instruments, for the previous calendar year(=), including during each of the post-closure years.~~

~~(i) For facilities owned and operated by ((municipal corporations)) a public entity, the ((financial assurance accounts shall be audited)) audit must be conducted according to the audit schedule of the office of the state auditor. The audit report must be filed with the jurisdictional health department and the department and must include a certification of audit completion and summary findings ((shall be filed with the jurisdictional health department and the department, including during each of the post-closure care years)).~~

~~(ii) For facilities not owned or operated by ((municipal corporations)) a public entity:~~

~~(A) The annual audits ((shall)) must be conducted by a certified public accountant licensed in the state of Washington. The annual audit report filed with the jurisdictional health department and the department must include a certification of audit completion and summary findings ((shall be filed with the jurisdictional health department and the department, including during each of the post-closure care years.)); and~~

~~(B) The annual audit ((shall)) report must also include, as applicable, calculations demonstrating the proportion of closure or post-closure, completed during the preceding year as specified in the closure and post-closure plans.~~

~~(d) Established financial assurance accounts ((shall)) must not constitute an asset of the facility owner or operator.~~

~~(e) Any income ((accruing to)) in the established financial assurance account(s) ((will)) may be used at the owner's discretion upon approval ((of)) by the jurisdictional health department.~~

~~((8)) **(7) Financial assurance requirements - Fund withdrawal for closure and post-closure activities.**~~

~~(a) The owner or operator will withdraw funds from the closure and/or post-closure financial assurance instrument as specified in the approved closure/post-closure plans(=).~~

~~(b) If the withdrawal of funds from the financial assurance instrument exceeds by more than five percent the withdrawal schedule stated in the approved closure and/or post-closure plan over the life of the permit, the closure and/or post-closure plan ((shall)) must be amended.~~

~~(c) After verification by the jurisdictional health department of facility closure, excess funds remaining for closure in a financial assurance account ((shall)) must be released to the facility owner or operator.~~

(d) After verification by the jurisdictional health department of facility post-closure, excess funds remaining for post-closure in a financial assurance account ~~((shall))~~ must be released to the facility owner or operator.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-700 Permits and local ordinances. (1) Permit required.

(a) ~~Except for (b) and (c) of this subsection, no solid waste storage, treatment, processing, handling, recycling, or disposal facility ((shall)) may be maintained, established, substantially altered, expanded, or improved until the person operating or owning ((such)) the site has obtained a permit or permit deferral from the jurisdictional health department, or a beneficial use exemption from the department pursuant to the provisions of this chapter, or is operating in compliance with all terms of a conditionally exempt solid waste handling activity identified in this chapter. Facilities operating under ((categorical)) conditional exemptions established by this chapter ((shall)) must meet all the conditions of ((such)) the exemptions or ((will)) may be required to obtain a permit under this chapter(=) and may be subject to the enforcement provisions of RCW 70.95.315. Facilities that meet the terms and conditions for exemption under one standard may require permitting for other nonexempt activities on-site. Facilities may operate under multiple exemptions from permitting if they meet all conditions for each section. In addition, persons dumping or depositing solid waste without a permit in violation of this chapter ((shall be)) are subject to the penalty provisions of RCW 70.95.240.~~

~~(b) ((Permits issued under this chapter are not required for remedial actions performed by the state and/or in conjunction with the United States Environmental Protection Agency to implement)) Pursuant to RCW 70.105D.090, permits issued under this chapter are not required for remedial actions performed by the department under chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act, or by a potentially liable person under a consent decree, order, or agreed order issued under chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act. If the substantive requirements of this chapter are not met, permits may still be required. Permits issued under this chapter may still be required for independent remedial actions, as defined in RCW 70.105D.020, including those performed under the voluntary cleanup program authorized under RCW 70.105D.030 (1)(i).~~

~~(c) Pursuant to section 121 (1)(e) of the Comprehensive Environmental Response Compensation and Liability Act ((of 1980)) (CERCLA), 42 U.S.C. Sec. 9621 (1)(e), permits issued under this chapter are not required for any removal or remedial action((s taken by others to comply with a state and/or federal cleanup order or consent decree)) performed by the U.S. Environmental Protection Agency under CERCLA or by a potentially responsible party under a consent decree or administrative order issued under CERCLA. If the substantive requirements of this chapter are not met, permits may still be required.~~

~~((e))~~ (d) Any jurisdictional health department and the department may enter into an agreement providing for the exercise by the department of any power that is specified in the contract and that is granted to the jurisdictional health department under chapter 70.95 RCW, Solid waste management—Reduction and recycling. However, the jurisdictional health department ~~((shall))~~ must have the approval of the legislative authority or authorities it serves before entering into any ~~((such))~~ agreement with the department.

(2) **Local ordinances.** Each jurisdictional health department ~~((shall))~~ must adopt local ordinances implementing this chapter not later than one year after the effective date of this chapter, and ~~((shall))~~ must file the ordinances with the department within ninety days following local adoption. Local ordinances ~~((shall))~~ must not be less stringent than this chapter, but may include additional requirements provided additional requirements do not conflict with state or federal statutes.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-710 Permit application and issuance.

(1) Permit application process.

(a) Any owner or operator required to obtain a solid waste permit ~~((shall))~~ must apply ~~((for a permit from))~~ to the jurisdictional health department on forms prescribed by the department. All permit application filings ~~((shall))~~ must include two copies of the application. An application ~~((shall))~~ may not be considered complete by the jurisdictional health department until all the information required under WAC 173-350-715 and the applicable section(s) of this chapter has been submitted.

(b) The jurisdictional board of health ~~((department))~~ may establish reasonable fees for permits, permit modifications, and renewal of permits. All permit fees collected by the health department ~~((shall))~~ must be deposited in the account from which the health department's operating expenses are paid.

(c) Once the jurisdictional health department determines that an application for a permit is complete, it ~~((shall))~~ must:

(i) Refer one copy to the appropriate regional office of the department for review and comment and include correspondence indicating that the jurisdictional health department has determined that the application is complete;

(ii) Investigate every application to determine whether the ~~((facilities))~~ facility meets all applicable laws and regulations, ~~((conform to))~~ is not in conflict with the approved comprehensive solid waste management plan and/or the approved hazardous waste management plan, and ~~((comply))~~ complies with all zoning requirements; and

(iii) When the application is for a permit to establish or modify a solid waste handling facility located in an area that is not under a quarantine, as defined in RCW 17.24.007, and when the facility will receive material for composting, from an area under a quarantine, the jurisdictional health department must also provide a copy of the application to the Washington state department of agriculture. The Washington state department of agriculture will review the application to determine whether it contains information demonstrating that the proposed facility presents a risk of spreading disease, plant

pathogens, or pests to areas that are not under a quarantine. Within forty-five days, the Washington state department of agriculture will report its findings to the jurisdictional health department and department.

(d) Once the department has received a complete application for review, it ~~((shall))~~ will:

(i) Ensure that the proposed ~~((site or))~~ facility conforms with all applicable laws and regulations including ~~((the minimum functional standards for solid waste handling))~~ this chapter;

(ii) Ensure that the proposed ~~((site or))~~ facility ~~((conforms to))~~ is not in conflict with the approved comprehensive solid waste management plan and/or the approved hazardous waste management plan; and

(iii) Recommend for or against the issuance of ~~((each))~~ the permit by the jurisdictional health department within forty-five days of receipt of a complete application.

~~((e) Application procedures for statewide beneficial use exemptions and permit deferrals are contained in WAC 173-350-200 and 173-350-710(8), respectively.)~~

(2) Permit issuance.

(a) When the jurisdictional health department has evaluated all pertinent information, it may issue or deny a permit. ~~((Every solid waste permit application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.))~~ The jurisdictional health department must approve or disapprove every complete solid waste permit application within ninety days of its determination that the application is complete. Every permit issued by a jurisdictional health department ~~((shall))~~ must contain specific requirements necessary for the proper operation of the permitted ~~((site or))~~ facility.

(b) Every permit issued ~~((shall))~~ may be valid for a period not to exceed five years at the discretion of the jurisdictional health department. If a permit is to be issued for longer than one year, the jurisdictional health department may hold a public hearing before making a decision.

(c) Jurisdictional health departments ~~((shall))~~ must file all issued permits with the appropriate regional office of the department no more than seven days after the date of issuance. No solid waste permit issued pursuant to RCW 70.95.180 will be considered valid unless it has been reviewed by the department.

(d) The department ~~((shall))~~ will review ~~((the))~~ each permit ~~((in accordance with RCW 70.95.185))~~ and report its findings to the jurisdictional health department in writing within thirty days of permit issuance.

(e) ~~((The))~~ Jurisdictional health departments ~~((is authorized to))~~ may issue one solid waste handling permit ~~((for a location where))~~ covering multiple ~~((solid waste handling))~~ activities ~~((occur, provided all activities meet the applicable requirements of this chapter))~~ at the same site, or multiple solid waste handling permits may be issued for a single facility with multiple activities.

(3) Permit renewals.

(a) Prior to renewing a permit, the jurisdictional health department ~~((shall))~~ will conduct a review as it deems necessary to ensure that ~~((the))~~ solid waste handling ~~((facility or facilities located))~~ on the site continues to:

(i) Meet the solid waste handling standards of the department;

(ii) Comply with all applicable ~~((local))~~ laws and regulations; and

(iii) ~~((Conform to))~~ Not conflict with the approved solid waste management plan and/or the approved hazardous waste management plan.

(b) A jurisdictional health department ~~((shall))~~ must approve or deny a permit renewal within forty-five days of conducting its review.

(c) Every permit renewal ~~((shall))~~ will be valid for a period not to exceed five years at the discretion of the jurisdictional health department. If a permit is to be renewed for longer than one year, the jurisdictional health department may hold a public hearing before making a decision.

(d) Jurisdictional health departments must file all issued permit renewals with the appropriate regional office of the department not more than seven days after the date of issuance. No permit renewal issued pursuant to RCW 70.95.190 will be considered valid unless it has been reviewed by the department.

(e) The department ~~((shall))~~ will review the renewal ~~((in accordance with RCW 70.95.190))~~ and report its findings to the jurisdictional health department in writing within thirty days of issuance of the permit renewal.

~~((e) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid.))~~

(4) Permit modifications.

(a) Any ~~((significant))~~ change to the operation, design, site or processing capacity, performance, or monitoring of a permitted facility ~~((may))~~ requires a modification to the permit ~~((The following procedures shall be followed by an owner or operator prior to making any change in facility operation, design, performance or monitoring:))~~

(a) The facility owner or operator shall consult with the jurisdictional health department regarding the need for a permit modification;

(b) The jurisdictional health department shall determine whether the proposed modification is significant. Upon such a determination, the owner or operator shall make application for a permit modification, using the process outlined in subsections (1) through (3) of this section; and

(c) If a proposed change is determined to not be significant and not require a modification to the permit, the department ~~shall be notified~~ when such a change is tied to a regulatory design or operating standard in this chapter. A modification request must include the following information:

(i) A description of the proposed modification;

(ii) The reasons for the proposed modification;

(iii) A description of the impacts from the proposed modification upon the solid waste facility as presently permitted;

(iv) A showing that, as modified, the solid waste facility will be capable of compliance with the applicable requirements of this regulation; and

(v) Any other information as required by the jurisdictional health department.

(b) If the jurisdictional health department and the department determine that the proposed modification is significant, the procedures of subsection (1) of this section will be followed except that:

(i) The department will report its findings to the jurisdictional health department within thirty days;

(ii) The jurisdictional health department will approve or disapprove the modification request within forty-five days after its receipt of a complete application; and

(c) If the jurisdictional health department and the department determine that the procedures of subsection (1) of this section are not necessary, any written form of communication documenting the deliberation and decision related to the permit modification request is sufficient.

(d) The jurisdictional health departments must file approved modifications with the appropriate regional office of the department no more than seven days after the date of issuance. No solid waste permit modification issued pursuant to RCW 70.95.180 will be considered valid unless it has been reviewed by the department.

(5) Inspections.

(a) At a minimum, jurisdictional health departments must conduct annual inspections of all permitted solid waste facilities ((shall be performed by the jurisdictional health department, unless otherwise specified in this chapter)).

(b) All facilities and sites ~~((shall))~~ must be physically inspected prior to issuing a permit, permit renewal, or permit modification.

(c) Any duly authorized representative of the jurisdictional health department may enter and inspect any property, premises or place at any reasonable time for the purpose of determining compliance with this chapter, and relevant laws and regulations. Findings ~~((shall))~~ must be noted and kept on file. A copy of the inspection report or annual summary ~~((shall))~~ must be furnished to the site operator.

(6) Permit transfers.

(a) No solid waste permit may be transferred to a new owner or operator without first obtaining approval from the jurisdictional health department by submitting an application specified by the jurisdictional health department and the department pursuant to subsection (1) of this section.

(b) The application must include at least the following:

(i) The name and all contact information of the new owner or operator (applicant);

(ii) A demonstration that a new owner or operator is capable of operating the facility in compliance with all the applicable requirements of this regulation and the solid waste permit conditions;

(iii) If applicable, financial assurance pursuant to WAC 173-350-600. Existing financial assurance must remain in place by the currently permitted owner or operator until this requirement is met;

(iv) An original signature pursuant to WAC 173-350-715(3); and

(v) Any other information as required by the jurisdictional health department.

(c) The jurisdictional health department is authorized to require a new solid waste permit application pursuant to all procedures of subsection (1) of this section if it determines the requirement is warranted.

(7) Permit suspension and appeals.

(a) Any permit for a solid waste handling facility (~~shall be~~) is subject to suspension at any time the jurisdictional health department determines that the (~~site or the~~) solid waste handling facility is being operated in violation of this chapter, conditions of the solid waste permit, the rules of the Washington state department of agriculture, or local laws and regulations.

(b) Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste handling facility, it (~~shall~~) must:

(i) Upon request of the applicant or holder of the permit, grant a hearing on (~~such~~) the denial or suspension within thirty days after the request;

(ii) Provide notice of the hearing to all interested parties including the county or city having jurisdiction over the site and the department; and

(iii) Within thirty days after the hearing, notify the applicant or the holder of the permit in writing of the determination and the reasons therefore. Any party aggrieved by (~~such~~) the determination may appeal to the pollution control hearings board by filing with the board a notice of appeal within thirty days after receipt of notice of the determination of the health officer.

(c) If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension (~~shall~~) will not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health (~~and~~) or the environment.

~~((d) Procedures for appealing beneficial use exemption determinations are contained in WAC 173-350-200 (5)(g).~~

~~(7))~~ (8) Variances.

(a) Any person (~~who owns or operates a solid waste handling facility subject to a solid waste permit under WAC 173-350-700,~~) subject to the solid waste permitting requirements of this section may apply to the jurisdictional health department for a variance from any section of this chapter (~~(-))~~ except that no variance (~~shall~~) will be granted for requirements specific to chapter 70.95 RCW, Solid waste management—Reduction and recycling. (~~The application shall be accompanied by such information as the jurisdictional health department may require. The jurisdictional health department may grant such variance, but only after due notice or a public hearing if requested, if it finds that:~~

(i) ~~The solid waste handling practices or location do not endanger public health, safety or the environment; and~~

(ii) ~~Compliance with the section from which variance is sought would produce hardship without equal or greater benefits to the public.~~

~~(b) No variance shall be granted pursuant to this section until the jurisdictional health department has considered the relative interests of the applicant, other owners of property likely to be affected by the handling practices and the general public.~~

~~(e) Any variance or renewal shall be granted within the requirements of subsections (1) through (3) of this section and for time period and conditions consistent with the reasons therefore, and within the following limitations:~~

~~(i) If the variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement, or control of pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternative measures that the jurisdictional health department may prescribe;~~

~~(ii) The jurisdictional health department may grant a variance conditioned by a timetable if:~~

~~(A) Compliance with this chapter will require spreading of costs over a considerable time period; and~~

~~(B) The timetable is for a period that is needed to comply with the chapter.~~

~~(d) An application for a variance, or for the renewal thereof, submitted to the jurisdictional health department shall be approved or disapproved by the jurisdictional health department within ninety days of receipt unless the applicant and the jurisdictional health department agree to a continuance.~~

~~(e) No variance shall be granted by a jurisdictional health department except with the approval and written concurrence of the department prior to action on the variance by the jurisdictional health department.~~

~~(8))~~ Requests for variances must be made during the application process in subsection (1) of this section or the permit modification process in subsection (4) of this section.

(b) Any variance request must contain sufficient information and justification for the jurisdictional health department and department to determine if a variance request should be approved including a demonstration that compliance with the section from which variance is sought would produce hardship without equal or greater benefits to the public.

(c) Any variance request granted by the jurisdictional health department requires written concurrence by the department.

(d) Variances may be granted for a limited time period if deemed appropriate by the jurisdictional health department and department.

(e) All variances must be reviewed annually as part of the permit review process in subsection (5)(a) of this section.

(9) Permit deferral.

(a) A jurisdictional health department may, at its discretion and with the concurrence of the department, waive the requirement that a solid waste permit be issued for a facility under this chapter by deferring to other air, water, or environmental permits issued for the facility which provide an equivalent or superior level of environmental protection.

(b) The requirement to obtain a solid waste permit from the jurisdictional health department (~~shall~~) will not be waived for any transfer station, landfill, or incinerator that receives municipal solid waste destined for final disposal.

(c) Any deferral of permitting or regulation of a solid waste facility granted by the department or a jurisdictional health department prior to June 11, 1998, (~~shall~~) will

remain valid and ~~((shall))~~ will not be affected by this subsection.

(d) Any person who owns or operates ~~((an applicable))~~ a solid waste handling facility subject to obtaining a solid waste permit may apply to the jurisdictional health department for permit deferral. Two copies of an application for permit deferral ~~((shall))~~ must be signed by the owner or operator and submitted to the jurisdictional health department. Each application for permit deferral ~~((shall))~~ must include:

(i) A description of the solid waste handling units for which the facility is requesting deferral;

(ii) A list of the other environmental permits issued for the facility;

(iii) A ~~((demonstration that identifies each requirement of this chapter and a))~~ detailed description of how the other environmental permits will provide an equivalent or superior level of environmental protection;

(iv) Evidence that the facility is ~~((in conformance))~~ not in conflict with the approved comprehensive solid waste management plan and/or the approved hazardous waste management plan;

(v) Evidence of compliance with chapter 197-11 WAC, SEPA rules, including the SEPA lead agency's determination; and

(vi) Other information that the jurisdictional health department or the department may require.

(e) When the permit deferral application is for a solid waste handling facility located in an area that is not under a quarantine, as defined in RCW 17.24.007, and when the facility will receive material for composting, from an area under a quarantine, the jurisdictional health department must also provide a copy of the application to the Washington state department of agriculture. The Washington state department of agriculture will review the application to determine whether it contains information demonstrating that the proposed facility presents a risk of spreading disease, plant pathogens, or pests to areas that are not under a quarantine. Within forty-five days, the Washington state department of agriculture must report its findings to the jurisdictional health department and department.

(f) The jurisdictional health department ~~((shall))~~ must notify the applicant if it elects not to waive the requirement that a solid waste permit must be issued for a facility under this chapter. If the jurisdictional health department elects to proceed with permit deferral, it ~~((shall))~~ must:

(i) ~~((Forward))~~ Refer one copy of the complete deferral application to the appropriate regional office of the department for review and written concurrence;

(ii) Notify the permit issuing authority or authorities for the other environmental permits described in (d)(ii) of this subsection and allow ~~((an))~~ a thirty day opportunity for comment; and

(iii) Determine if the proposed permit deferral provides an equivalent or superior level of environmental protection.

~~((f))~~ (g) The department ~~((shall))~~ will provide a written ~~((report of its findings to the jurisdictional health department and recommend for or against the permit deferral. The department shall provide its findings))~~ concurrence or denial for the permit deferral within forty-five days of receipt of a complete permit deferral application or inform the jurisdictional health department as to the status with a schedule for its determination.

department as to the status with a schedule for its determination.

~~((g))~~ (h) No solid waste permit deferral ~~((shall))~~ will be effective unless the department has provided written concurrence. All requirements for solid waste permitting ~~((shall))~~ remain in effect until the department has provided written concurrence.

~~((h))~~ (i) When the jurisdictional health department has evaluated all information, it ~~((shall))~~ must provide written notification to the applicant and the department whether or not it elects to waive the requirement that a solid waste permit be issued for a facility under this chapter by deferring to other environmental permits issued for the facility. Every complete permit deferral application ~~((shall))~~ must be approved or denied within ninety days after its receipt by the jurisdictional health department or the owner or operator ~~((shall))~~ must be informed as to the status of the application with a schedule for final determination.

~~((i))~~ (j) The jurisdictional health department must send any approval for a permit deferral to the appropriate regional office of the department within seven days of issuance.

(k) The jurisdictional health department ~~((shall))~~ must revoke any permit deferral if it or the department determines that the other environmental permits are providing a lower level of environmental protection than a solid waste permit. Jurisdictional health departments ~~((shall))~~ must notify the facility's owner or operator of intent to revoke the permit deferral and direct the owner or operator to take measures necessary to protect human health and the environment and to comply with the permit requirements of this chapter.

~~((j))~~ (l) Facilities ~~((which are))~~ operating under ~~((the))~~ a solid waste permit deferral ~~((of solid waste permitting))~~ to other environmental permits ~~((shall))~~ must:

(i) Allow the jurisdictional health department or the department, at any reasonable time, to inspect the solid waste handling ~~((units))~~ facility which ~~((have))~~ has been granted a permit deferral;

(ii) Notify the jurisdictional health department and the department whenever changes are made to the other environmental permits identified in (d)(ii) of this subsection. This notification ~~((shall))~~ must include a detailed description of how the changes will affect the facility's operation and ~~((a demonstration))~~ how, as described in (d)(iii) of this subsection, ~~((that))~~ the amended permits continue to provide an equivalent or superior level of environmental protection to the deferred solid waste permits. If the amended permits no longer provide an equivalent or superior level of environmental protection, the facility owner or operator ~~((shall))~~ must close the solid waste handling ~~((unit))~~ facility or apply for a solid waste permit from the jurisdictional health department according to procedures of subsection (1) of this section;

(iii) Notify the jurisdictional health department and the department within seven days of discovery of any violation of, or failure to comply with, the conditions of the other environmental permits identified in (d)(ii) of this subsection;

(iv) Notify the jurisdictional health department of any enforcement actions taken as a result of noncompliance with the permit(s) that have been deferred to;

(v) Prepare and submit ~~((a copy of))~~ an annual report to the jurisdictional health department and the department by

April 1st as required under the appropriate annual reporting sections of this chapter;

~~((+))~~ (vi) Operate in accordance with any other written conditions that the jurisdictional health department deems appropriate; and

~~((vi) Shall)~~ (vii) Take any measures deemed necessary by the jurisdictional health department when the permit deferral has been revoked.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-715 General permit application requirements. (1) Every permit application ~~((shall))~~ must be ~~((on))~~ in a format ~~((supplied))~~ prescribed by the department and ~~((shall))~~ must contain at a minimum the following information:

(a) Contact information for the facility owner, ~~((and))~~ the facility operator, and property owner if different, including contact name, company name, mailing address, uniform business identifier number, phone number, fax number, and email;

(b) Identification of the type of ~~((facility))~~ solid waste handling that is to be permitted;

(c) Identification of any other permit (local, state, or federal) in effect at the site;

(d) A vicinity plan or map (having a minimum scale of 1:24,000) that ~~((shall))~~ shows the area within one mile ~~((+6 km))~~ of the property boundaries of the facility in terms of the existing and proposed zoning and land uses within that area, residences, and access roads, and other existing and proposed man-made or natural features that may impact the operation of the facility;

(e) Evidence of compliance with chapter 197-11 WAC, SEPA rules, including the SEPA lead agency's determination;

(f) Information as required under the appropriate facility permit application subsections of this chapter; and

(g) Any additional information as requested by the jurisdictional health department or the department.

(2) Engineering plans, reports, specifications, programs, and manuals submitted to the jurisdictional health department or the department ~~((shall))~~ must be prepared and certified by ~~((an individual licensed to practice engineering))~~ a professional engineer registered in the state of Washington, in an engineering discipline appropriate for the solid waste facility type or activity.

(3) Signature and verification of applicants:

(a) All applications for permits ~~((shall))~~ must be accompanied by evidence of authority to sign the application and ~~((shall))~~ must be signed by the owner or operator as follows:

(i) In the case of corporations, by a duly authorized principal executive officer of at least the level of vice president; in the case of a partnership or limited partnership, by:

(A) A general partner;

(B) Proprietor; or

(C) In case of sole proprietorship, by the proprietor~~((s))~~;

(ii) In the case of a municipal, state, or other government entity, by a duly authorized principal executive officer or elected official.

(b) Applications ~~((shall))~~ must be signed or attested to by, or on behalf of, the owner or operator, in respect to the veracity of all statements therein; or ~~((shall))~~ must bear an executed statement by, or on behalf of, the owner or operator to the effect that false statements made therein are made under penalty of perjury.

(c) The signature of the applicant ~~((shall))~~ must be notarized on the permit application form.

AMENDATORY SECTION (Amending WSR 03-03-043, filed 1/10/03, effective 2/10/03)

WAC 173-350-900 Remedial action. When the owner or operator of a solid waste facility permitted under this chapter is subject to remedial ~~((measures in compliance with))~~ action under the authority of chapter 70.105D, Hazardous waste cleanup—Model Toxics Control Act, and chapter 173-340 WAC, ((the)) Model Toxics Control Act—Cleanup, the roles of the jurisdictional health department and the department ~~((shall be))~~ are as follows:

(1) The jurisdictional health department:

(a) May participate in all negotiations, meetings, and correspondence between the owner and operator and the department in implementing the ~~((model toxics control))~~ remedial action;

(b) May comment upon and participate in all decisions made by the department in assessing, choosing, and implementing a remedial action ~~((program))~~;

(c) ~~((Shall))~~ Must require the owner or operator to continue any remaining activities for the operation, closure, and post-closure ((activities)) of the facility as appropriate under this chapter, after remedial actions ~~((measures))~~ are completed; and

(d) ~~((Shall continue to regulate all solid waste facilities during construction, operation, closure and post-closure, that are not directly impacted by chapter 173-340 WAC:))~~ Must exercise its authority for permitting any solid waste handling at the facility that is not addressed through requirements of a remedial action conducted under any consent decree, order, or agreed order issued by the department for the implementation of the remedial action, including permit modifications that may be necessary to address impacts on solid waste handling due to remedial actions.

(2) The department ~~((shall carry out all the responsibilities assigned to it by chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act:))~~;

(a) Must follow the requirements of chapter 173-340, Model Toxics Control Act—Cleanup, regarding permits and exemptions from applicable local, state, and federal laws to ensure that the remedial action complies with the substantive provisions of chapter 70.95 RCW, Solid waste management—Reduction and recycling, and the substantive provision of any laws requiring or authorizing local government permits or approvals; and

(b) Must review and comment on any solid waste permitting activities conducted by the jurisdictional health department regarding the facility.

(3) Nothing in this section is intended to prohibit a jurisdictional health department from charging a fee to the person conducting the remedial action to defray the costs of services

rendered relating to the substantive requirements for the remedial action.

NEW SECTION

WAC 173-350-980 Severability. If any provision of this rule or its application to any covered person, facility, or circumstance is held invalid, the remainder of the rule or application of the provision to other covered persons, facilities, or circumstances is not affected.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-350-990 Criteria for inert waste.

WSR 18-17-011 PERMANENT RULES PARAEDUCATOR BOARD

[Filed August 2, 2018, 10:38 a.m., effective September 2, 2018]

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

Purpose: Creates new chapter 179-15 WAC describing requirements for the subject matter special education certificate for paraeducators.

Citation of Rules Affected by this Order: New chapter 179-15 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-080 on June 6, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 0, Repealed 0.

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

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

Date Adopted: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-15 WAC

SPECIAL EDUCATION SUBJECT MATTER CERTIFICATE

NEW SECTION

WAC 179-15-010 Purpose. (1) The purpose of this chapter is to define a paraeducator's minimum requirements and process to attain, and the validity period for, the special education subject matter certificate;

(2) The special education subject matter certificate provides increased training to paraeducators to meet the demands of special education instructional support; and

(3) Provided that the special education subject matter certificate is not a prerequisite for a paraeducator working in any program.

NEW SECTION

WAC 179-15-020 Minimum requirements. Prior to completing the special education subject matter certificate, the paraeducator must have completed the fundamental course of study.

NEW SECTION

WAC 179-15-030 Process. (1) To attain the paraeducator special education subject matter certificate, the paraeducator must complete twenty continuing education credit hours of training that meet the learning objectives of the course outline as described in WAC 179-15-060;

(2) Training for the certificate must include the training competencies that align with WAC 179-15-050; and

(3) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the special education subject matter certificate.

NEW SECTION

WAC 179-15-040 Validity period. The special education subject matter certificate expires after five years, and as follows:

(1) A certificate issued prior to June 30th of a calendar year shall have the expiration date of the certificate calculated on the basis such certificate was completed on June 30th of the same calendar year regardless of the date of issuance; and

(2) A certificate issued July 1st or later in the calendar year shall have the expiration date of the certificate calculated on the basis that such certificate was completed on June 30th of the next calendar year regardless of the date of issuance.

NEW SECTION

WAC 179-15-050 Knowledge and skill competencies for the standards of practice. The knowledge and skill competencies describe the learning objectives paraeducators should exhibit when working with students. Competencies are associated with each of the standards written in WAC

179-07-030 and are in addition to the knowledge and skill competencies written in WAC 179-07-040:

(1) Supporting instructional opportunities:

(a) Knowledge competencies:

(i) Knowledge of fundamental purpose of Individuals with Disabilities Education Act is to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them to further education, employment and independent living;

(ii) Knowledge of common special education terminology and acronyms (e.g., Individuals with Disabilities Education Act (IDEA), individualized education program, section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act (ADA), functional behavior assessment (FBA), behavior intervention plan (BIP), and least restrictive environment (LRE)) that relate to required assignment;

(iii) Knowledge of basic special education process (e.g., free and appropriate public education, individualized education program, and section 504 of the Rehabilitation Act of 1973);

(iv) Knowledge of the legal requirements for supporting students eligible for and receiving special education services;

(v) Knowledge of the purpose of individualized education program goals, related supports (e.g., accommodations and modifications) and/or related documents (e.g., health care plan) if applicable or pertinent to assigned duties;

(vi) Knowledge of the importance and role of families in the educational process of students eligible and receiving special education services; and

(vii) Knowledge of the importance of language development in academic and nonacademic learning environments for students eligible and receiving special education services.

(b) Skill competencies:

(i) Ability to implement instructional strategies and techniques that support specially designed instruction and specific learning needs as developed and directed by certificated/licensed staff;

(ii) Ability to assist students with assistive technology as directed by certificated/licensed staff; and

(iii) Ability to assist in recording and maintaining data (e.g., academic, behavior, social/emotional, or health) to support individualized education program goals and behavior plans as directed by certificated/licensed staff.

(2) Demonstrating professionalism and ethical practices:

(a) Knowledge competencies:

Knowledge of district expectations and/or policies regarding appropriate communication with families and students eligible for and receiving special services as directed by certificated/licensed staff.

(b) Skill competencies:

(i) Ability to practice ethical and professional standards of conduct, including the requirements of confidentiality;

(ii) Ability to comply with the requirements of confidentiality for educational and medical records;

(iii) Ability to comply with legal requirements regarding abuse and neglect;

(iv) Ability to comply with district policies and procedures regarding students eligible for and receiving special education services;

(v) Ability to support high expectations and quality of life potential for students eligible for and receive special education services;

(vi) Develop and maintain professional relationships with both general and special education colleagues;

(vii) Collaborate with others providing services to students eligible for and receiving special education services;

(viii) Practice within their professional knowledge and skills and seek appropriate support when needed; and

(ix) Pursue and participate in professional staff development and/or learning opportunities.

(3) Supporting a positive and safe learning environment:

(a) Knowledge competencies:

(i) Knowledge of legal, ethical practices, and procedural safeguards regarding positive behavioral supports, restraints, and/or isolation of students eligible for and receiving special education services;

(ii) Knowledge that all student behavior (both desired and undesired) is a form of communication and should be acknowledged with an effective response;

(iii) Knowledge of the importance of consistency, predictability and structures in the learning environment and the impact on student behavior and learning outcomes; and

(iv) Knowledge of the basic behavior change process and intervention strategies (e.g., antecedent, behavior, and consequence).

(b) Skill competencies:

(i) Ability to support the legal, ethical practices, and procedural safeguards regarding positive behavioral support, restraint, and isolation of students eligible for and receiving special education services as directed by certificated/licensed staff;

(ii) Ability to implement strategies to support students to maximize their independence across all learning environments;

(iii) Ability to support students in following prescribed classroom routines and transitions with consistency and predictability as determined by certificated/licensed staff;

(iv) Ability to effectively implement a behavior plan for students eligible for and receiving special education services and determined by certificated/licensed staff; and

(v) Ability to carry out assigned health related care or duties with dignity and respect for students they support as directed by school nurse.

(4) Communicating effectively and participating in the team process:

(a) Knowledge competencies:

(i) Knowledge of how to forward and direct concerns or issues from students and/or families of students eligible for receiving special education services; and

(ii) Knowledge of district expectations and appropriate boundaries of communication in various settings (inside and outside of school day) with students and families to protect student confidentiality and privacy following the established chain of command as determined by certificated/licensed staff and district policy.

(b) Skill competencies:

(i) Ability to support in individualized education program conferences and team meetings as determined by each individualized education program team;

(ii) Ability to communicate and forward family or student concerns/issues to designated certificated/licensed staff or administrator;

(iii) Ability to follow individualized education program goals and communicate within appropriate boundaries to protect student confidentiality and privacy as directed by certificated/licensed staff.

(5) Demonstrating cultural competency aligned with standards developed by the professional educator standards board under RCW 28A.410.270:

(a) Knowledge competencies:

Knowledge of culturally responsive strategies for delivering specially designed instruction, accommodations, adaptations, and modifications as designed and determined by certificated/licensed staff.

(b) Skill competencies:

Ability to assist or implement culturally responsive strategies with students to facilitate effective integration into various settings (e.g., libraries, classrooms, playgrounds, community, and assorted modes of transportation) as directed by certificated/licensed staff.

NEW SECTION

WAC 179-15-060 Course outline for the special education subject matter certificate. Providers and facilitators must follow the current course outline as published by the professional educator standards board when delivering training for the special educator subject matter certificate.

WSR 18-17-012**PERMANENT RULES****PARAEDUCATOR BOARD**

[Filed August 2, 2018, 10:43 a.m., effective September 2, 2018]

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

Purpose: Creates new chapter 179-17 WAC describing requirements for the advanced paraeducator certificate.

Citation of Rules Affected by this Order: New chapter 179-17 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-012 on May 24, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 0, Repealed 0.

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

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

Date Adopted: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-17 WAC**ADVANCED PARAEDUCATOR CERTIFICATE**NEW SECTION

WAC 179-17-010 Purpose. (1) The purpose of this chapter is to define a paraeducator's minimum requirements and process to attain, and the validity period for, the advanced paraeducator certificate;

(2) The advanced paraeducator certificate provides further training to paraeducators interested in expanding the duties of their role; and

(3) Provided that the advanced paraeducator certificate is not a prerequisite for a paraeducator working in any program.

NEW SECTION

WAC 179-17-020 Definitions. "Advanced paraeducator certificate" means a credential earned by a paraeducator who may have the following duties:

(1) Assisting in highly impacted classrooms;

(2) Assisting in specialized instructional support and instructional technology applications;

(3) Mentoring and coaching other paraeducators; and

(4) Acting as a short-term emergency substitute teacher only after the school district has consulted with the paraeducator and applied for the emergency substitute certificate as required in chapter 181-79A WAC.

NEW SECTION

WAC 179-17-030 Minimum requirements. Prior to completing continuing education credit hours for the advanced paraeducator certificate, the paraeducator must meet requirements and apply for the general paraeducator certificate.

NEW SECTION

WAC 179-17-040 Process. (1) To attain the advanced paraeducator certificate, the paraeducator must complete seventy-five continuing education credit hours of training in topics related to the duties of an advanced paraeducator; and

(2) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the advanced paraeducator certificate.

NEW SECTION

WAC 179-17-050 Validity period. The advanced paraeducator certificate expires after five years, and as follows:

- (1) A certificate issued prior to June 30th of a calendar year shall have the expiration date of the certificate calculated on the basis such certificate was completed on June 30th of the same calendar year regardless of the date of issuance; and
- (2) A certificate issued July 1st or later in the calendar year shall have the expiration date of the certificate calculated on the basis that such certificate was completed on June 30th of the next calendar year regardless of the date of issuance.

NEW SECTION

WAC 179-17-060 Knowledge and skill competencies for the advanced paraeducator standards of practice. The knowledge and skill competencies describe the learning objectives paraeducators should exhibit when working with students. Competencies are associated with each of the standards written in WAC 179-07-030 and are in addition to the knowledge and skill competencies written in WAC 179-07-040:

- (1) Supporting instructional opportunities:
 - (a) Knowledge competencies:
 - (i) Expanded knowledge of reading, writing, and math skills;
 - (ii) Expanded knowledge of computer applications to support K-12;
 - (iii) Staying current on the knowledge of district standards, curriculum, instruction and assessment;
 - (iv) Awareness of district policies and initiatives;
 - (v) Expanded knowledge of one's own cultural identity and how it influences perceptions, values, and practices;
 - (vi) Expanded knowledge of recording and supporting student data in order to accurately maintain databases as directed by certificated/licensed staff; and
 - (vii) Knowledge of effective mentoring and coaching strategies and practices.
 - (b) Skill competencies:
 - (i) Seeks opportunities to learn about perceptions, values and practices of culture and races different from their own;
 - (ii) Demonstrate advanced ability to assist in implementing district/school/classroom instructional outcomes as directed by certificated/licensed staff;
 - (iii) Demonstrate advanced ability to utilize technology to support educational and safety outcomes as directed by certificated/licensed staff;
 - (iv) Demonstrate advanced ability to assist in administration of assessments and monitoring student progress as directed by certificated/licensed staff;
 - (v) Ability to assess effectiveness of mentoring program with each mentee and adapt for the mentee's strengths and weaknesses; and
 - (vi) Ability to pursue feedback from mentee's team in order to develop and provide ongoing support of educational outcomes.
 - (2) Demonstrating professionalism and ethical practices:
 - (a) Knowledge competencies:

- (i) Knowledge of the distinctions in the roles and responsibilities of teachers, paraeducators, advanced paraeducators, administrators, families, and other team members;

- (ii) Knowledge of state and federal special education laws and laws that apply to English language learners, educational staff associate, Americans with Disabilities Act, Section 504, and Every Student Succeeds Act;

- (iii) Knowledge of district use of observational tools to promote connection-making between instructional practices and student data; and

- (iv) Knowledge of ongoing reflective inquiry to improve, inform, and refine instructional practice.

- (b) Skill competencies:

- (i) Ability to observe and gather data to provide specific, timely, actionable and nonevaluative feedback to build reflective capacity in mentees;

- (ii) Ability to foster a growth mindset to engage mentees in continuous improvement; and

- (iii) Ability to guide mentees in setting measurable goals that are timely and appropriate.

- (3) Supporting a positive and safe learning environment:

- (a) Knowledge competencies:

- (i) Expanded knowledge of child and adolescent development (academic progress, ages, stages of development, and stages of language acquisition);

- (ii) Expanded knowledge in strategies to create an equitable learning environment which fosters unique strengths and abilities of students being served;

- (iii) Knowledge of creating a school culture that fosters leadership, growth, and integration of all colleagues including an understanding of each role and appropriate supports to ensure student success; and

- (iv) Knowledge of differing approaches to positive and safe learning environments and how to support those established by certificated/licensed staff and administrators.

- (b) Skill competencies:

- Identifies student developmental stages and collaborates with certificated staff on strategies to address concerns and risk factors as determined by the instructional team.

- (4) Communicating effectively and participating in the team process:

- (a) Knowledge competencies:

- (i) Awareness of interpersonal communication skills (pausing, paraphrasing, and skilled questioning);

- (ii) Awareness of team building and collaboration strategies;

- (iii) Knowledge of strategies to give and receive constructive feedback;

- (iv) Aware of skills to facilitate conflict resolution; and

- (v) Knowledge of how to build trusting relationships and open communication with colleagues.

- (b) Skill competencies:

- (i) Uses communication skills (e.g., paraphrasing, pausing, questioning) to support learning;

- (ii) Uses strategies to build trusting, respectful, and confidential relationships through open, honest, and authentic communication with colleagues; and

- (iii) Approaches difficult conversations in a proactive, supportive, and genuine manner.

(5) Demonstrating cultural competency aligned with standards developed by the professional educator standards board under RCW 28A.410.270:

(a) Knowledge competencies:

(i) Proficient in strategies to support and maintain a culturally inclusive learning environment;

(ii) Understanding of how a person's own cultural identity and biases can have possible impacts on the learning environment; and

(iii) Broaden understanding of student cultural histories and contexts, as well as family norms and values in different cultures.

(b) Skill competencies:

(i) Proficient implementation of educational material which represents and supports various cultures and abilities of students being served as directed by certificated/licensed staff;

(ii) Ability to provide research-based resources and reflective practices to assist mentee in developing and providing an inclusive learning environment; and

(iii) Ability to help others identify their own biases utilizing research-based practices.

NEW SECTION

WAC 179-17-070 Suggested courses for the advanced paraeducator certificate. Suggested courses published by the professional educator standards board.

WSR 18-17-013

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed August 2, 2018, 10:55 a.m., effective September 2, 2018]

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

Purpose: Creates new chapter 179-21 WAC describing the paraeducator career ladder.

Citation of Rules Affected by this Order: New chapter 179-21 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-017 on May 24, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 0, Repealed 0.

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

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

Date Adopted: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-21 WAC

CAREER LADDER

NEW SECTION

WAC 179-21-010 Authority. The authority for this chapter is RCW 28A.413.030 which authorizes the paraeducator board to make policy recommendations, as necessary, for a paraeducator career ladder that will increase opportunities for paraeducator advancement through advanced education, professional learning, and increased instructional responsibility.

NEW SECTION

WAC 179-21-020 Purpose. The purpose of this chapter is to indicate the opportunities available for paraeducator career advancement that are overseen by the paraeducator board, and any associated rules adopted by the board.

NEW SECTION

WAC 179-21-030 Pipeline for paraeducators conditional loan scholarship. The state laws establishing this program include RCW 28A.660.042 and 28A.660.050.

NEW SECTION

WAC 179-21-040 Alternative route to teaching block grants. The state law establishing this program is RCW 28A.660.050.

NEW SECTION

WAC 179-21-050 Recruiting Washington teachers program. The state law establishing this program is RCW 28A.415.370.

WSR 18-17-015

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed August 2, 2018, 1:29 p.m., effective September 2, 2018]

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

Purpose: Amends WAC 181-85-033 to clarify clock hour awards timelines and clock hour for national board certificated educators.

Citation of Rules Affected by this Order: Amending WAC 181-85-033.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-12-056 on May 31, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.presb[esb].wa.gov.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 24, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 16-24-024, filed 11/29/16, effective 12/30/16)

WAC 181-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional Teaching Standards assessment—Supervisors—First peoples' language, culture and oral tribal traditions. (1) Notwithstanding any provisions of this chapter to the contrary, for consultation and collaboration as a member of an approved professional growth team, as defined by WAC 181-78A-010 and 181-79A-030, members of a professional growth team, excluding the candidate, ~~((shall receive))~~ are eligible for the equivalent of three continuing education credit hours. The team member may not receive more than the equivalent of six continuing education credit hours, as defined by this section, during ~~((a calendar year))~~ the period beginning July 1st of one year and ending June 30th of the following year.

(2) A person holding a valid educational certificate pursuant to RCW 28A.410.010 ~~((shall receive))~~ is eligible for the equivalent of ten continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(3)(a) Notwithstanding any provisions of this chapter to the contrary, individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students or the superintendent of public instruction, a person holding a valid educational certificate pursuant to RCW 28A.410.010 ~~((shall receive))~~ is eligible for the equivalent of thirty continuing education credit hours for

service as a supervisor. The person may not receive more than the equivalent of thirty continuing education credit hours during a school year period.

(b) The term "supervisor" shall mean individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students, or the office of superintendent of public instruction for supervising the training of teacher interns, administrative interns, educational staff associate interns, and paraprofessionals.

(4) ~~((A person holding))~~ National board certification from the National Board for Professional Teaching Standards (NBPTS):

(a) Individuals who submitted at least one component of an initial NBPTS national board certification process in 2017 or earlier, and who hold a valid educational certificate pursuant to RCW 28A.410.010 ~~((shall receive))~~, are eligible for the equivalent of forty-five continuing education credit hours for ~~((completion of an assessment process as part))~~ submission of a complete portfolio of four components of the National Board for Professional Teaching Standards ~~((certificate application))~~ certification process. Completion of a national board certification process shall be defined as published by the professional educator standards board. Upon achieving national board certification, the individual ~~((shall receive))~~ is eligible for the equivalent of an additional forty-five continuing education credit hours for a total of ninety continuing education credit hours per national board certificate. Beginning January 1, 2022, all individuals submitting complete components as part of an initial NBPTS national board certification process are eligible for continuing education credit hours as described in WAC 181-85-033 (4)(b).

(b) Individuals who first submitted a component of an initial NBPTS national board certification process in 2018 or later, and who hold a valid educational certificate pursuant to RCW 28A.410.010, are eligible for the equivalent of fifty continuing education credit hours per submission of a complete national board component, for a total of two hundred continuing education credit hours per submission of a complete national board certification portfolio. Completion of a national board component shall be defined as published by the professional educator standards board.

(c) Individuals who submit a complete NBPTS national board renewal portfolio in 2018 or later, and who hold a valid educational certificate pursuant to RCW 28A.410.010, are eligible for the equivalent of two hundred continuing education credit hours. Completion of a national board renewal portfolio shall be defined as published by the professional educator standards board.

(5) Notwithstanding any provisions of this chapter to the contrary, teachers who achieve the professional certification through the external assessment per WAC 181-79A-206 ~~((will receive))~~ are eligible for the equivalent of one hundred fifty continuing education credit hours.

(6) Notwithstanding any provision of this chapter to the contrary, ~~((individuals who receive))~~ in-service training or continuing education according to RCW 28A.415.020(6) in first peoples' language, culture and oral tribal traditions provided by a sovereign tribal government participating in the

Washington state first peoples' language, culture and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

(7) Notwithstanding any provision of this chapter to the contrary, individuals who serve as scorers for the Washington teacher performance assessment (~~((shall receive))~~ are eligible for the equivalent of ten continuing education credit hours for each four assessments scored, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment (~~((shall receive))~~ are eligible for the equivalent of ten continuing education credit hours.

(8) Notwithstanding any provision of this chapter to the contrary, individuals who serve as scorers for the Washington ProTeach Portfolio assessment (~~((shall receive))~~ are eligible for the equivalent of ten continuing education credit hours for completing one full scoring session during a calendar year, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Individuals who receive initial training as scorers for the Washington ProTeach Portfolio assessment (~~((shall receive))~~ are eligible for the equivalent of ten additional continuing education credit hours.

WSR 18-17-016

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed August 2, 2018, 2:13 p.m., effective September 2, 2018]

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

Purpose: Creates new chapter 179-19 WAC describing the paraeducator pilot.

Citation of Rules Affected by this Order: New chapter 179-19 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-009 on May 24, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-19 WAC

PILOT

NEW SECTION

WAC 179-19-010 Authority. The authority for this chapter is RCW 28A.413.095 which authorizes the paraeducator board to administer a pilot program on the paraeducator standards of practice, the paraeducator certificates, and the courses described in this title.

NEW SECTION

WAC 179-19-020 Purpose. The purpose of this chapter is to set forth procedures for paraeducators and districts who participate in the pilot program.

NEW SECTION

WAC 179-19-030 Pilot participation. The paraeducator pilot program shall distribute grants to a diverse set of school districts that volunteer to pilot the state paraeducator standards of practice, the paraeducator certificates, and the courses described in this title. Paraeducators who participate in the pilot program:

(1) Who have received training in the fundamental course of study and/or have completed it, and have received and/or completed continuing education credit hours training in one or more of the approved paraeducator certificates, may utilize the continuing education credit hours earned to meet paraeducator requirements written in chapter 28A.413 RCW;

(2) Provided, that the paraeducator remains in accordance with filing requirements stated in WAC 179-01-020.

WSR 18-17-025

PERMANENT RULES

WHATCOM COMMUNITY COLLEGE

[Filed August 6, 2018, 8:23 a.m., effective September 6, 2018]

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

Purpose: The existing chapter 132U-125 WAC, Student rights and responsibilities and chapter 132U-300 WAC, Discrimination and harassment, have out-of-date definitions, jurisdiction, and procedures that must be updated and revised based upon the AAG model policies and procedures and a statewide review of best practices among community and technical colleges. The existing chapter 132U-125 WAC does not address the recent federal and state regulations.

Citation of Rules Affected by this Order: New chapter 132U-126 WAC; repealing chapter 132U-125 WAC; and amending chapter 132U-300 WAC.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 18-10-034 on April 25, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 21, Amended 11, Repealed 25; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 7, 2018.

Barbara Nolze
Administrative Assistant to the
Vice President for Student Services

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132U-125-001	Authority.
WAC 132U-125-003	Purpose.
WAC 132U-125-005	Statement of jurisdiction.
WAC 132U-125-010	Definitions.
WAC 132U-125-015	Statement of student rights.
WAC 132U-125-020	Student responsibilities and prohibited conduct.
WAC 132U-125-025	Classroom conduct.
WAC 132U-125-030	Trespass.
WAC 132U-125-035	Disciplinary sanctions.
WAC 132U-125-040	Initiation of disciplinary action.
WAC 132U-125-045	Appeal from disciplinary action.
WAC 132U-125-050	Brief adjudicative proceedings authorized.
WAC 132U-125-055	Brief adjudicative proceedings—Initial hearing.
WAC 132U-125-060	Brief adjudicative proceedings—Review of an initial decision.
WAC 132U-125-065	Brief adjudicative proceedings—College record.
WAC 132U-125-070	Student conduct committee.

WAC 132U-125-075	Appeal—Student conduct committee.
WAC 132U-125-080	Student conduct committee hearings—Presentations of evidence.
WAC 132U-125-085	Student conduct committee—Initial decision.
WAC 132U-125-090	Appeal from student conduct committee initial decision.
WAC 132U-125-095	Summary suspension.
WAC 132U-125-100	Supplemental sexual misconduct procedures.
WAC 132U-125-105	Supplemental definitions.
WAC 132U-125-110	Supplemental complaint process.
WAC 132U-125-115	Supplemental appeal rights.
WAC 132U-125-130	Purpose.

Chapter 132U-126 WAC

STUDENT RIGHTS AND RESPONSIBILITIES POLICY

NEW SECTION

WAC 132U-126-001 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer the disciplinary procedure. Administration of the disciplinary procedures is the responsibility of the vice president for student services or designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132U-126-003 Purpose. Whatcom Community College, as a state supported institution of higher education, has a primary mission to contribute to the vitality of its communities by providing quality education and preparing students for active citizenship in a global society. Students and college personnel share the responsibility of contributing to a learning environment that promotes academic integrity, social justice, civility, and nonviolence within a safe and supportive college community.

Enrollment in Whatcom Community College carries with it the obligation to be a responsible citizen of the college community and to treat others with respect and dignity. All students are responsible for understanding and complying with college policies and regulations along with local, state, and federal laws. The student conduct code and disciplinary procedures are implemented to assist in the protection of the rights and freedoms of all members of the college community. The purpose of the student code is to hold students accountable while upholding their rights and responsibilities.

NEW SECTION**WAC 132U-126-005 Statement of jurisdiction.** (1)

The student conduct code shall apply to student conduct that occurs:

- (a) On college premises;
- (b) At or in connection with college sponsored activities;

or

(c) To off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training, internships, cooperative and distance education, online education, practicums, supervised work experiences, study abroad, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of admissions to the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

NEW SECTION

WAC 132U-126-010 Definitions. The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" any day, Monday through Friday (excluding holidays), during which college offices are open.

(2) "College community" shall include any person or entity with a connection or relationship with pursuit of the college mission.

(3) "College premises" shall include the college campus and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, leased, or controlled by the college.

(4) "Complainant" is an alleged victim of sexual misconduct.

(5) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary cases in accordance with the procedures of this code.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten business days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(8) "Filing" is the process by which a document is received by a college official responsible for facilitating a disciplinary process. Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by first class mail to the specified college official's office; or

(c) Emailing the document to specified college official's colleges email address.

(9) "Guest" any person who is not a member of the college community, who is on institutional property or attending an institutional function that the invitation of and/or hosted by a member of the college community.

(10) "Preponderance of evidence" is defined as "more likely than not" and is the standard of responsibility that is used when determining whether a violation of the student rights and responsibilities has occurred.

(11) "President" is the president of the college. The president is authorized to delegate or reassign any and all of their responsibilities as may be reasonably necessary.

(12) "Reporting party" is a student or another member of the college community who reports an alleged violation of this code that has been committed.

(13) "Respondent" is the student against whom disciplinary action is initiated.

(14) "Service" is the process by which a document is officially delivered to a party. Service is deemed complete upon the hand delivery of the document, or upon the date the document is emailed or post marked by the mail service. Unless otherwise provided, service upon a person shall be accomplished by:

(a) Hand delivery of the document to a person; or

(b) Sending the document by certified or first class mail to the person's last known address; or

(c) Emailing the document to the party's official college email address.

(15) "Student" includes all persons taking courses at or through the college, whether on a full-time or a part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admissions are considered "students."

(16) "Student conduct code" or "code" is the student rights and responsibilities policy in this chapter.

(17) "Student conduct officer" is a college administrator designated by the president or vice president for student services to be responsible for implementing and enforcing the student conduct code.

NEW SECTION

WAC 132U-126-015 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach

and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the education goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The right of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(3) **Sexual misconduct complainant.** In any case involving an allegation of sexual misconduct as defined in this code, a complainant is afforded certain rights under this code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which they are a complainant;

(b) The right to appeal to the student conduct committee an initial order issued by a conduct officer;

(c) The right to request presidential review of an initial order issued by the student conduct committee; and

(d) The right to be accompanied to all hearings by an advisor and/or an attorney.

NEW SECTION

WAC 132U-126-020 Student responsibility for guests. Guests and visitors on college property or at official college functions are expected to comply with all college policies and procedures, as well as all applicable local, state, and federal laws and regulations.

(1) Guests who willfully refuse to comply with an order of a college official or other law enforcement officer to desist from prohibited conduct may be ejected from the premises by legal trespass order.

(2) Students who invite guests into their college controlled residence, or to official college functions are responsible for the behavior of their guests. As a result, a student may be held responsible for any alleged violation(s) of the code committed by their guest.

NEW SECTION

WAC 132U-126-025 Amnesty. Students are encouraged to see swift medical assistance for themselves and others without fear of penalty in situations involving use of, or medical issues related to, alcohol or drugs. Students requesting and receiving medical assistance in these situations will not typically be subject to the formal student conduct process. While disciplinary action may not be taken, the college reserves the right to take steps necessary to address health and safety concerns for the individual and the community. This policy refers to isolated incidents and does not excuse students who repeatedly or knowingly violate the alcohol or drug policy, nor does it preclude action arising from other violations of the code. The student conduct officer will consider the positive impact of reporting a situation when determining any course of action.

Complainants and witnesses who, in good faith, report sexual misconduct will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual misconduct unless their own conduct placed another person's health or safety at risk.

NEW SECTION

WAC 132U-126-030 Prohibited student conduct. The college may impose sanctions against a student found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication:

(a) Cheating includes any attempt to give or obtain unauthorized collaboration relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other act of dishonesty including, but not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students;

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Disruptive behavior.** Behavior not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders the following:

(a) Instruction, services, research, administration, disciplinary proceedings, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property or under college jurisdiction, whether or not actually conducted or sponsored by the college.

(4) **Assault or intimidation.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. Bullying is physical or verbal abuse, repeated over time, and involves a power imbalance between the aggressor and victim.

(5) **Cyber misconduct.** Use of electronic communication including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, correspondence using another's identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or property of another person. Property for the purposes of this subsection includes, but is not limited to, computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college copyrights and trademarks.

(7) **Failure to comply.** Failure to comply with a directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of legal disabling chemical sprays when possessed and/or used for self defense.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, sale, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, or sale of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, or being under the influence of marijuana or the psychoactive compounds found in marijuana or the possession of drug paraphernalia. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or the appearance of being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is obscene, indecent, pornographic and/or lascivious that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental, or physical disability; use of a service animal; age; religion; creed; gender, including pregnancy; marital status; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and/or other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and does deny or limit, based on sex, the ability of a student to

participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breast, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence laws, or anyone else protected under domestic family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; age; religion; genetic information; gender, including pregnancy, marital status; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violation.** Safety violation includes any non-accidental or negligent conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of self or the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems. A safety violation may include the operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(19) **Violation of other laws and policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132U-126-035 Classroom conduct. Faculty have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

Any instructor has the authority to exclude a student from any single class session during which the student is disruptive to the learning environment. The instructor shall report any such exclusion from the class to the vice president for student services, or designee, who may summarily suspend the student or initiate conduct proceedings as provided in this procedure. The vice president for student services, or designee, may impose a disciplinary probation that restricts the student from the classroom until the student has met with the student conduct officer and the student agrees to comply with the specific conditions outlined by the student conduct officer for behavior in the classroom. The student may appeal the disciplinary sanction according to the disciplinary appeal procedures.

NEW SECTION

WAC 132U-126-040 Sanctions. In keeping with the educational mission of Whatcom Community College, sanctions serve the purpose of educating students about their rights and responsibilities, reinforcing the high standards of scholarship expected of Whatcom students, promoting student development, and maintaining safety and well-being of members of the college community. When appropriate, the college may attempt to resolve issues without formal disciplinary action and may give verbal warnings. When a student takes responsibility for a violation or is determined to have violated the code, the student conduct officer may impose one or more of the following sanctions. This list is not meant to be exhaustive and other sanctions may be applied at the discretion of the student conduct officer.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation. Probation may be for a specific period of time or for the duration of the student's enrollment at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) **Educational activity.** A student may be required to engage in educational activities related to violation(s). Such activities may include, but are not limited to, attendance at educational programs, community services, project or written assignments, and/or meeting with campus officials.

(7) **Loss of privileges.** A student may be denied specific privileges on a temporary or permanent basis such as participating in specific activities or restriction from specific areas of campus.

(8) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceedings.

(9) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditional upon compliance with the recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until further evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(10) **Administrative no-contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(11) **Student housing relocation.** Students who are living in college-controlled or administered housing may be transferred to alternate college-controlled or administered housing.

(12) **Termination of student housing contract.** A student may be removed from their college-controlled housing and their housing contract terminated.

NEW SECTION

WAC 132U-126-045 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer in response to a report filed by any college community member. A complaint should be made in writing to the office of student conduct. Additionally, information

received from any source (police report, third party, electronic, etc.) may be considered as a complaint. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the sanction imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132U-125-035.

(c) Refer the matter directly to the student conduct committee for such disciplinary action, as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective sanctions and/or conditions.

NEW SECTION

WAC 132U-126-050 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by submitting a written appeal with the conduct review officer within ten business days of service. Failure to appeal on or before the deadline constitutes a waiver of the right to appeal and the initial decision shall be deemed final.

(2) The written appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a sanction by a preponderance of the evidence.

(6) Disciplinary action imposed for violation will not begin while an appeal is pending, except summary suspension and any conditions included in a summary suspension.

(7) The student conduct committee shall hear appeals from:

(a) Disciplinary suspensions in excess of ten business days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, the president or designee.

(8) Appeals to the following sanctions shall be reviewed through brief adjudicative proceedings:

(a) Suspension of ten business days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the three sanctions listed in this subsection.

(9) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct office following the same procedures as set forth in subsection (8)(a) through (d) of this section for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any sanctions and/or conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(10) If the respondent files an appeal to a decision imposing sanctions for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to participate as a party to the appeal.

(11) Except as otherwise specified in this chapter, a complainant who files an appeal to sanctions or who participates as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

NEW SECTION

WAC 132U-126-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings

shall be conducted by a conduct review officer or designee. The conduct review officer shall not participate in any case in which the conduct officer is complainant or witness; or in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. The conduct review officer shall conduct an informal hearing and provide each party an opportunity to be informed of the facts as viewed by the college and the initial disciplinary findings. Each party will also have an opportunity to explain their view of the matter.

(3) The conduct review officer shall serve an initial decision to both the respondent and the student conduct officer within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten business days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) Upon review, if the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten business days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132U-126-060 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president or designee, provided a party files a written request for review with the conduct review officer within ten business days of service of the initial decision.

(2) The president or designee shall not participate in any case in which they are a complainant or witness; has direct or personal interest, prejudice, or bias; or has acted previously in an advisory capacity.

(3) During the review, the president or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision. The decision must be served on the parties within twenty business days of the initial decision or of the request for review,

whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If, upon review, the president or designee determines that the respondent's conduct may warrant disciplinary suspension of more than ten business days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving sexual misconduct, the president will, on the same date as the final decision is served to the respondent, serve a written notice to the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132U-126-070 Student conduct committee structure. (1) The student conduct committee shall consist of five members appointed each year:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the faculty union;

(c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president or designee.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are in a party, complainant, or witness; in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity. Any involved party may petition the committee for disqualification of a committee member.

NEW SECTION

WAC 132U-126-075 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct pre-hearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Any involved party, including the committee chair, may submit a request to submit and exchange lists of potential witnesses and copies of potential exhibits that reasonably expect to be presented to the committee. This request must be submitted to the committee chair at least five business days prior to the hearing. The parties shall exchange the items no later than the third business day prior to the hearing. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearings copies of:

(a) The conduct officer's notification of imposition of discipline or referral to the committee; and

(b) The notice of appeal or any response to referral by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of their choice. A respondent, or complainant in a case involving allegations of sexual misconduct, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132U-126-080 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, neither party shall directly question or cross-examine one another. Attorneys from the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion, shall pose the questions on the party's behalf.

NEW SECTION

WAC 132U-126-085 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusion, and/or a proposed decision for its consideration.

(2) Within twenty business days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusion on all material issues of law. The decision shall state the related section(s) of the conduct code the respondent is alleged to have violated and if the allegations are sustained. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanc-

tion(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president or designee.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. A complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132U-126-090 Appeal from student conduct committee initial decision. (1) A respondent, or complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the student conduct committee's initial decision to the president or designee by filing a written notice of appeal with the president's office within ten business days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The president or designee shall not participate in any case in which the president or designee is a complainant or witness; has direct or personal interest, prejudice, or bias has or has acted previously in an advisory capacity.

(3) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president or designee's may ask for additional briefing from the parties on issues raised on appeal. The review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(4) The president or designee shall provide a written decision to all parties within twenty business days after receipt of the notice of appeal. The president or designee's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(5) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct

allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(6) The president or designee shall not engage in an ex parte communication with any of the parties regarding any appeal.

NEW SECTION

WAC 132U-126-095 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) **Notice.** Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reason for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet as scheduled with the student conduct officer or conduct review officer or to attend a scheduled disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(f) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

NEW SECTION

WAC 132U-126-100 Sexual misconduct proceedings.

Both the respondent and the complainant in cases involving sexual allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decisions.

NEW SECTION

WAC 132U-300-040 Introduction. Whatcom Community College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, or honorably discharged veteran or military status, or the use of trained guide dog or service animal, as required by Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor.

NEW SECTION

WAC 132U-300-050 Definitions. Complainant: Employee(s), applicant(s), student(s), or visitor(s) of Whatcom Community College who alleges that she or he has been

subjected to discrimination or harassment due to his or her membership in a protected class.

Complaint: A description of facts that allege violation of the college's policy against discrimination or harassment.

Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

Discrimination: Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

Harassment: A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward individuals because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(a) Epithets, "jokes," ridicule, mockery, or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(b) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

(c) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

Protected class: Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or the use of a trained guide dog or service animal.

Resolution: The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.

Respondent: Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

Retaliation: Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because the person reported an alleged violation of this policy or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

Sexual harassment: A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment:

(a) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing.

(b) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

Examples of conduct that may qualify as sexual harassment include:

- (i) Persistent comments or questions of a sexual nature;
- (ii) A supervisor who gives an employee a raise in exchange for submitting to sexual advances;
- (iii) An instructor who promises a student a better grade in exchange for sexual favors;
- (iv) Sexually explicit statements, questions, jokes, or anecdotes;
- (v) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body;
- (vi) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences;
- (vii) Persistent, unwanted attempts to change a professional relationship to an amorous relationship;
- (viii) Direct or indirect propositions for sexual activity;
- (ix) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

Sexual violence: Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(a) **Dating violence** means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(b) **Domestic violence** includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(c) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any object, by a person

upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(d) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(e) **Stalking** means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

NEW SECTION

WAC 132U-300-060 Complaint procedure. Whatcom Community College has enacted policies prohibiting discrimination against, and harassment of members of protected classes. Any individual found to be in violation of this policy will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/EEO coordinator identified below. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hard copies of the complaint form are available in the Human Resource Office, Laidlaw Center (LDC) 235.

The following college official is designated to handle inquiries regarding this policy:

Name: Becky Rawlings
 Title: Executive Director for Human Resources, Title IX/EEO Coordinator
 Office: Laidlaw Center (LDC) 235
 Contact: brawlings@whatcom.edu
 Address: 237 W. Kellogg Rd., Bellingham, WA 98226

The Title IX/EEO coordinator or designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- Will make determinations regarding how to handle requests by complainants for confidentiality;
- Will keep accurate records of all complaints and referrals for the required time period;
- May conduct investigations or delegate and oversee investigations conducted by a designee;

- May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- Will issue written findings and recommendations upon completion of an investigation; and
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

NEW SECTION

WAC 132U-300-070 Who may file a complaint. Any employee, applicant, student, or visitor of Whatcom Community College may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hardcopies of the complaint form are available at the Human Resource Office, Laidlaw Center (LDC) 235. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

NEW SECTION

WAC 132U-300-080 Confidentiality and right to privacy. Whatcom Community College will seek to protect the privacy of the complainant to the full extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Whatcom Community College policies and procedures. Although Whatcom Community College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator/designee.

Confidentiality requests and sexual violence complaints. The Title IX/EEO coordinator/designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EEO coordinator/designee will inform the complainant that maintaining confidentiality may limit the college's ability to respond fully to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EEO coordinator/designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;

- Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EEO coordinator/designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO coordinator/designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

NEW SECTION

WAC 132U-300-090 Investigation procedure. Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX/EEO coordinator/designee shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator/designee shall inform the complainant and respondent(s) of the appointment of an investigator.

(1) **Interim measures.** The Title IX/EEO coordinator/designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(2) **Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation, the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator/designee. The Title IX/EEO coordinator/designee shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s),

and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student rights and responsibilities policy (chapter 132U-126 WAC) or college employment policies and collective bargaining agreements.

(3) **Written notice of decision.** The Title IX/EEO coordinator/designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions, or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the respondent not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to confidentiality requirements.

(4) **Informal dispute resolution.** Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(5) **Final decision and/or reconsideration.** Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EEO coordinator/designee. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator/designee within seven business days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven business days, the decision becomes final. If a request for reconsideration is received, the college president or designee shall respond within fourteen business days. The president or designee shall either deny the request or, if the president or designee determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

NEW SECTION

WAC 132U-300-100 Publication of antidiscrimination policies and procedures. The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she

has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

NEW SECTION

WAC 132U-300-110 Limits to authority. Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Whatcom Community College policies and procedures, and federal, state, and municipal rules and regulations.

NEW SECTION

WAC 132U-300-120 Nonretaliation, intimidation, and coercion. Retaliation by, for, or against any participant (including complainant, respondent, witness, Title IX/EEO coordinator/designee, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individual(s) as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO coordinator/designee immediately.

NEW SECTION

WAC 132U-300-130 Criminal complaints. Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

Bellingham Police Department

505 Grand Avenue
Bellingham, WA 98225
360-778-8800
<https://www.cob.org/gov/dept/police>

Blaine Public Safety Department

322 H Street
Blaine, WA 98230
360-332-6769
<http://www.ci.blaine.wa.us/171/Public-Safety>

Everson Police Department

111 W Main Street
Everson, WA 98247
360-966-4212
<http://www.ci.everson.wa.us/police-department.html>

Ferndale Police Department

2220 Main Street
Ferndale, WA 98248
360-384-3390
<http://www.ferndalepd.org/>

Lynden Police Department

203 19th Street
Lynden, WA 98264
360-354-2828
<http://www.lyndenwa.org/departments/police/>

Sumas Police Department
433 Cherry Street
Sumas, WA 98295
360-988-5711
<http://www.sumaspolice.com/>

Western Washington University
Department of Public Safety
516 High Street
Bellingham, WA 98225
360-650-3911
<http://www.wvu.edu/ps/police/index.shtml>

Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225
360-676-6650
<http://www.whatcomcounty.us/200/Sheriff>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil criminal prosecution.

NEW SECTION

WAC 132U-300-140 Other discrimination complaint options. Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission at <http://www.hum.wa.gov/>

U.S. Dept. of Education Office for Civil Rights at <http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission at <http://www.eeoc.gov/>

**Discrimination/Harassment
Complaint Form**

This form is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident giving rise to the complaint as possible, including the location, date and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.

Name of person filing the complaint: _____ Date: _____

Signature: _____ Date: _____

You may use the back side of this sheet if needed. Please return this form to the Title IX/EEO coordinator, LDC 235.

**WSR 18-17-026
PERMANENT RULES
BIG BEND
COMMUNITY COLLEGE**

[Filed August 6, 2018, 8:55 a.m., effective September 6, 2018]

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

Purpose: Updates to rules.

Citation of Rules Affected by this Order: Amending x [WAC 132R-04-015 and 132R-04-057].

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 18-13-075 on June 15, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: August 2, 2018.

Melinda Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-015 Definitions. For the purposes of this chapter, terms are defined as follows:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The vice president of learning and student success will serve as the student conduct officer or may appoint a designee.

(2) "Conduct review officer" is a college administrator designated by the president to be responsible for receiving and facilitating appeals from student disciplinary actions and for reviewing initial decisions issued in a brief adjudicative proceeding. The conduct review officer shall be designated by the president and shall be authorized to grant appropriate relief upon review. The director of student programs will serve as the conduct review officer, unless otherwise designated by the president.

(3) "The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary and to reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which discipline is imposed by the student conduct officer against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the disciplinary committee. Appeals of all other appealable disciplinary action may be reviewed through brief adjudicative proceedings.

(6) "Respondent" is the student against whom disciplinary action is being taken.

(7) "Service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document to the college assigned email, once one has been generated, and by certified mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed, if possible, and deposited into the mail.

(8) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review by a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

(a) Hand delivery of the document to the school official or school official's assistant; or

(b) By sending the document by email and first class mail to the recipient's college-assigned email and office address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

(9) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings,

facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(10) "Student" (~~includes~~) is defined as all persons taking courses at or through the college, including those concurrently attending secondary or postsecondary institutions and college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses (including online courses, or otherwise. Persons who withdraw after allegedly violating the code) (excluding those trainings occurring through the Center for Business and Industry Service and the Japanese Agriculture Training Program), irrespective of modality. Persons who withdraw after allegedly violating the student code of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for the purposes of this chapter. "Continuing relationship" is established when a student is registered for an upcoming term or has indicated an intent to do so via a transaction, such as submitting a financial aid application for an upcoming term.

(11) "Business day" means a weekday, excluding weekends and college holidays. If a time period is not specifically stated in business days, then calendar days apply.

(12) "Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the college when the college files the complaint.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132R-04-057.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-057 Student code of conduct violations. The college may impose sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act of misconduct. Misconduct for which the college may impose sanctions includes, but is not limited to, any of the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, or fabrication.

(a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment, and also includes providing false or deceptive information in an instructional course concerning the completion of an assignment.

(2) **Other dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive conduct.** Conduct not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, bullying is repeated or aggressive unwanted behavior, not otherwise protected by law, that humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyber misconduct including, but not limited to: Cyberstalking, cyberbullying, or online harassment.

(a) Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

(b) Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third-parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person.

Property for the purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive(s) of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive

device or any other weapon apparently capable of producing bodily harm, unless previously authorized by the vice president of learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:

(a) Commissioned law enforcement personnel in the state of Washington, legally authorized military personnel while in performance of their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) Alcohol. The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana and the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug (including anabolic steroids, androgens, or human grown hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college, or in any location where such use is prohibited, or in any location other than the parking lots, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas.

"Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Disorderly conduct.** Conduct which is disorderly, lewd, indecent, or obscene, that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcomed sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's programs or activities or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of sexual harassment and means threatening or emotionally distressing conduct based on sex. This includes, but is not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that

the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) **Consent:** Clear knowing and voluntary permission to engage in mutually agreed upon activity. For consent to be valid, there must be actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot consent if they are unable to understand what is happening or are disoriented, or if they are asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapable of consent has engaged in nonconsensual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See supplemental definitions: "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((19))~~ ~~**Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.~~

~~((20))~~ **Abuse of process.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena or order to appear at a hearing;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student disciplinary committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

~~((21))~~ **(20) Unsafe vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

~~((22))~~ **(21) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

~~((23))~~ **(22) Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

~~((24))~~ **(23) Aiding or abetting.** Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

WSR 18-17-027

PERMANENT RULES

BIG BEND

COMMUNITY COLLEGE

[Filed August 6, 2018, 9:18 a.m., effective September 6, 2018]

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

Purpose: Update per legislative changes and statutory updates per EHB 1595.

Citation of Rules Affected by this Order: New WAC 132R-175-085; and amending chapter 132R-175 WAC, Public records.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 18-09-039 on April 12, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 9, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 7, 2018.

Melinda Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-175-010 Authority and purpose. (1) The purpose of this chapter ((shall be to ensure compliance by)) is to establish procedures the Community College District No. 18 (also referred to herein as "the district") will follow to ensure compliance with the provisions of chapter ((42-17)) 42.56 RCW, ((Disclosure Campaign finances Lobbying Records; and in particular with RCW 42-17.250 through 42-17.348 that deal with public records)) Public Records Act.

(2) Per RCW 42.56.070(1), the Community College District No. 18 makes available for inspection and copying non-exempt "public records" as described in these rules. A public record includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by Community College District No. 18, regardless of physical form or characteristics.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-175-030 (~~(Description of central and field organization of Community College District No. 18.)~~) **Public records officer.** (~~The Community College District No. 18 is an institution of higher education. The administrative office of the district and its staff are located at Moses Lake, Washington.~~) (1) Any person wishing to request access to public records of the district, or seeking assistance in making such a request should contact the district's public records officer, who shall manage all of the district's public records. Throughout this chapter, references to the public records officer shall mean the public records officer or his/her designee.

(2) Any person wishing to request access to public records of the district or seeking assistance in making such a request should contact the public records officer of the district at:

Public Records Officer
Big Bend Community College
7662 Chanute Street N.E.
Moses Lake, WA 98837
Phone: 509-793-2010
Fax: 509-762-6355
Email: publicrecords@bigbend.edu

(3) Information is also available at the Big Bend Community College web site at <http://www.bigbend.edu/information-center/public-information-request/>.

(4) The public records officer and the district shall assist requestors, comply with the Public Records Act, and provide public records training and assistance to college employees.

AMENDATORY SECTION (Amending Order 73-8, filed 5/4/73)

WAC 132R-175-070 (~~(Office hours.)~~) **Availability of public records.** (1) Public records shall be available for inspection and copying during the customary office hours of the district. For the purposes of this chapter, the customary office hours shall be from (~~9:00 a.m. to noon~~) 7:30 a.m. to 5:00 p.m., Monday through Thursday and from (~~1:00 p.m. to 4:00 p.m., Monday through Friday~~) 7:30 a.m. to 2:30 p.m. on Friday, excluding legal holidays.

(2) The district will maintain its records in a reasonably organized manner. The district will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the district's records from the district's offices without the permission of the public records officer. If, in the judgment of the public records officer, there is a possibility of the destruction of the public record, the public records officer shall make a copy of the record available to the requestor.

(3) A variety of records are available on the Big Bend Community College web site at www.bigbend.edu. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-175-080 Requests for public records. In accordance with requirements of chapter ~~(42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency.)~~ 42.56 RCW public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request (~~shall~~) to inspect or copy public records of the district shall be made in writing upon a form prescribed by the district (~~which shall be~~), or by letter, fax, or email addressed to the public records officer. The request form prescribed by the district is available at its administrative office and on Big Bend Community College's web page at <http://www.bigbend.edu/information-center/public-information-request/>. The (~~form shall~~) request shall be presented to the public records officer (~~or to any member of the district's staff, if the public records officer is not available~~), at the administrative office of the district during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The address of the person requesting the record;
- (c) Other contact information, including telephone number and any email address;
- (d) The (~~time of day and calendar date on which~~) date and time of day when the request was made;
- (~~e~~) The nature of the request;
- (~~d~~) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;
- (~~e~~) If the requested matter is not identifiable by reference to the district's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.) (c) Adequate identification of the public records for the public records officer to locate the records:

- (f) A verification that the records requested shall not be used to compile a commercial sales list;
- (g) The format the requestor wants to receive the documents in, which should include whether the request is to inspect documents or purchase copies.

(2) The public records officer or designee may accept requests for public records that contain the information in this section by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 132R-175-085 Processing of public records requests. (1) The public records officer will process requests

in the order that allows the most requests to be processed in the most efficient manner. District employees who receive a request for public records shall immediately forward the request to the public records officer.

(2) Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection and copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available; or

(e) Deny the request.

(3) If the district does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) When a request for records in an electronic format is received, the public records officer will provide the nonexempt records or portion of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available or in a format that is reasonably translatable from the format in which the agency keeps the record.

(5) In the event that the requested records contain information that may affect the rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) Some records are exempt from disclosure, in whole or in part. If the district believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt, the public records officers will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) Inspection of records.

(a) Consistent with other demands, the district shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document.

(b) The requestor must claim or review the assembled records within thirty days of the district's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should

contact the agency to make arrangements or the district may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(8) When the request is for a large number of records the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If within thirty days the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the district has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the district has closed the request.

(11) If, after the district has informed the requestor that it has provided all available records, the district becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-175-090 ((Copying)) Costs of providing copies of public records. The college may charge a reasonable fee for providing public records in response to requests under chapter 42.56 RCW received on or after July 23, 2017.

(1) Pursuant to RCW 42.56.120 (2)(b), Big Bend Community College finds that it is unduly burdensome for the college to calculate the actual costs to provide records due to insufficient resources to conduct a comprehensive study to determine actual costs and the interruption of essential college business that would result from conducting such a comprehensive study.

(2) The college reserves the right to charge fees to the requestor in accordance with the amounts provided in RCW 42.56.120. The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor.

(3) No fee shall be charged for the inspection of public records (~~The district shall charge a fee of twenty-five cents per page of copy for providing copies of public records and for use of the district copy equipment. This charge is the amount necessary to reimburse the district for its actual costs incident to such copying. At least five working days may be required to provide copies of public records~~) or locating public documents and making them available for copying.

with the exception of the customized service charge allowed in RCW 42.56.120.

(4) The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The district will notify the requestor when payment is due.

(7) Payment should be made by check or money order to Big Bend Community College. The district prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The district will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-175-100 Exemptions. (1) The district reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 132R-175-080 is exempt under the provisions of ~~((RCW 42.17-340))~~ chapter 42.56 RCW or any other law that exempts or prohibits disclosure. All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(2) In addition, pursuant to chapter ~~((42.17))~~ 42.56 RCW, the district reserves the right to delete/redact portions of documents. If deletions/redactions are made they will be accompanied by a written statement specifying the reason for the deletion/redaction, including a statement of the specific exemption authorizing the deletion/redaction and a brief explanation of how the exemption applies to the information which is deleted/redacted.

(3) The district maintains a nonexclusive list of records that it considers exempt from disclosure on its public records web site at <http://www.bigbend.edu/information-center/public-information-request/>.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-175-110 Review of denials of public records requests. (1) Any person who objects to the initial denial or partial denial of a request for a public record may petition in writing (including email) for prompt review of such decision by tendering ~~((a written))~~ the request for review. The written request shall specifically refer to the written statement by the public records officer ~~((or other staff member))~~ which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the president of the college. The president shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the board of trustees as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision, within two business days following the ~~((original denial))~~ receipt of the petition, or within such other time as the district and the requestor mutually agree upon.

(3) Administrative remedies shall not be considered exhausted until the district has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

(4) Pursuant to RCW 42.56.530, if the district denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(5) Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-175-130 Records index. (1) The public records officer shall establish a central district index which shall be the district's master index to be coordinated with subsidiary indexes established in each major administrative area of the college, specifically:

(a) The office of the secretary to the board of trustees of the district (which is the office of the president of Big Bend Community College);

(b) The office of the president of Big Bend Community College;

(c) The office of the vice president of learning and student success; and

(d) The office of the vice president for finance and administration.

(2) The district shall make available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated since its inception:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports

or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

~~((2))~~ (3) The current index promulgated by the district shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132R-175-020	Definitions.
WAC 132R-175-040	Operations and procedures.
WAC 132R-175-050	Public records available.
WAC 132R-175-060	Public records officer.
WAC 132R-175-120	Protection of public records.
WAC 132R-175-140	District's address.
WAC 132R-175-150	Adoption of form.
WAC 132R-175-160	Request for public record.

WSR 18-17-028

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 6, 2018, 9:46 a.m., effective September 6, 2018]

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

Purpose: The department is amending WAC 388-823-0025 and 388-823-0050 in order to simplify the application process for potential clients including children receiving foster care and dependents of military service members, align requirements with the health care authority's rules under Title 182 WAC, amend who can request a developmental disabilities administration eligibility determination, and clarify who is considered a Washington state resident.

Citation of Rules Affected by this Order: Amending WAC 388-823-0025 and 388-823-0050.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 74.04.815.

Adopted under notice filed as WSR 18-12-110 on June 6, 2018.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, email Chantelle.Diaz@dshs.wa.gov.

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

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 3, 2018.

Cheryl Strange
Secretary

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0025 Who ~~(can)~~ may apply for a DDA eligibility determination? (1) You ~~((must be a resident of the state of Washington, as described in WAC 388-823-0050, to))~~ may apply for ~~(an)~~ a DDA eligibility determination on your own behalf.

(2) ~~((The following individuals can apply))~~ A person may submit an application for a DDA eligibility determination on your behalf if the person is:

(a) ~~((If a court has not appointed the child as his own decision maker, a parent or legal representative must apply on behalf of a child under the age of eighteen years))~~ Delegated to consent to routine medical care for you under WAC 388-148-1560;

(b) ~~((If there is a legal guardian of an applicant age eighteen years or older, the legal guardian must apply on behalf of the adult applicant; or~~

~~(e) If there is no legal guardian of an adult applicant age eighteen years or older, the adult applicant can apply on his/her own behalf))~~ Your parent if you are under eighteen;

(c) Your caretaker relative under WAC 182-500-0020;

(d) Your spouse;

(e) Your authorized representative under WAC 182-503-0130; or

(f) Applying for you because a medical condition prevents you from applying on your own behalf.

(3) ~~((A request for eligibility determination requires the signature of the applicant or their legal representative. With the consent of the applicant, any person, agency, or advocate may assist with the application process))~~ If you or your legal representative request it, DDA will withdraw your eligibility application or terminate your eligibility.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0050 ~~((For DDA eligibility, who is considered to be a resident of the state of))~~ Do I have to be considered a Washington state resident to be eligible for DDA? (1) You must ~~((live in the state of))~~ be considered a Washington state resident to ~~((apply or continue to be a client~~

~~of) be eligible for DDA. If ((you are a child under the age of eighteen, your primary custodian or legal guardian must also live in the state of)) DDA does not consider you a Washington state resident, you are not eligible for DDA and DDA will deny or terminate your eligibility. ((Proof that you live in the state of Washington may include documentation such as a lease agreement, school records, or mail addressed to you. Such documentation will not be considered proof of residency if you have been denied medicaid or other benefits due to failure to meet residency requirements under WAC 388-468-0005.))~~

~~(2) ((DDA will not process your request for determination of eligibility or will terminate your eligibility if you do not live in the state of)) You are considered a Washington state resident if you:~~

~~(a) Meet residency requirements under WAC 182-503-0520 or 182-503-0525; or~~

~~(b) Are a dependent of a military service member and legal resident under RCW 74.04.815.~~

~~(3) If DDA learns that you are not a Washington state resident, DDA must terminate your eligibility.~~

~~(4) You must inform your DDA case resource manager when your address changes.~~

~~(5) If DDA receives returned mail from you with no forwarding address, DDA will try to verify you are a Washington state resident by trying to contact you or anyone identified by you to receive notices.~~

~~(6) If DDA cannot contact you or verify you are a Washington state resident, DDA must terminate your eligibility.~~

~~(7) If your eligibility was terminated because DDA could not contact you, DDA will restore your eligibility if you:~~

~~(a) Verify your continuous Washington state residency;~~

~~(b) Request your eligibility be restored; and~~

~~(c) Were determined eligible on or after June 1, 2005.~~

WSR 18-17-031

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 7, 2018, 3:14 p.m., effective September 7, 2018]

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

Purpose: The purpose of this final rule is to update provisions of chapter 392-700 WAC, Dropout reengagement, to meet the requirements of RCW 28A.150.260 (13)(c) and provide clarification for open doors programs.

Citation of Rules Affected by this Order: Amending WAC 392-700-035, 392-700-065, 392-700-137, 392-700-155, and 392-700-175.

Statutory Authority for Adoption: RCW 28A.175.010, 28A.175.115.

Adopted under notice filed as WSR 18-11-128 on May 23, 2018.

Changes Other than Editing from Proposed to Adopted Version: The final rules amend proposed WAC 392-700-137 (1)(b)(i), omitting the phrase "as the student has demonstrated competency aligned to the common core standards." This change does not substantively alter the requirement that

students be awarded core academic subject credit for passing a standardized high school equivalency subject matter certificate. Rather, it simply deletes language that was intended to clarify the requirement. The amendment was made because Washington state[d] the intended clarification is best addressed in guidance.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 1, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-035 Student eligibility. (1) A student is eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age at the beginning of the school year but whose sixteenth birthday occurs on or before September 1st;

(b) Has not yet met the high school graduation requirements of either the district, tribal compact school, charter school, or the college under RCW 28B.50.535; and

(c) At the time the student enrolls, is significantly behind in credits based on the student's cohort graduation date. The cohort graduation date is established as the end of the fourth school year after a student first enrolls in the ninth grade.

(i) A student who is more than twenty-four months from their cohort graduation date and has earned less than sixty-five percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than sixty-five percent. A cohort is the group of students that enter the ninth grade in the same school year;

(ii) A student who is between twelve and twenty-four months from their cohort graduation date and has earned less than seventy percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than seventy percent;

(iii) A student who is less than twelve months from their cohort graduation date or who has passed their cohort graduation date by less than twelve months and has earned less than seventy-five percent of the high school credits expected

to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than seventy-five percent;

(iv) A student who is passed their cohort graduation date by twelve months or more and has not met their district, tribal compact school, or charter school graduation requirements; or

(v) A student who has never attended the ninth grade and has earned zero high school credits.

(d) If determined not to be credit deficient as outlined in ~~((subsection (1)))~~(c) of this ~~((section))~~ subsection, has been recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, a district, tribal compact school, or charter school designated school personnel, or staff from community agencies which provide educational advocacy services;

(e) Are not currently enrolled in any high school classes that receive state basic education funding, excluding an approved skill center program, a Jobs for Washington's Graduates program, or running start program;

(f) Students who are claimed for state funding by a district, tribal compact school, or charter school outside the district they live in, must be released by either a choice transfer or interdistrict agreement. When a choice transfer is in place, the student's resident district as defined in WAC 392-700-015(23) becomes the district operating the program.

(2) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree; or

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(3) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-065 Instruction. (1) All program instruction will meet the following criteria:

(a) Instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work.

(b) Instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:

(i) Instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and

(ii) Instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of

calculating FTE and will be designed to prepare students for course work that is at the ninth grade level or higher.

(c) Instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.

(d) The program will administer standardized tests to new students, as defined in WAC 392-700-015 (12)(a), and reenrolling student, as defined in WAC 392-700-015 (12)(d), within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.

(e) The program will provide all instruction, tuition, and required academic skills assessments at no cost to the students, but may collect mandatory fees as established by each program.

(i) Consumable supplies, textbooks, and other materials that are retained by the student do not constitute tuition or a fee.

(ii) Programs are encouraged to offer a waiver or scholarship process.

(2) Instruction for students enrolled in programs operated by a district, tribal compact school, charter school, or agency will meet the following criteria:

(a) Instruction must include:

(i) Academic skills instruction and high school equivalency certificate preparation course work with curriculum and instruction appropriate to each student's skills levels and academic goals; and

(ii) College readiness and work readiness preparation course work.

(b) Instruction may include:

(i) Competency based academic and/or vocational training;

(ii) College preparation math or writing instruction;

(iii) Subject specific high school credit recovery instruction;

(iv) English ~~((as a second))~~ language learners instruction ~~((ESL))~~ (ELL); and

(v) Other course work approved by the district, tribal compact school, or charter school including cooperative work experience.

(c) Instruction will be scheduled so that enrolled students have the opportunity to attend and work with instructional staff during the hours of the program's standard instructional day.

(d) The program will maintain an instructor to student ratio as follows:

(i) The scheduled teaching hours of an instructional staff will equal or exceed the hours of the program's standard instructional day plus one additional hour per every five teaching hours for planning, curriculum development, recordkeeping, and required coordination of services with case management staff.

(ii) For any one instructional session, the program will assign instructional staff as needed to maintain an instructional staff to student ratio that does not exceed 1:25.

(iii) For programs that use noninstructional staff as part of the calculated instructional staff to student ratio, the following conditions must be met:

(A) Noninstructional staff may not be a replacement for the instructional staff and must work under the guidance and direct supervision of the instructional staff; and

(B) The ratio of total instructional and noninstructional staff to students may not exceed 2:50.

(3) Instruction for students enrolled in programs operated by a college will meet the following criteria:

(a) Instruction will be provided through courses approved by the college, identifiable by course title, course number, quarter, number of credits, and, for vocational course, the classification of instructional program (CIP) code number assigned by OSPI to the approved career and technical education (CTE) course.

(b) The following instruction will be offered to all students, as appropriate for their goals, skills levels, and completion of prerequisites:

(i) Basic skills (~~(remediation)~~) courses and high school equivalency certificate preparation courses;

(ii) Courses that will lead to a postsecondary degree or certificate;

(iii) Course work that will lead to a high school diploma; and

(iv) College and work readiness preparation course work.

(c) The program will maintain an instructor to student ratio as follows:

(i) Instructor to student ratio for any course open to both program students and nonprogram students will be determined by the college; and

(ii) Instructor to student ratio for classes designed exclusively for program students will not exceed 1:35.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-137 Award of credit. (1) For programs operated by districts, tribal compact schools, charter schools, and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through ~~(November)~~ December;

(ii) ~~(December through February)~~ January through March;

(iii) ~~(March through May)~~ April through June; and

(iv) ~~(June)~~ July through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of ~~(0.5)~~ 1.0 high school ~~(elective)~~ subject area credit(s) will be awarded when a student passes ~~(one or more)~~ a standardized high school equivalency certificate ~~(pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed)~~ test in the subject matter. Additional credits may be awarded if the student has completed a course(s) of study to prepare for the test.

(ii) A 0.5 high school ~~(elective)~~ subject matter credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) A minimum of 0.25 high school elective credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies.

(iv) For students taking part in district-, tribal compact school-, or charter school-approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district, tribal compact school, or charter school.

(v) The district, tribal compact school, or charter school must award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district, tribal compact school, or charter school review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district, tribal compact school, or charter school, and the college will determine whether the high school diploma will be awarded by the district, tribal compact school, or charter school or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The college will determine the type of credit; and

(iii) 0.5 subject-specific credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work which is aligned to the common core standards.

(c) If the district, tribal compact school, or charter school is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The dis-

district, tribal compact school, or charter school will determine the type of credit based on the articulation agreement between the college and district, tribal compact school, or charter school;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The district, tribal compact school, or charter school will determine the type and amount of credit for each class based on the articulation agreement between the college and district, tribal compact school, or charter school; and

(iii) 0.5 subject-specific credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work.

(3) The district, tribal compact school, or charter school is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district, tribal compact school, or charter school will be provided by the college or agency as needed to facilitate this process.

(4) The district, tribal compact school, or charter school will ensure that the process for awarding high school credits under this scope of work is implemented as part of its policy regarding award of credits per WAC 180-51-050 (5) and (6).

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-155 Annual reporting calendar. (1)

For programs operated by districts, tribal compact schools, charter schools or agencies and for below one hundred level classes offered in a college-operated program, the following requirements will be met in relation to the school calendar:

(a) A school year begins September 1st and ends August 31st.

(b) The program will provide the reporting district, tribal compact school, or charter school a calendar of the school year prior to the beginning of the program's start date for that school year.

(c) The school year calendar must meet the following criteria:

(i) The specific planned days of instruction will be identified; and

(ii) There must be a minimum of ten instructional months.

(d) The number of hours of instruction as defined in WAC 392-700-065 must meet the following criteria:

(i) The calculation for standard instructional day may not exceed six hours per day even when instruction is provided for more than six hours per day; and

(ii) The standard instructional day may not be less than two hours per day.

(e) The total planned hours of instruction for the school year:

(i) Is the sum of the instructional hours for all instructional months of the school year; and

(ii) Prior to the 2018-19 school year, must have at a minimum of nine hundred planned hours of instruction for the school year. Beginning with the 2018-19 school year, must

have at a minimum of one thousand planned hours of instruction for the school year.

(2) For programs operated by colleges and for college level classes, the school year calendar shall meet the following criteria:

(a) The specific planned days of instruction will be identified; and

(b) There must be a minimum of ten instructional months.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-175 Required documentation and reporting. (1) Student documentation:

(a) The program shall submit to the reporting district, tribal compact school, charter school, or direct funded technical college monthly the program's enrollment and maintain and make available upon request the following documentation to support the monthly enrollment claimed:

(i) Each student's eligibility pursuant to WAC 392-700-035;

(ii) Evidence of each student's enrollment requirements under WAC 392-700-160 to include:

(A) Enrollment in district, tribal compact school, charter school, or direct funded technical college;

(B) Evidence of minimum attendance period; and

(C) Earned indicators of academic progress.

(D) Evidence of weekly status check.

(ii) Case management support pursuant to WAC 392-700-085.

(b) The district, tribal compact school, charter school, agency, or college operating the program shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(c) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

(2) CEDARS student reporting. Approved programs are responsible for submitting all required student information to OSPI in accordance with the CEDARS reporting guidance and reengagement operational instructions.

(3) Annual reporting.

(a) The program will prepare and submit an annual performance report to the district, tribal compact school, charter school, agency, or college under which the program is operating no later than October 1st.

(b) The district((, agency, or college)) or direct funded technical college who reports the student enrollment for state funding will review and submit the program's annual performance report to OSPI no later than November 1st. The annual performance must be completed using the designated OSPI reporting tool.

(c)(i) The annual report will provide the previous school year's student level data:

((+)) (ii) A list of the program's enrolled students by:

(A) Gender, age, race/ethnicity;

(B) Earned credentials as defined in WAC 392-700-015(11);

(C) Attained indicators of academic progress as defined in WAC 392-700-015(15). For high school and college credit, detail the subject area;

(D) The number of months each enrolled student was claimed for state funding;

(E) The number of months each enrolled student was served;

(F) The status of each enrolled student at the end of the school year (graduated, continuing, exited by student choice, exited by program choice, or turned twenty-one during the school year).

~~((ii) Total number of instructional staff.~~

~~(A) For programs operated by a district, tribal compact school, charter school, or agency, report total number of instructional staff assigned to the program.~~

~~(B) For programs operated by a college, report the number of instructional staff teaching students for the program.))~~

WSR 18-17-033

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed August 7, 2018, 9:23 a.m., effective September 7, 2018]

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

Purpose: Rule making is needed to correct a spelling error in the rule.

Citation of Rules Affected by this Order: Amending WAC 4-30-072.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 18-12-092 on June 5, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 7, 2018.

Charles E. Satterlund, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-072 What are the responsibilities of a verifying CPA? The verifying CPA is expected to:

(1) Obtain the applicant's completed Experience Affidavit form and supporting documentation to support the jobs

the applicant held which provided the experience supporting the applicant's assertion that by performing the specific job functions, she/he was provided the opportunity to obtain each specific competency (this expectation may be met if the applicant is employed by the verifying CPA's firm or organization);

(2) Verify the applicant's relevant employment history;

(3) Interview the candidate or otherwise obtain or possess knowledge sufficient to understand the skill sets applied, tasks performed, and time spent in the applicant's represented job functions;

(4) Assess whether the skill sets applied, tasks performed, and time spent would likely provide an opportunity to obtain each specific competency, excluding knowledge of the Washington state Public Accountancy Act and related board rules;

(5) Determine, by interview or course completion certificate, etc., that the applicant is ~~((knowledgeable))~~ knowledgeable of the Public Accountancy Act and related board rules applicable to individuals licensed in the state of Washington;

(6) Document this process and the basis for the conclusions reached by the verifying CPA relative to each specific competency, and maintain this documentation for a minimum of three years.

WSR 18-17-047

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed August 8, 2018, 1:43 p.m., effective October 1, 2018]

Effective Date of Rule: October 1, 2018.

Purpose: The agency is creating rules to allow for enhanced rates for pediatric care services and the administration of vaccines provided to clients age eighteen and younger.

Citation of Rules Affected by this Order: New WAC 182-531-2030.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESSB 6032, section 213 (1)(ddd).

Adopted under notice filed as WSR 18-14-082 on July 2, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 8, 2018.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-531-2030 Enhanced rates for pediatric care services and administration of vaccines. (1) Subject to available funds, the agency pays an enhanced rate for covered pediatric care services and the administration of vaccines provided to clients age eighteen and younger.

(2) For the purposes of this section, pediatric care services are defined as covered evaluation and management services.

(3) The agency uses the resource-based relative value scale (RBRVS) payment methodology described in WAC 182-531-1850 to calculate the enhanced rate.

(4) If the enhanced rate is less than the agency's published fee schedule rate, the agency pays the published rate.

(5) This enhanced rate applies only to pediatric care services and administration of vaccines for clients age eighteen and younger that are not already paid at an enhanced rate.

WSR 18-17-048
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed August 8, 2018, 1:52 p.m., effective September 8, 2018]

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

Purpose: Chapter 246-470 WAC, Prescription monitoring program (PMP), the adopted rule amendments and new sections implement section 9 of ESHB 1427 (chapter 297, Laws of 2017). These rules are needed to establish a framework, structure, and guidance for the exchange of PMP data that will assure the integrity of protected patient information while providing meaningful dispenser and provider data.

Citation of Rules Affected by this Order: New WAC 246-470-053, 246-470-054 and 246-470-082; and amending WAC 246-470-010, 246-470-050, and 246-470-052.

Statutory Authority for Adoption: RCW 70.225.020, 70.225.025, 70.225.040.

Other Authority: ESHB 1427 (chapter 297, Laws of 2017).

Adopted under notice filed as WSR 18-08-021 on March 23, 2018.

Changes Other than Editing from Proposed to Adopted Version: A single, nonsubstantive change was made, striking "licensed" from WAC 246-470-052(2). The word remained after a previous edit intended to remove the entire phrase "licensed by the department" did not remove the single word "licensed." The remaining word caused the sentence to be awkward and unclear.

A final cost-benefit analysis is available by contacting Gary Garrety, P.O. Box 47852-7852, Olympia, WA 98504-7852, phone 360-236-4802, fax 360-236-2901, TTY 360-833-6388 or 711, email gary.garrety@doh.wa.gov, web site www.doh.wa.gov/pmp.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 3, Repealed 0.

Date Adopted: August 7, 2018.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 17-18-103, filed 9/6/17, effective 10/7/17)

WAC 246-470-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Authentication" means information, electronic device, or certificate provided by the department or their designee to a data requestor to electronically access prescription monitoring information. The authentication may include, but is not limited to, a user name, password, or an identification electronic device or certificate.

(2) "Controlled substance" has the same meaning provided in RCW 69.50.101.

(3) "Department" means the department of health.

(4) "Dispenser" means a practitioner or pharmacy that delivers to the ultimate user a schedule II, III, IV, or V controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020, but does not include:

(a) A practitioner or other authorized person who only administers, as defined in RCW 69.41.010, a controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020;

(b) A licensed wholesale distributor or manufacturer, as defined in chapter 18.64 RCW, of a controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020; or

(c) A veterinarian licensed under chapter 18.92 RCW. Data submission requirements for veterinarians are included in WAC 246-470-035.

(5) "Indirect patient identifiers" means data that may include: Hospital or provider identifiers; a five-digit zip code, county, state, and country of residence; dates that include month and year; age in years; and race and ethnicity; but does not include the patient's first name; middle name; last name; Social Security number; control or medical record number; zip code plus four digits; dates that include day, month, and year; or admission and discharge date in combination.

(6) "Local health officer" means the legally qualified physician who has been appointed as the health officer for a county or district health department, consistent with RCW 70.05.010(2).

(7) "Qualifying medical test site" means a medical test site licensed by the department under chapter 70.42 RCW,

and certified as a drug testing laboratory by the United States department of health and human services, substance abuse and mental health services administration.

~~((6))~~ (8) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

~~((7))~~ (9) "Patient address" means the current geographic location of the patient's residence. If the patient address is in care of another person or entity, the address of that person or entity is the "patient address" of record. When alternate addresses are possible, they must be recorded in the following order of preference:

(a) The geographical location of the residence, as would be identified when a telephone is used to place a 9-1-1 call; or

(b) An address as listed by the United States Postal Service; or

(c) The common name of the residence and town.

~~((8))~~ (10) "Pharmacist" means a person licensed to engage in the practice of pharmacy.

~~((9))~~ (11) "Prescriber" means a licensed health care professional with authority to prescribe controlled substances or legend drugs.

~~((10))~~ (12) "Prescription monitoring information" means information submitted to and maintained by the prescription monitoring program.

~~((11))~~ (13) "Program" means the prescription monitoring program established under chapter 70.225 RCW.

~~((12))~~ (14) "Valid photographic identification" means:

(a) A driver's license or instruction permit issued by any United States state or province of Canada. If the patient's driver's license has expired, the patient must also show a valid temporary driver's license with the expired card.

(b) A state identification card issued by any United States state or province of Canada.

(c) An official passport issued by any nation.

(d) A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(e) A merchant marine identification card issued by the United States Coast Guard.

(f) A state liquor control identification card. An official age identification card issued by the liquor control authority of any United States state or Canadian province.

(g) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses and are recognized by the liquor control board.

AMENDATORY SECTION (Amending WSR 17-18-103, filed 9/6/17, effective 10/7/17)

WAC 246-470-050 Local health officer, pharmacist, prescriber or other health care practitioner and medical test site access to information from the program. (1) Access.

(a) The local health officer or a licensed health care practitioner authorized by the local health officer may obtain prescription monitoring information for the purposes of patient

follow-up and care coordination following a controlled substance overdose event.

(b) A pharmacist, prescriber, or licensed health care practitioner authorized by a prescriber or pharmacist may obtain prescription monitoring information relating to their patients, for the purpose of providing medical or pharmaceutical care.

~~((b))~~ (c) A qualifying medical test site may have access to prescription monitoring information for the purpose of providing assistance to a prescriber or dispenser for determining medications an identified patient, in the care of the prescriber or dispenser, is taking.

(2) Registration for access.

(a) A local health officer, pharmacist, prescriber, or licensed health care practitioner authorized by a local health officer, prescriber or pharmacist shall register by using the registration process established by the department in order to receive an authentication to access the electronic system.

(b) Staff of a qualifying medical test site, meeting requirements of (a) of this subsection may register for access by using the registration process established by the department.

(3) Verification by the department. The department shall verify the authentication and identity of the local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site before allowing access to any prescription monitoring information. The qualifying medical testing laboratory's registered substance abuse and mental health services administration responsible person must designate and report to the program those staff who may access the prescription monitoring information.

(4) Procedure for accessing prescription information.

(a) A local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site center may access information from the program electronically, using the authentication issued by the department or the department's designee.

(b) A local health officer, pharmacist, prescriber, or licensed health care practitioner authorized by a local health officer, prescriber or pharmacist may alternately submit a written request via mail or facsimile transmission in a manner and format established by the department.

(5) Reporting lost or stolen authentication. If the authentication issued by the department is lost, missing, or the security of the authentication is compromised, the local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the ~~((program's))~~ mandate as outlined in RCW 70.225.040 and this chapter.

AMENDATORY SECTION (Amending WSR 17-18-103, filed 9/6/17, effective 10/7/17)

WAC 246-470-052 Facility and provider group access to information from the program. (1) Access.

(a) A health care facility or entity may have access to prescription monitoring information for the purpose of providing medical or pharmaceutical care to the patients of the facility or entity ~~((#))~~ or for quality improvement purposes only under the following conditions:

(i) The facility or entity is licensed by the department, operated by the federal government, or a federally recognized Indian tribe; and

(ii) The facility or entity is a trading partner with the state's health information exchange.

(b) A health care provider group of five or more prescribers may have access to prescription monitoring information for the purpose of providing medical or pharmaceutical care to the patients ~~((#))~~ or for quality improvement purposes, only under the following conditions:

(i) All prescribers in the provider group are licensed by the department, the provider group is operated by the federal government or a federally recognized Indian tribe; and

(ii) The provider group is a trading partner with the state's health information exchange.

(2) Registration for access. A facility or entity ~~((licensed by the department,))~~ identified in subsection (1)(a) of this section or a provider group of five or more prescribers ~~((all licensed by the department))~~ identified in subsection (1)(b) of this section may register for access by using the registration process established by the department.

(3) Verification by the department. The department or its designee shall verify the authentication and identity of the ~~((licensed))~~ facility, entity, or provider group before allowing access to any prescription monitoring information.

(4) Procedure for accessing prescription information. A ~~((licensed))~~ facility, entity, or provider group identified in subsection (1) of this section must access information from the program electronically through the state health information exchange.

(5) If the connection between the facility, entity, or provider group and the health information ~~((exchanged))~~ exchange is compromised, the facility, entity, or provider group shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the ~~((program's))~~ mandate as outlined in RCW 70.225.040 and this chapter.

NEW SECTION

WAC 246-470-053 The coordinated care electronic tracking program access to information from the program. (1) Access. The coordinated care electronic tracking program may have access to data for the purposes of:

(a) Providing program data to emergency department personnel when the patient registers in the emergency department; and

(b) Providing notice to the patient's providers, appropriate care coordination staff, and prescribers listed in the

patient's prescription monitoring program record when the patient has experienced a controlled substance overdose event.

(2) Registration for access. The coordinated care electronic tracking program may register for access by using the registration process established by the department.

(3) Verification by the department. The department or its designee shall verify the authentication and identity of the coordinated care electronic tracking program before allowing access to any prescription monitoring information.

(4) Procedure for accessing prescription data. The coordinated care electronic tracking program must access data from the program electronically through the state health information exchange. The data shall only be retained long enough by the tracking program to create the report needed by emergency department personnel when the patient registered or to provide notice of an overdose event.

(5) If the secure connection between the coordinated care electronic tracking program and the state health information exchange is compromised, the coordinated care electronic tracking program shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

NEW SECTION

WAC 246-470-054 Facility, entity, and provider group access to prescriber information. (1) Access. Facilities, entities, and provider groups which have elected to receive information as identified in WAC 246-470-052 shall receive quarterly reports from the department with facility or entity and individual prescriber information for quality improvement purposes of the facility, entity, or provider group.

(2) Requesting a report. The facility, entity, or provider group shall submit a request for each quarterly report using a format established by the department and containing the names and credentials of the providers they employ.

(3) Verification. The department will establish a process for verifying the point of contact at each facility, entity or provider group who will receive the report.

(4) Providing a report. The department will establish a secure method for delivering the report to the facility, entity or provider group.

(5) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

NEW SECTION

WAC 246-470-082 Access by the Washington state hospital association to information from the program. (1) The department may provide dispenser and prescriber data that includes indirect patient identifiers to the Washington state hospital association's coordinated quality improvement program (CQIP).

(2) Before providing data to the association's CQIP the department will enter into a data use agreement that outlines the following:

- (a) The data fields that will be provided;
- (b) The security methods used to protect and transmit the data;
- (c) Any allowed redisclosure of the data provided to the CQIP must be consistent with the purpose of the data use agreement; and
- (d) How indirect patient identifiers will be protected from any attempts to reidentify the patient or their family.

(3) All requests for, uses of, and disclosures of prescription monitoring information by the requesting entity must be consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

WSR 18-17-049

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed August 8, 2018, 2:02 p.m., effective September 8, 2018]

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

Purpose: The agency is amending chapter 182-560 WAC, Achieving a Better Life Experience (ABLE) Act, to comply with amendments to federal rules under 26 U.S.C. Sec. 529A, qualified ABLE programs, and to clarify how contributions to ABLE accounts count towards countable income in determining eligibility for apple health programs.

Citation of Rules Affected by this Order: Amending WAC 182-560-100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 26 U.S.C. Section 529A qualified ABLE programs.

Adopted under notice filed as WSR 18-14-070 on June 29, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 8, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-11-135, filed 5/24/17, effective 7/1/17)

WAC 182-560-100 Achieving a Better Life Experience (ABLE) Act. This rule describes a qualified achieving a better life experience (ABLE) account and its effect on the determination of eligibility for Washington apple health coverage.

(1) A qualified ABLE account:

- (a) Is established and maintained by a state, or its designated agency or entity;
- (b) Meets federal requirements under 26 U.S.C. Sec. 529A; and
- (c) Is used to save funds for the disability related expenses of the account's designated beneficiary.

(2) This section applies to ABLE account beneficiaries who:

(a) Are entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act; or

(b) Meet the blindness or disability requirements under WAC 182-512-0050 (1)(b) and (c).

(3) The disability or blindness described in subsection (2)(a) or (b) of this section must have occurred before age twenty-six.

(4) This section does not apply if the total combined annual contributions to an ABLE account exceed the ~~((gift tax annual exclusion amount identified in the Internal Revenue Service publication 559))~~ limit under 26 U.S.C. Sec. 529A.

(5) When determining countable income for apple health programs for the account's designated beneficiary, the medic-aid agency or the agency's designee does not:

(a) Count contributions made by a person other than the designated beneficiary to the ABLE account;

(b) Count funds distributed from the account;

(c) Count earnings generated by the account, such as accrued interest or dividends; or

(d) Reduce income used to determine eligibility by the amount of contributions made to the account, including any funds the designated beneficiary may contribute to it.

(6) When determining eligibility for apple health programs, the agency or the agency's designee excludes as resources:

(a) The value of an ABLE account, including any earnings generated by the account; and

(b) Subject to subsection (8) of this section, distributions from the account for qualified disability expenses as long as the beneficiary:

(i) Maintains an ABLE account;

(ii) Contributes to an ABLE account; or

(iii) Receives distributions from such ABLE account.

(7) "Qualified disability expense (QDE)" means any expense related to the beneficiary's blindness or disability that is made for the benefit of the beneficiary, including the following expenses:

(a) Education;

(b) Housing;

(c) Transportation;

(d) Employment training and support;

(e) Assistive technology and personal support services;

(f) Health;

- (g) Prevention and wellness;
 - (h) Financial management;
 - (i) Legal fees;
 - (j) Expenses for oversight and monitoring; and
 - (k) Funeral and burial expenses.
- (8) Distributions under subsection (6)(b) of this section, which are retained into a subsequent calendar month:

(a) Remain excluded as resources as long as the distributions are identifiable and the beneficiary still intends to use the distribution for a QDE;

(b) Are available resources on the first day of a subsequent calendar month if the intent of the beneficiary changes such that the beneficiary will not use the distribution for a QDE; and

(c) Are available resources on the first day of any subsequent month when the distribution is actually used for a non-QDE.

(9) The agency or the agency's designee counts as a resource on the first day of the following month any funds distributed for purposes other than paying a QDE expense described in subsection (7) of this section.

(10) If the beneficiary has multiple ABLE accounts, the agency or the agency's designee applies this section to the first ABLE account established.

(11) Funds remaining in the ABLE account when the beneficiary dies are subject to estate recovery under chapter 182-527 WAC, less any:

(a) Outstanding QDE debts; and

(b) Premium payments made from the ABLE account on behalf of the beneficiary to obtain coverage under the apple health care for workers with disabilities described in WAC 182-511-1000.

WSR 18-17-071
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-191—Filed August 10, 2018, 12:23 p.m., effective September 10, 2018]

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

Purpose: Amends rules for commercial salmon fishing in Grays Harbor. These rules incorporate recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor.

Citation of Rules Affected by this Order: Amending WAC 220-354-290.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 18-13-110 on June 20, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 10, 2018.

Kelly Susewind
Director

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

WAC 220-354-290 Grays Harbor salmon fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon, and shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
((12:01 p.m. through 7:00 p.m.	Area 2A and Area 2D
October 24;	
7:00 a.m. through 7:00 p.m.	
October 25;	
6:00 a.m. through 6:00 p.m.	
October 30;	
6:00 a.m. through 6:00 p.m.	
October 31;	
7:00 a.m. through 7:00 p.m.	
November 6;	
7:00 a.m. through 7:00 p.m.	
November 7;	
7:00 a.m. through 7:00 p.m.	
November 8;	
AND	
7:00 a.m. through 7:00 p.m.	
November 9;	
6:00 a.m. through 6:00 p.m.	Area 2C
October 23;	
6:00 a.m. through 6:00 p.m.	
November 2;	
7:00 a.m. through 7:00 p.m.	
November 6;	
AND	
7:00 a.m. through 7:00 p.m.	
November 7:))	

Time:

7:00 a.m. through 7:00 p.m.October 22;12:00 p.m. through 11:59 p.m.October 30;7:00 a.m. through 7:00 p.m.October 31;7:00 a.m. through 7:00 p.m.November 12;AND7:00 a.m. through 7:00 p.m.November 13;12:01 a.m. through 12:00 p.m. Area 2COctober 21;12:00 p.m. through 11:59 p.m.October 24;AND12:00 p.m. through 11:59 p.m.October 31.**Gear:**

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be aboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. (~~Nets may be no more than fifty-five meshes deep.~~)

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(c) Area 2C from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as

measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 1 through November 30.

(5) Retention of any species other than Chinook, chum, coho or shad, is prohibited in Area 2C from October 1 through November 30.

(6) Quick reporting is required for original receivers. According to WAC 220-352-320, reports must be made by 10:00 a.m. the day following landing, unless otherwise specified in an electronic fish receiving ticket reporting agreement (see WAC 220-352-035(3)).

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or email at harborfishtickets@dfw.wa.gov. Fishers may have wholesale fish buyers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or email. Notice of intent must be given prior to 12:00 p.m. on October ((+)) 12, for openings in Areas 2A, 2C, or 2D.

(10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

projected to continue through fiscal year 2019, resulting in an approximate \$7.5 million deficit in fund balance for the division, far below the recommended minimum fund balance of \$1.6 million. The fee increase will correct the deficiencies in revenues that have persisted since fiscal year 2004 and the full amount of the fee increase will be allocated to the securities division.

Citation of Rules Affected by this Order: New WAC 460-05A-010.

Statutory Authority for Adoption: RCW 21.20.340 and 43.320.110 as amended by SB 6024 (2018).

Adopted under notice filed as WSR 18-13-076 on June 15, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 13, 2018.

Gloria Papiez
Director

WSR 18-17-078
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed August 13, 2018, 9:22 a.m., effective September 13, 2018]

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

Purpose: The department of financial institutions is hereby adjusting the filing fees required for initial and renewal applications for registration as an investment adviser, broker-dealer, investment adviser representative, and securities salesperson, in addition to the initial and renewal notice filing fees for federal covered advisers, upward by ten dollars effective January 31, 2019, to defray the costs of administering the Securities Act of Washington, chapter 21.20 RCW, pursuant to RCW 21.20.340 and 43.320.110 as amended by SB 6024 (2018). On March 22, 2018, Governor Jay Inslee signed into law SB 6024, which authorizes the director of the department of financial institutions to increase the fees set forth in RCW 21.20.340 upward by no more than fifteen dollars upon a finding that a fee increase is necessary to defray the costs of administering the Securities Act of Washington. The securities division's annual revenues are insufficient to sustain its operations. The securities division's annual expenditures have exceeded its revenues cumulatively by approximately \$14.4 million since fiscal year 2004. The securities division's yearly deficits are

Chapter 460-05A WAC
FEES

NEW SECTION

WAC 460-05A-010 Licensing fees. (1) In accordance with RCW 21.20.340(15), the fees specified in RCW 21.20.340 (6) and (7) are adjusted upward by ten dollars effective January 1, 2019, in order to defray the costs of administering the Securities Act of Washington, chapter 21.20 RCW. Accordingly, the following fees shall apply:

(a) For registration of a broker-dealer or investment adviser, the fee shall be one hundred sixty dollars for original registration and eighty-five dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one half of the fee.

(b) For a federal covered adviser filing pursuant to RCW 21.20.050, the fee shall be one hundred sixty dollars for original notification and eighty-five dollars for each annual renewal. A fee shall not be assessed in connection with converting an investment adviser registration to a notice filing when the investment adviser becomes a federal covered adviser.

(c) For registration of a salesperson or investment adviser representative, the fee shall be fifty dollars for each original registration with each employer and thirty dollars for

each annual renewal. When an application is denied or withdrawn the director shall retain one half of the fee.

(2) Upon a finding by the department of financial institutions that the fee increase, or portion thereof, set forth in subsection (1) of this section is not necessary to defray the costs of administering the Securities Act of Washington, chapter 21.20 RCW, the department may waive that portion of the fee attributable to a fee increase under RCW 21.20.340(15).

WSR 18-17-079
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed August 13, 2018, 1:44 p.m., effective September 13, 2018]

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

Purpose: Addition of assistant division manager to the list of titles authorized to act as the State Environmental Policy Act responsible official.

Citation of Rules Affected by this Order: Amending WAC 332-41-910.

Statutory Authority for Adoption: Chapter 43.21C RCW.

Other Authority: Chapter 34.05 RCW, WAC 197-11-902(2), 197-11-904(1), 197-11-910 and delegation order, 11/5/01, signature authority to adopt rules.

Adopted under notice filed as WSR 18-10-007 on April 20, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 7, 2018.

Brule Burkhart
Deputy Supervisor
for Administration

AMENDATORY SECTION (Amending WSR 07-08-021, filed 3/27/07, effective 4/27/07)

WAC 332-41-910 Designation of responsible official.

(1) **Who may serve as DNR's SEPA responsible official?** Since the responsible official shall carry out duties and functions for the purpose of assuring DNR's compliance with SEPA and the SEPA rules, it is important that DNR clearly designate who will be the responsible official for a proposal.

(a) DNR's responsible official will be as follows:

(i) Division manager;

(ii) Designated region manager; ((~~or~~))

(iii) Designated assistant division manager; or

(iv) Designated assistant region manager.

(b) The responsible official for the harbor line commission shall be the division manager of the aquatic resources division.

(c) When the region manager or assistant region manager is involved with the proposal, or during emergencies, i.e., fire season, it may be necessary to assign the responsible official duties for a proposal to a region manager in another region. The division manager may also assume responsible official duties for the proposal.

(d) When potentially significant conflicting DNR interests exist involving DNR proposals that converge at the division manager or region manager level, or the proposal involves more than one region, a superior management-level official may act as the responsible official. See subsection (4) of this section for recommended qualifications.

(2) **What are the responsible official's duties?** When DNR is the lead agency, the responsible official shall review the environmental checklist and make the threshold determination in compliance with this chapter, chapters 43.21C RCW and 197-11 WAC, and specifically, WAC 197-11-330.

(3) **What other procedural requirements must be followed?** The responsible official shall carry out further SEPA compliance under WAC 197-11-340, 197-11-350, or 197-11-360, as appropriate. This includes notice and circulation requirements for threshold determinations.

(4) **What are the general qualifications of a DNR responsible official?** The responsible official shall not be the applicant, project leader, or the decision maker for the proposal. The official shall have general technical expertise sufficient to assess the impacts of the proposal.

(5) **What if a determination of significance is issued?** When an environmental impact statement is required based on the threshold determination, scoping and EIS preparation under chapter 197-11 WAC shall occur under direction of the responsible official.

WSR 18-17-080
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed August 13, 2018, 3:31 p.m., effective September 13, 2018]

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

Purpose: Topographic elements shown on maps produced to document and display topography are a product of professional practice for those registered under chapters 18.43 and 18.210 RCW. Our intention in drafting proposed WAC 332-130-145 is to provide a set of requirements for displaying topographic elements on those maps. The proposed requirements are specifically for topographic elements.

Citation of Rules Affected by this Order: New WAC 332-130-145.

Statutory Authority for Adoption: RCW 58.24.040(1).

Adopted under notice filed as WSR 18-11-132 on May 23, 2018.

Changes Other than Editing from Proposed to Adopted Version: Changed the wording from "topographic maps" to "topographic elements on maps" and added a couple of examples.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 7, 2018.

Andrew Hayes
Acting Deputy Supervisor
for Uplands

NEW SECTION

WAC 332-130-145 Topographic elements on maps—Requirements. For the purposes of this section, topographic elements consist of information shown on a map which depicts the horizontal and vertical positions of natural and/or fabricated features and existing terrain surfaces. Usually, contour lines and spot elevations are used to depict surface relief, but a variety of methods can be used to show changes in terrain.

The following requirements shall apply to maps that include topographic elements, prepared by professionals registered under chapters 18.43 and 18.210 RCW. Such requirements should be considered minimum only. The professional conducting the work will determine what precision and accuracy are expected to be utilized for topographic mapping services necessitating various levels of accuracy.

(1) The following elements must be included on every map that includes topographic elements:

- (a) Vertical datum used (such as "assumed," "NAVD 88," "NSRS," "unknown");
- (b) North arrow;
- (c) Map scale and graphic scale bar;
- (d) Legend of symbols used;
- (e) Licensee name and contact information;
- (f) Seal and signature of licensee.

(2) Statements of clarification for elements shown:

(a) Basis of elevations citing benchmark(s) used with elevation(s) (such as "city bench mark 20-01, elevation 456.32 feet, GPS observation including metadata");

(b) Purpose or intended use of the topographic elements shown on the map (such as "preliminary plat," "on-site septic design," "civil engineering design");

(c) A description of the source of the contours (such as "contours derived from direct field observations," or "contours shown are from county GIS");

(d) Labeling to determine contour interval(s);

(e) Description of project benchmarks established (such as "railroad spike in power pole," "chiseled 'X' in concrete curb");

(f) Statement of elevations and contour accuracy (such as "national mapping standards, one-half the contour interval");

(g) Statement on limitation of use (such as "preliminary-not for design," "this is not a boundary survey");

(h) Source of boundary information (such as "record of survey including auditor indexing information," "county GIS") and method(s) used to relate area mapped to said boundaries.

(3) Statements of clarification of utility information shown:

(a) Source of utility location (such as "surface markings," "as-built," "potholing," or "field measurement");

(b) Statement of accuracy of utility depiction (such as "locations of underground utilities shown hereon are based upon field measurement" or "locations of underground utilities shown hereon are based upon as-built maps");

(c) A statement of the scope of work between the project owner and the licensee regarding the comprehensiveness, exclusions, and limits of the utility investigations leading to these utility depictions.

WSR 18-17-086

PERMANENT RULES

WASHINGTON STATE LOTTERY

[Filed August 14, 2018, 9:33 a.m., effective September 14, 2018]

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

Purpose: Changes to WAC 315-06-040 provide additional language that clearly specifies which promotional and advertising materials do not apply to this WAC. This will reduce confusion for staff as to what promotional items are required to contain a specific, printed odds statement.

Changes to WAC 315-02-130 will clearly state who is an employee of the commission and who is not, thereby reducing misconceptions about contractors and licensed agents being classified as employees.

Changes to WAC 315-34-057 provide clarifying language regarding a player claiming a Lotto prize, presenting a winning ticket, undergoing a debt check, and selecting a cash or annuity option.

Changes to WAC 315-38-090 provide clarifying language regarding a player claiming a lottery jackpot prize, presenting a winning ticket, undergoing a debt check, and selecting a cash or annuity option.

Citation of Rules Affected by this Order: WAC 315-06-040, 315-02-130, 315-34-057, and 315-38-090.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Adopted under notice filed as WSR 18-12-067 on June 1, 2018.

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

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: August 14, 2018.

Kristi Weeks
Director of Legal Services

AMENDATORY SECTION (Amending WSR 10-16-025, filed 7/23/10, effective 8/23/10)

WAC 315-02-130 Employee of the commission defined. "Employee of the commission" means the ~~((employees or agents of the lottery and the director))~~ salaried or wage earning employees of the state lottery. "Employee of the commission" does not mean contractors, subcontractors, consultants, or licensed agents of the state lottery, unless expressly defined in contract.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

WAC 315-06-040 Disclosure of probability of purchasing a winning ticket. (1) The estimated probability of purchasing a winning ticket shall be conspicuously displayed on:

(a) The tickets for a specific game;

(b) All printed promotional and advertising materials for a specific game, including but not limited to, brochures, posters, billboards, placards, and point-of-sale displays.

(2) The estimated probability of purchasing a winning ticket shall be communicated in television and radio commercials for a specific game.

(3) The estimated probability of purchasing a winning ticket for each category of prize in a specific game shall be conspicuously displayed as part of:

(a) The "how-to-play" brochure which explains the procedures for the lottery's draw games; and

(b) The brochures of instructions to lottery retailers for the conduct of specific scratch games.

(4) The disclosure required by this section shall not apply to:

(a) Generic promotional and advertising materials publicizing the Washington state lottery which do not promote a specific draw game or a specific scratch ticket theme; or

(b) Promotional and advertising materials which promote multiple draw or scratch games or any combination of games in a single piece. Materials that promote or advertise multiple games or a combination of games in a single piece are required to include the following language: "Please visit

walottery.com for the latest odds." Such materials may include, but are not limited to, jackpot signs, banners, curb signs, building signage, vehicle wraps, and billboards.

AMENDATORY SECTION (Amending WSR 05-12-005, filed 5/18/05, effective 6/18/05)

WAC 315-34-057 Lotto prize claim and payment methods. The following sets forth requirements for claims and payment of Lotto prizes:

(1) Claims for prize payment shall be made in accordance with chapter 315-30 WAC.

(2) Prize payments shall be made as follows:

(a) **Cash option:** ~~((After))~~ When a player ~~((has claimed))~~ claims a jackpot prize or a share of a jackpot prize, ~~((and after the claim has been validated (including a debt check pursuant to WAC 315-06-125),))~~ the player may elect to be paid a one-time single cash payment of fifty percent of his or her share of the announced jackpot, provided:

(i) The player must elect this cash option within sixty days of the ~~((validation))~~ presentation of his or her ~~((prize))~~ winning ticket, by following the procedure required by the lottery;

(ii) If the federal tax code is interpreted by federal authorities to require that this cash option be exercised within sixty days of the drawing for the prize, then (a)(i) of this subsection will not apply and instead, the player must elect this cash option within sixty days of the date of the drawing for the prize;

(iii) The player's choice of payment method as designated by signing the appropriate lottery form is final and may not be changed by the player at a later date.

(b) **Annuity:** A player who chooses not to elect the cash option or who does not elect the cash option within the sixty-day limit will be paid his or her prize in twenty-five annual installment payments.

(3) After the player has made his or her choice of payment method, the lottery will validate the claim, including a debt check pursuant to WAC 315-06-125, and pay the prize as appropriate.

AMENDATORY SECTION (Amending WSR 05-11-050, filed 5/13/05, effective 6/13/05)

WAC 315-38-090 Jackpot prize payments. (1) Prior to each drawing, the directors shall determine the estimated annuitized jackpot prize amount to be advertised. The advertised jackpot prize amount shall be the basis for determining the amount to be awarded for each Mega Millions panel matching all five of the five Mega Millions winning numbers drawn for Field 1 and the one Mega Millions winning number drawn for Field 2. No annuitized jackpot prize, when there is only one jackpot prize winning ticket, shall be less than \$12 million.

(2) If, in any Mega Millions drawing, there are no Mega Millions panels that qualify for the jackpot prize category, the portion of the prize fund allocated to such jackpot prize category shall remain in the jackpot prize category and be added to the amount allocated for the jackpot prize category in the next consecutive Mega Millions drawing.

(3) If the annuitized jackpot prize divided by the number of Mega Millions panels matching all five of the five Mega Millions winning numbers for Field 1 and the one Mega Millions winning number for Field 2, is equal to or greater than \$1,000,000, the jackpot prize(s) will be paid under the annuity option unless a cash option was selected by the winner(s), as follows:

(a) **Cash option:** ~~((After))~~ When a player ~~((has claimed))~~ claims a jackpot prize or a share of a jackpot prize, ~~((and after the claim has been validated (including a debt check pursuant to WAC 315-06-125);))~~ the player may elect to be paid a one-time single cash option payment as defined by WAC 315-38-020(3), provided:

(i) The player must elect this cash option within sixty days of the ~~((validation))~~ presentation of his or her ~~((prize))~~ winning ticket, by following the procedure required by the lottery;

(ii) If the federal tax code is interpreted by federal authorities to require that this cash option be exercised within sixty days of the drawing for the prize, then (a)(i) of this subsection will not apply and instead, the player must elect this cash option within sixty days of the date of the drawing for the prize;

(iii) The player's choice of payment method as designated by signing the appropriate lottery form is final and may not be changed by the player at a later date;

(iv) Cash option jackpot prizes shall be paid in a single payment in accordance with the internal validation procedures and settlement procedures pursuant to the multistate agreement and the Washington state lottery. At the director's discretion, an initial payment of a portion of the cash option prize may be paid to the winner at the time the prize is claimed.

(b) **Annuity:** A player who chooses not to elect the cash option or who does not elect the cash option within the sixty-day limit will be paid his or her prize in twenty-six annual installment payments. The initial payment shall be paid in accordance with the internal validation procedures and settlement procedures established by the multistate agreement and the Washington state lottery. The subsequent twenty-five payments shall be paid annually to coincide with the month of the federal auction date at which the bonds were purchased. All such payments shall be made within seven days of the anniversary of the actual auction date. This date of payment of the subsequent payments is subject to the discretion of the director of the Washington state lottery, acting in the best interest of the lottery.

(4) After the player has made his or her choice of payment method, the lottery will validate the claim, including a debt check pursuant to WAC 315-06-125, and pay the prize as appropriate.

(5) In the event multiple Mega Millions panels match all five of the five Mega Millions winning numbers for Field 1 and the one Mega Millions winning number for Field 2, and the annuitized Mega Millions jackpot prize divided by the number of winning game panels is less than \$1,000,000, each Mega Millions jackpot prize winner shall be paid an amount equal to the "cash equivalent grand/jackpot prize," as defined by the multistate agreement, divided equally by the number

of jackpot prize winners. Each such jackpot prize winner will be paid in a single cash payment.

WSR 18-17-089
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed August 14, 2018, 10:18 a.m., effective September 14, 2018]

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

Purpose: Amends WAC 181-78A-005, 181-78A-010, 181-78A-100, 181-78A-105, 181-78A-110, 181-78A-115, 181-78A-120, 181-78A-220, 181-78A-300 and 181-78A-307, to reform the program requirements for state approved teacher preparation in response to technological reporting improvements.

Citation of Rules Affected by this Order: Amending WAC 181-78A-005, 181-78A-010, 181-78A-100, 181-78A-105, 181-78A-110, 181-78A-115, 181-78A-120, 181-78A-300, and 181-78A-307.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 18-12-059 on May 31, 2018.

Changes Other than Editing from Proposed to Adopted Version: Minor clarifying language change. Also added new national standards that went into effect for principals and was an understood change for stakeholders.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 0.

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

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

Date Adopted: July 25, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 11-01-047, filed 12/7/10, effective 1/7/11)

WAC 181-78A-005 Purpose. ~~((In order to support the successful implementation of Washington's ongoing public school reform and improvement policies, the professional~~

educator standards board is establishing a performance-based preparation system for educators. The intent of the performance-based preparation system is to ensure that educators can demonstrate a positive impact on student learning as the foundation for preparing students to participate effectively in a diverse and democratic society. This chapter establishes the procedures, standards, and criteria to be used in the development and approval of preparation programs offered by (approved) preparation program(s) providers in Washington state leading to teacher, administrator, and educational staff associates certification. These rules establish a performance-based preparation system for educators that supports the Improvement of Student Achievement Act of 1993 (ESHB 1209) which will enable educators to implement the Washington state student learning (goals and essential academic learning) standards and requirements.

AMENDATORY SECTION (Amending WSR 16-12-026, filed 5/23/16, effective 6/23/16)

WAC 181-78A-010 Definition of terms. The following definitions shall be used in this chapter:

(1) ("College or university" means any accredited institution as defined in WAC 250-61-050 and as amended by the Washington student achievement council.

(2)) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.

((3)) (2) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.

((4)) (3) "Program approval" means the approval by the professional educator standards board of an educator preparation program offered by an educator preparation program provider within Washington state.

((5)) (4) "Field experience" means (a sequence of) learning experiences (which occur) in (actual) school (settings or), clinical, or laboratory settings. (Such) These learning experiences (are) must be related to specific program outcomes and (are) designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.

((6) "Accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by an organization as provided in WAC 250-61-050 and as amended by the Washington student achievement council.

(7) "Accredited institution of higher education," for purposes of credit on salary schedule per RCW 28A.415.024, means an accredited institution of higher education by WAC 250-61-050 and as amended by the Washington student achievement council.

(8) "An approved performance-based educator preparation program" means a program that requires the candidate to demonstrate in multiple ways, over time, specific professional educator standards board required standards, criteria, knowledge and skills, including, where appropriate, evidence related to positive impact on student learning.

(9)) (5) "A positive impact on student learning" means ((that a teacher through instruction and assessment has been able to document)) students' documented increased knowledge and/or demonstration of a skill or skills related to the state ((goals and/or essential academic learning requirements: Provided, That teachers)) approved standards; or for candidates employed by private schools ((who are candidates for the professional teaching certificate shall document)), students' documented increased knowledge ((and/or)) or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) ((Such)) Alternative learning goals ((as) established by the private school ((has established)).

((10)) (6) "Collaboration" ((as used in WAC 181-78A-500 through 181-78A-540)) means ongoing communication among the professional growth team members ((using a variety of formats (e.g., conferences, electronic mail, conference calls, etc.)) to reach consensus regarding the content ((Course work, experiences, competencies, knowledge and skills--)) of the candidate's professional growth plan.

((11) "Professional growth team" for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a program administrator/designee, and a colleague/peer from the same professional role specified by the candidate.

(12)) (7) "Professional growth plan" means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207 ((and 181-78A-540.

(13) "Draft professional growth plan" means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-78A-540.

(14) "Culminating seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance, and positive impact on student learning. The culminating seminar shall meet requirements set forth in WAC 181-78A-535(2)).

(8) "Board" means the professional educator standards board.

(9) "Clinical practice" means a specific, prolonged field experience where the candidate practices or serves in the role for which he or she is being prepared. Clinical practice must take place in an education setting and under the general supervision of a certificated practitioner, with three years' experience in the role for which the candidate is seeking certification.

(10) "Components" means the design features of the program and actions of the provider.

(11) "Domains" means broad categories of educator preparation program providers' performance expectations and outcomes established by the board.

(12) "Educator preparation program" or "program" means all courses, requirements, and other activities leading to a specific educator certification including teaching, admin-

istrator, school counselor, or school psychologist certificate and/or teaching certificate endorsement.

(13) "Educator preparation program provider" or "program provider" or "provider" means the entity approved to provide one or more educator preparation programs and responsible for operating the programs in compliance with the board's standards and policies.

(14) "Indicator" means performance data determined by the board that identifies the need for further inquiry into the functioning of a program.

(15) "Internship" means the period of clinical practice for candidates enrolled in approved administrator, school counselor, and school psychologist preparation programs.

(16) "Review period" means the period between annual submissions of indicator performance data when the board may require sponsoring organizations to participate in graduated levels of intervention and reporting.

(17) "Review team" means a group of people with experience, expertise, and training to assess the adequacy of program components and domains.

(18) "Student teaching" means the period of clinical practice for individuals enrolled in teacher preparation programs. This period must include at least four hundred fifty hours of supervised planning, instruction, and reflection.

(19) "Thresholds" means the target level of overall performance, or maximum acceptable variance for indicators approved and published by the board.

AMENDATORY SECTION (Amending WSR 15-12-123, filed 6/3/15, effective 7/4/15)

WAC 181-78A-100 Existing approved programs. ((Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to programs in the revision of their existing programs.

(1) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and national accreditation organizations as such agreement relates to the accreditation cycle and allow CAEP accredited programs to follow the CAEP schedule for their review. Non-CAEP accredited programs shall have a review every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2). The professional educator standards board will not consider requests for site visit delays.

(2) Each institution shall submit its program for review when requested by the professional educator standards board to ensure that the program meets the state's program approval standards as follows:

(a) At least six months prior to a scheduled on-site visit, the institution shall submit an institutional report that provides evidence and narrative, as needed, that addresses how the program approval standards are met for each preparation program undergoing review. Evidence shall include such

data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the professional educator standards board as evidence pertinent to the program approval process.

(b) The institutional report shall be reviewed by a team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) A site team chair who has completed state site chair training.

(e) Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The professional educator standards board liaison for that institution may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

(d) Team membership may be reduced for regular continuing visits in which fewer than five standards are being reviewed, initial visits, and focus visits. At a minimum, the team must consist of two members of which one must be a member of the professional educator standards board.

(e) Members of a focus visit team shall, at a minimum, be comprised of one member who served on the on-site team and one member of the professional educator standards board.

(f) Members of the site team may be assigned to conduct an audit of a standard. The standard(s) to be audited during a site review will be determined by the professional educator standards board. The audit must be held during the same semester as the site team review. A site team member conducting an audit will not participate in site team meetings, and will not have a vote in site team decision beyond the standard being audited. The process for an audit shall be published by the professional educator standards board.

(g) The review of the off-site team shall identify additional evidence and clarifications that may be needed to provide adequate support for the institutional report.

(h) The report of the off-site team shall be submitted to the institution, which shall provide an addendum to the institutional report no later than five weeks preceding the on-site review.

(i) The on-site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board. The team shall be comprised of members of the off-site review team whenever possible.

(j) The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

(k) Institutions may submit a reply to the report within two weeks following receipt of the report. The reply is limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review.

PESB shall publish the process for submitting and reviewing the institutional reply.

(l) In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100(1).

(m) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The institution seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

(3) Institutions seeking Council for the Accreditation of Educator Preparation, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.) Providers of programs approved by the board shall comply with the review process established in this chapter and published by the board.

(1) Teacher and principal preparation programs: The board will annually review performance data of all educator preparation programs based on components and indicators established in this chapter and published by the board. The professional educator standards board will provide annual updated written guidance to providers regarding the submission of annual program data.

(a) Notification: If annual preparation program data analysis indicates that program performance falls below thresholds during any given review period, the board staff will provide written notification to the educator preparation program provider. The educator preparation program provider may choose to submit a response to the board staff. The response must be received by board staff within four weeks following receipt of the notification by the provider. The response should offer evidence of factors and circumstances that explain why program performance is below board approved thresholds on the indicators identified in the notice. The board staff will offer providers guidance on content and timelines for submission of this optional response. The board will review responses concurrently with annual data analysis reports.

(b) Interventions: Providers with program performance below indicator thresholds are subject to graduated levels of intervention as follows:

(i) Intervention 1 - Required self-study report: If a provider that received written notification of performance below threshold on one or more indicators during the previous review period has performance below thresholds on the same indicator(s) during the subsequent review period, the board will send the provider a second notification. The provider must complete a self-study report related to the components and domain(s) identified in both notifications and submit it to the board. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also submit evidence and

a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. If the board is satisfied with the self-study report, the board will approve it on the consent agenda of the board meeting following submission. If the board is not satisfied with the self-study report, staff will give providers additional written timelines and guidance to address the board's concerns.

(ii) Intervention 2 - Formal review: If a provider demonstrates performance below thresholds for a third successive review period or more, the professional educator standards board will provide a third notification. Based on its discretion and authorized by a vote, the board also may require a formal review related to the provider's performance in the domains of practice identified in the notifications. Prior to commencing a formal review, the board will consider the notifications, responses, and self-study report to determine whether to proceed with or postpone a formal review.

(A) The formal review will incorporate the following elements:

(I) The board shall determine the schedule for formal reviews and whether an on-site visit or other forms of documentation and validation will be used to evaluate programs under program approval standards.

(II) The provider will submit requested evidence to the board staff.

(III) A review team, including at least one member of the board, will review the evidence. The review team may request additional information including information provided through interviews with provider staff or affiliates as needed.

(IV) The review team will provide a report to the board identifying areas of practice associated with the previous notifications where the provider is out of compliance with educator preparation program requirements established in WAC 181-78A-300 and the educator preparation program expectations and outcomes established in WAC 181-78A-220. The review team may also identify areas of practice where the provider is out of compliance with educator preparation program requirements that were not associated with previous notifications but were noticed by the review team during the process of review. The report may also identify whether the approved indicators or thresholds are functioning as intended.

(V) Board staff serving on the review team will provide assistance to the review team during the review process but will not serve in an evaluative role.

(VI) The review team will submit its report and other appropriate documentation to the provider and the board within one year of the board designating the program for formal review.

(VII) The board may extend the length of the one-year period for submission of the review team's report up to two years at its discretion.

(B) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is to focus on the evidence, conclusions, and recommendations in the report but also may include additional evidence of factors and circumstances that explain why program performance is persistently below board approved thresholds

on the indicators identified in the notice and self-study report. The board shall publish the process for submitting and reviewing the reply.

(C) In considering the review team's report, the board may request additional information or review, or take action to extend, or change the program's approval status per the provisions of WAC 181-78A-110.

(c) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. This request must be made within twenty days from the decision date. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

(d) The board will publish a schedule for its review of the domains, components, indicators and thresholds. This review will occur at least every five years and not more frequently than every two years.

(2) Superintendent programs: The board will annually review data related to the performance of all superintendent programs according to data reporting guidance published by the board.

(a) Annual data analysis: After each annual review period, the board will give superintendent program providers written analysis of annual data submission.

(b) Superintendent program review: The professional educator standards board shall determine the schedule for formal reviews and whether an on-site visit or other forms of documentation and validation shall be used for evaluation.

(i) Superintendent program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) Superintendent program providers will submit requested evidence to the staff of the professional educator standards board.

(iii) A review team, including at least one member of the professional educator standards board, will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed. One board staff member will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include at least one K-12 practitioner with expertise related to the program scheduled for review and two individuals with expertise related to the domains of practice identified in annual written analyses.

(iv) The two providers with peer representatives on the review team will be scheduled for annual review during the subsequent review period.

(v) At least three months in advance of scheduled review, superintendent program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also provide evidence and a description of the provider's performance related to the indicator(s), compo-

nents, and domains identified in the notifications. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the board as evidence pertinent to the program approval process.

(c) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with requirements established in WAC 181-78A-300 and the program expectations and outcomes established in WAC 181-78A-220.

(i) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(ii) The board may extend the length of the one-year report period up to two years at its discretion. The review team's report and other appropriate documentation will be submitted to the provider and the board within one year of the board designating the program for formal review.

(iii) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review. The board shall publish the process for submitting and reviewing the reply.

(iv) In considering the review team's report, the board may request additional information or review, or take action to extend or change the educator preparation program's approval status per the provisions of WAC 181-78A-110.

(d) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision. This request must be made within twenty days from the decision date. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035.

(3) Program administrator programs: The board will annually review data related to the performance of all program administrator programs according to data and reporting guidelines published by the board.

(a) Program administrator programs implemented in conjunction with principal preparation programs will be reviewed concurrently with that provider's principal preparation program.

(b) Program administrator programs implemented in conjunction with superintendent preparation programs will be reviewed concurrently with that provider's superintendent preparation program.

(4) School counseling programs. The board will approve school counseling programs upon receiving notification of the program's approval from the council for the accreditation for counseling and related education programs. School counseling program providers shall comply with accrediting procedures for council for the accreditation for counseling and related education programs.

(a) A provider of residency school counseling programs without approval from council for the accreditation for counseling and related education programs shall provide proof to the professional educator standards board before November

1, 2018, that it will seek such accreditation. The board will place any existing school counseling program that does not receive council for the accreditation for counseling and related education programs accreditation before November 1, 2022, into disapproval status.

(b) The board will place any existing approved residency school counseling program not accredited from the council for the accreditation for counseling and related education programs into disapproval status on November 1, 2022.

(c) Providers of existing residency school counseling programs without accreditation from the council for the accreditation for counseling and related education programs may continue providing courses and field experience that lead to the residency school counselor certificate if the candidates in their programs pass a licensure exam and complete a Master's degree in any area of counseling from a CACREP-accredited program with at least forty-eight semester or seventy-two quarter hours of graduate-level academic credit covering at the minimum the following six content areas:

(i) Appraisal of individuals;

(ii) Group counseling;

(iii) Cultural diversity in counseling;

(iv) Career development;

(v) Fundamentals of school counseling;

(vi) Practicum/internship: Candidates complete a supervised internship in a school based setting that includes a minimum of four hundred hours of on-the-job professional service and one hour per week of individual supervision provided by a mentor.

(5) School psychology programs. Providers of school psychology programs shall comply with accrediting procedures for the National Association for School Psychology. Approval from the professional educator standards board will be based upon the program receiving approval from the National Association for School Psychology.

AMENDATORY SECTION (Amending WSR 12-20-030, filed 9/27/12, effective 10/28/12)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. ((Each institution or organization)) A prospective provider desiring to establish a preparation program shall comply with the following:

(1) ((Submit a form declaring an intent to offer)) Notification of intent. Prospective providers must submit the appropriate form, published by the professional educator standards board, declaring an intent to apply for approval to offer an educator preparation program or a new educator certification program.

(a) The ((declaration)) notification of intent will be posted on the ((professional educator standards)) board web site as public notice.

(b) The ((program will be contacted to begin the preproposal.

(2) Develop a written plan which addresses all preproposal components published by the professional educator standards board.

(a) Submit such plan to the designated official of the professional educator standards board for review and comment.

(b) After the designated official verifies the preproposal is complete, the preproposal will be brought to the professional educator standards board.

(3) The institution or organization may be granted approval for full proposal development or denied approval of the preproposal)) board will contact the prospective provider to begin the preproposal process.

(2) Preproposal. The prospective provider will develop and submit a preproposal that addresses all requirements approved and published by the board including evidence of necessary capacity, resources, and projected sustainability of the program. After board staff verify the preproposal is complete, the preproposal will be brought to the board.

(3) Final proposal. The prospective provider may be approved to develop a final proposal or the preproposal may be denied.

(a) If denied, the ((institution or organization)) provider may resubmit its ((plan based upon)) preproposal informed by suggestions of the ((professional educator standards)) board.

(b) If the preproposal is approved((; the institution or organization shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board a written plan which addresses all final proposal components including:

(A) How the professional education advisory board was involved in program development, including a letter of support; and

(B) Letters of support from partner districts and/or agencies.

(iii) Present the written plan to the professional educator standards board.

(4) The program may be approved in a specific location(s) for a period of up to twenty-seven months following the beginning of instruction. The institution or organization shall notify the professional educator standards board when instruction has begun.

If approval is denied, the institution or organization may resubmit its plan based upon the suggestions of the professional educator standards board)) by the board, the prospective provider must develop and submit a written plan which addresses all final proposal elements including domains, components, and other program approval requirements contained in WAC 181-78A-220 and 181-78A-300 as established in this chapter and published by the board, including letters of support from partner districts and/or community agencies as evidence of how the program will meet Washington educator workforce needs.

(c) Final proposals submitted by prospective providers of school counselor preparation programs shall include verification of program approval by the council for the accreditation for counseling and related education programs.

(d) Final proposals submitted by prospective providers of school psychologist programs shall include verification of program approval by the National Association for School Psychology.

(4) After reviewing a prospective provider's final program proposal, the board may approve or deny the program approval:

(a) The program may be approved in a specific location(s) for an initial approval period of up to twenty-seven months following the beginning of instruction. The prospective provider must notify the board when instruction has begun. If initial approval is denied, the prospective provider may resubmit a revised plan informed by suggestions given by the board and its staff.

(b) School counselor and school psychologist programs: Approve the program for a time period to align with their respective national association approvals.

(5) Prior to the expiration of initial approval, staff of the ((professional educator standards)) board shall conduct a site visit to determine if the program is in full compliance ((with the program approval standards; provided that an institution with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution)) and performance aligned with the state approval requirements. This includes a review of all applicable indicators and domain components for the type of program.

AMENDATORY SECTION (Amending WSR 13-20-028, filed 9/23/13, effective 10/24/13)

WAC 181-78A-110 ((Length of time for which program approval status shall be granted.)) **Approval status for existing programs.** ((1) Existing programs. Based upon review of the program site visit report and other documentation requested, and taking into consideration: The degree to which previously identified issues have been successfully addressed, the relationship and balance between program strengths and weaknesses, and the relative importance of specific unmet criteria to the overall function of the program, the professional educator standards board shall exercise professional judgment in taking one of the following actions:

(a) Limited, approval of up to one year in length. In issuing limited approval, and depending on the nature of evidence that must be considered to regain full approval, the board may specify the requirement of a:

(i) Focused site visit related to unmet standards and recommendations; or

(ii) Written report, related to unmet standards and recommendations.

(b) Full approval of either:

(i) Five years; or

(ii) Seven years, per provisions of WAC 181-78A-100(6); or

(c) Disapproval (WAC 181-78A-115):

(i) A program with full five or seven year approval prior to the site visit shall not receive a disapproval rating, except under the provisions of subsection (3) of this section.

(ii) A program awarded a disapproval rating may request a hearing conducted through the office of administrative hearings under WAC 181-78A-100 (7)(g) and 10-08-035.

(2) New programs. All new programs shall be conditionally approved for up to twenty-seven months under WAC 181-78A-105.

(3) The professional educator standards)) Providers will be notified of their current program approval status after each annual review period. Approval status for all programs will be published on the board web site.

(1) Based upon performance thresholds, formal program review reports, and national accreditation status, as applicable, the board shall take one of the following actions:

(a) Full approval.

(i) Teacher and principal preparation programs: The board shall approve programs that maintain overall performance at or above thresholds on program performance indicators.

(ii) School counseling and school psychology: The board shall approve programs that maintain accreditation from their national accrediting organizations.

(iii) Superintendent programs: The board shall approve programs that meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(iv) Program administrator programs: The board shall approve programs that meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(b) Limited approval.

(i) Teacher and principal: The board may grant limited approval to educator preparation programs with performance below thresholds established by the professional educator standards board for more than three consecutive review periods. Based on the report of the site-based review team, the board may elect to consider these programs "at-risk" for purposes of federal reporting. Programs deemed "at-risk" after subsequent review periods of low performance on established thresholds, and with board consideration of the outcome of the formal review and report submitted per WAC 181-78A-100, may be granted continued limited approval with the designation of "low-performing" for purposes of federal reporting.

(ii) School counseling and school psychology: The board shall give limited approval to programs with limited approval from their national accrediting organizations.

(iii) Superintendent and program administrator: The board shall give limited approval to programs that do not meet approval criteria or national standards after being reviewed and reported on by a review team per WAC 181-78A-100(2).

(iv) The board's staff may provide technical assistance to providers of low-performing preparation programs to help them improve their performance. Technical assistance may include, but is not limited to:

(A) Detailed information on the programs performance relative indicators.

(B) Assistance to address the performance and rigor of programs.

(C) Assistance to identify resources to assist program improvement.

(D) Sharing practices found effective in exemplary programs.

(c) Disapproval.

(i) A teacher, principal, superintendent or program administrator program must be in limited approval status for at least one full review period before being considered by the board for disapproval. A provider whose program has been disapproved may request a hearing to be conducted through the office of administrative hearings under WAC 10-08-035.

(ii) Providers of school counseling programs must notify the board if the program loses approval from the council for the accreditation for counseling and related education programs. The board may rescind approval of the program upon receipt of this notification.

(iii) Providers of school psychology programs must notify the board if the program loses approval from the National Association of School Psychologists. The board may rescind approval of the program upon receipt of this notification.

(2) The board, upon receipt of a serious complaint from any source or upon its own initiative prompted by indications of the need for response, may at any time review all or any part of a preparation program for compliance with the provisions of this chapter. If deviations from standards or requirements are found, the ((professional educator standards)) board is authorized to change the program's current approval status, including full disapproval.

AMENDATORY SECTION (Amending WSR 10-23-078, filed 11/15/10, effective 12/16/10)

WAC 181-78A-115 Disapproved programs.

Approved educator preparation programs shall not lose official approval status until the ((professional educator standards)) board has taken final action to disapprove the preparation program pending the provisions under WAC 181-78A-110 (1)((d)(ii) programs)) (c). Providers shall be permitted to continue to prepare and recommend for certification candidates who have been previously admitted to the program, provided that no recommendations for certifications will be accepted later than thirty months following receipt of the formal notice of disapproval. Following the receipt of formal notice of disapproval, the ((program)) provider shall notify all currently enrolled candidates of the program's disapproval status.

AMENDATORY SECTION (Amending WSR 10-23-078, filed 11/15/10, effective 12/16/10)

WAC 181-78A-120 Procedures for reestablishment of approval status for an educator preparation program.

((H)) The procedures for the reestablishment of ((professional educator standards)) board approval of a preparation program shall be the same as the procedure for initial approval as provided in WAC 181-78A-105(, except that if the preparation program continues to operate pursuant to the probationary status provision of WAC 181-78A-115, the professional educator standards board may limit the content of the written plan required by WAC 181-78A-105(3) to program standards determined by the professional educator standards board to be the cause of the program's disapproved status.

(2) A disapproved program may submit a compliance agreement for review by the professional educator standards board. If the program submits an acceptable compliance agreement, the program may be granted permission to admit new candidates for a period of time not to exceed twelve calendar months from the date of disapproval. Compliance agreements, not to exceed ten pages, must document the following:

(a) A work plan overview;

(b) A timeline of work that has been and will be performed; and

(c) A matrix that cross references components of the work plan with all unmet standards identified in the site visit report)).

AMENDATORY SECTION (Amending WSR 13-03-155, filed 1/23/13, effective 2/23/13)

WAC 181-78A-220 Program approval standards for approved preparation programs. ((The program approval standards for approved preparation programs for teachers, administrators, and educational staff associates are as follows:

(1) **Professional education advisory boards:** The institution or organization, in compliance with the provisions of WAC 181-78A-250, has established and maintained a professional education advisory board to participate in and cooperate with the institution or organization on decisions related to the development, implementation, and revision of each preparation program — i.e., teacher, administrator, school counselor, and school psychologist.

(2) **Accountability:** Each institution or organization, in compliance with the provision of WAC 181-78A-255, has established a performance-based preparation program.

(3) **Unit governance and resources:** A separate school, department, or other administrative unit within the institution or organization, in compliance with the provision of WAC 181-78A-261, is responsible for providing the resources needed to develop and maintain quality preparation programs.

(4) **Program design:** Each institution or organization, in compliance with the provision of WAC 181-78A-264, is responsible for establishing a collaboratively developed approved preparation program that is based on a conceptual framework, current research and best practice that reflects the state's learning goals and essential academic learning requirements.

(5) **Knowledge and skills:** Each institution or organization, in compliance with the provision of WAC 181-78A-270, has established policies requiring all candidates for certification to know and demonstrate the content, pedagogical, and professional knowledge and skills required for the particular certificate and areas of endorsement, which reflect the state's learning goals and essential academic learning requirements, and are necessary to help all students learn.)) The board shall adopt and revise program standards that describe domains of practice, program components, and other expectations for teacher and principal preparation programs to align and maintain currency with recognized national association standards for the specific certificate role. The board will

use national standards as guidance for determining domains, components, and indicators used for program review.

(1) General domain outcome expectations for teacher, principal, superintendent, and program administrator preparation programs are as follows:

(a) Candidates and cohorts. Providers of educator preparation programs recruit, select, and prepare diverse cohorts of candidates with potential to be outstanding educators.

(i) Providers conduct strategic and ongoing outreach to identify, recruit, admit, support, and transition promising educator candidates.

(ii) Providers of preparation programs use strategies to recruit and prepare a greater number of candidates from underrepresented groups including, but not limited to, candidates of color in effort to prepare an educator workforce that mirrors the characteristics of the student population in Washington state public schools.

(iii) Providers set, publish and uphold admission standards to ensure that candidates and cohorts are academically capable and prepared to succeed in educator preparation programs.

(b) Knowledge, skills and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(i) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(ii) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(iii) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the national professional standards adopted by the board for the role for which candidates are being prepared.

(iv) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators.

(v) Providers require candidates to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(c) Novice practitioners. Providers prepare candidates who are role ready.

(i) Providers prepare candidates who are ready to engage effectively in their role and context upon completion of educator preparation programs.

(ii) Providers prepare candidates to develop reflective, collaborative, and professional growth-centered practices through regular evaluation of the effects of their teaching through feedback and reflection.

(iii) Providers prepare candidates for their role in directing, supervising, and evaluating paraeducators.

(d) State and local workforce needs. Providers contribute positively to state and local educator workforce needs.

(i) Providers partner with local schools to assess and respond to educator workforce, student learning, and educator professional learning needs.

(ii) Providers use preparation program and workforce data in cooperation with professional educator advisory

boards to assess and respond to local and state workforce needs.

(iii) Providers of teacher educator preparation programs prepare and recommend increasing numbers of candidates in endorsement areas identified by the professional educator standards board workforce priorities.

(e) Data systems. Providers maintain data systems that are sufficient to direct program decision making, inform state-level priorities, and report to the professional educator standards board.

(i) Providers develop and maintain effective data systems that are sufficient for program growth, evaluation, and mandated reporting.

(ii) Providers utilize secure data practices for storing, monitoring, reporting, and using data for program improvement.

(iii) Providers produce and utilize data reports in accordance with data and reporting guidance published by the professional educator standards board.

(f) Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(i) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement per WAC 181-78A-125.

(ii) Providers ensure that candidates integrate knowledge and skills developed through field experiences with the content of programs' course work.

(iii) Providers offer field experiences that are in accordance with WAC 181-78A-300 and the board approved candidate assessment requirements.

(iv) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status, or local population density.

(g) Program resources and governance. Providers ensure that programs have adequate resources, facilities, and governance structures to enable effective administration and fiscal sustainability.

(i) Providers ensure that programs utilize a separate administrative unit responsible for the composition and organization of the preparation program.

(ii) Providers ensure the program has adequate personnel to promote teaching and learning.

(iii) Providers ensure the program has adequate facilities and resources to promote teaching and learning.

(2) General knowledge and skills standards are as follows:

(a) Teacher: The board adopts the national knowledge and skills competencies most recently published by the Council of Chief State School Officers known as the *Interstate Teacher Assessment and Support Consortium Model Core Teaching Standards and Learning Progressions for Teachers*.

Endorsement competencies will be aligned with the national standards of each content area/specialized professional organization, when such a national standard is avail-

able. Currently approved endorsement standards and competencies will be published on the board web site.

(b) Principal: The board adopts the national knowledge and skills competencies most recently published by the National Policy Board for Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - Building Level* published in 2018, or as subsequently revised. Until the publication of the *National Educational Leadership Preparation (NELP) Standards - Building Level* published in 2018, providers of principal preparation programs will use Standard 5 as published by the professional educator standards board.

(c) Superintendent and program administrator: The board adopts the national knowledge and skills competencies published by the University Council of Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - District Level* published in 2018, or as subsequently revised. Until the publication of the *National Educational Leadership Preparation (NELP) Standards - District Level* published in 2018, providers of superintendent and program administrator programs will use Standard 5 as published by the professional educator standards board.

AMENDATORY SECTION (Amending WSR 15-08-054, filed 3/27/15, effective 4/27/15)

WAC 181-78A-300 Program requirements for teacher candidates. ~~((1) Approved programs for teachers shall))~~ In addition to the general program standards and expectations established in WAC 181-78A-220, providers shall comply with the following:

(1) Field placement. The board will publish minimum field placement and clinical experience requirements for all roles. Providers must establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement. Each field placement agreement shall require, but not be limited to:

(a) Fingerprint and character clearance under RCW 28A.410.010 is current at all times during the field experience for candidates who do not hold a valid Washington certificate;

(b) Assurance that programs shall ensure candidates are placed in settings where they can be objectively evaluated;

(c) Specified qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating educator/administrator;

(d) Assurances related to the provision of mentors, including:

(i) Mentors are instructional leaders identified collaboratively with the partner school or district;

(ii) Mentors and principals are provided with a set of internship expectations;

(iii) Mentors receive or provide evidence of training on mentoring of adult learners;

(iv) Mentors must be fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(e) Providers must describe in writing the duties and responsibilities of site supervisors and mentors and the anticipated length and nature of the field experience;

(f) Teacher preparation programs.

(i) A provider of a teacher education program must administer the teacher performance assessment adopted by the board to all candidates in a residency certificate program.

(ii) Clinical practice for teacher candidates should consist of no less than four hundred fifty hours in classrooms settings.

(g) Administrator preparation programs.

(i) The internship for administrators shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought.

(ii) A provider of a principal preparation program shall require for those persons beginning their internship August 1, 2016, and after, an internship which requires practice as an intern for five hundred forty hours, of which at least one-half shall be during school hours, when students and/or staff are present, and for the duration of a full school year. A "full school year" shall mean at least the majority of an academic year: Provided further, that a provider of a principal preparation program shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220.

(iii) A provider of a superintendent preparation program shall require an internship of at least three hundred sixty hours.

(2) Assessment requirements for providers of teacher preparation programs.

(a) A provider of a teacher preparation program must assure that all candidates entering the program ~~((shall))~~ have successfully passed the WEST B or its alternative or exemptions per chapter 181-01 WAC at the time of admission. The candidate must take and pass the WEST B, or provide evidence of meeting an alternative or exception at the time of admissions. Candidates admitted to a residency teacher preparation program prior to passage of the WEST B or its approved alternative or exemptions must pass the WEST B prior to student teaching. The ~~((program shall))~~ provider must collect and hold evidence of candidates meeting this requirement.

~~((2) Approved programs, when placing a teacher candidate in the student teaching role with a school district.))~~ (b) A provider of a teacher preparation program shall assure that the candidate has successfully attempted at least one WEST E or equivalent content assessment test per chapter 181-02 WAC prior to placing a teacher candidate in a student teaching role with a district. The ~~((program shall))~~ provider must collect and hold evidence of candidates meeting this requirement.

~~((3))~~ (c) Teacher evaluation. Teacher preparation program providers shall require candidates for a residency certificate to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(d) Performance assessment. Teacher preparation program providers shall require that each candidate engage in a performance assessment process approved by the board. All

candidates shall exit the residency certificate program with a professional growth plan.

(3) Required since time immemorial curriculum integration.

(a) There shall be a one quarter or semester course in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

(4) Principal preparation programs.

(a) A provider of a principal preparation program must require candidates to demonstrate knowledge of teacher evaluation research, Washington's evaluation requirements, and successfully complete opportunities to practice teacher evaluation skills.

(b) Performance assessment. All candidates shall exit the preparation program with a professional growth plan.

(5) Professional education advisory board.

(a) All educator preparation program providers shall establish and maintain a professional education advisory board to participate in and cooperate with the organization on decisions related to the development, implementation, and revision of preparation program(s).

(b) The professional education advisory board has adopted operating procedures and has met at least three times a year.

(c) The professional education advisory board annually shall review and analyze data for the purposes of determining whether candidates have a positive impact on student learning and providing the institution with recommendations for programmatic change. This data may include, but not be limited to: Student surveys, follow-up studies, employment placement records, student performance portfolios, course evaluations, program review indicators, and summaries of performance on the pedagogy assessment for teacher candidates.

(d) The professional education advisory board shall make recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.

(6) This section shall be in effect beginning September 1, 2017.

AMENDATORY SECTION (Amending WSR 11-01-047, filed 12/7/10, effective 1/7/11)

WAC 181-78A-307 Course work/internship waiver.
~~((The institution or organization))~~ Educator preparation program providers may waive required course work ~~((and/or))~~ or waive or reduce in length the required internship for any candidate, ~~((based on an individual review))~~ if the ~~((institution or organization))~~ provider determines based on individual review that previous course work, work experiences, or alternative learning experiences have or will provide the candidate knowledge and skills to be otherwise gained from the required course work or internship.

WSR 18-17-102

PERMANENT RULES

THE EVERGREEN STATE COLLEGE

[Filed August 15, 2018, 1:02 p.m., effective September 15, 2018]

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

Purpose: This rule articulates standards for student conduct and procedures for adjudicating allegations of student misconduct. This proposed rule is a broad update to the existing WAC.

Citation of Rules Affected by this Order: Amending chapter 174-123 WAC.

Statutory Authority for Adoption: RCW 28B.40.120.

Adopted under notice filed as WSR 18-12-072 on June 1, 2018.

Changes Other than Editing from Proposed to Adopted Version: Two subsections in WAC 174-123-290 were changed that (i) address who may assist a student in a conduct proceeding, and (ii) who may represent a party in a conduct appeal hearing. WAC 174-123-290(10) no longer requires that a person advising a student in a conduct proceeding must be a "nonattorney," and WAC 174-123-290(11) clarifies that a "college procedural advisor" may not represent a student in an appeal hearing.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 15, 2018.

John Carmichael
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-110 ((Notification to respondent.))
The Evergreen State College code of student rights and responsibilities. (((1) The respondent will meet with the student conduct code administrator for a conduct conference as directed in a written notice.

(2) The student conduct administrator may impose interim restrictions on the respondent prior to, or at any stage during, a conduct conference, when the health or safety of the complainant or any member of the college community is deemed at risk. The interim restriction may include a no contact order and/or loss of privileges limiting access to community members who may be at risk due to the respondent's presence.

A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the reason for imposing an interim restriction, and advised of the date, time and place for a hearing regarding the interim restriction before the student conduct administrator, or their designee. The hearing will take place no later than three business days from the effective date of the interim restriction.

(3) The interim restriction will remain in place until a contract of accountability exists, an appeal board issues a final determination, or the student conduct administrator notifies the respondent in writing that the interim restriction has been modified or is no longer in effect.)) **This chapter will be known as the code of student rights and responsibilities (code) for The Evergreen State College.**

A community exists on the basis of shared values and principles. At The Evergreen State College, student members of the community are expected to uphold and abide by certain standards of conduct that form the basis of the code of student rights and responsibilities. These standards are embodied within a set of core values reflected in the college mission that include integrity, social justice, respect, community, and responsibility.

This document is to be understood in connection with WAC 174-121-010 Social contract, which is an aspirational document about how we wish to uphold our community, and to ensure an optimal experience for everyone involved in the college community.

The Evergreen State College can thrive only when all members of the community participate in the social contract, which prizes academic and interpersonal honesty, conveys our commitment to resolving differences with a strong will toward collaboration, and protects community values and individual rights. The code of student rights and responsibilities states specific procedures and standards for upholding the values and aspirations expressed in the social contract. Specifically, the code strives to afford opportunities for informal resolution, restorative practices, and education.

BACKGROUND

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-120 ((Conduct conference.)) Purpose.
 (((1) During the conduct conference, which may occur over a series of meetings, the student conduct administrator will explain to the respondent the process for addressing complaints under the code, advise the respondent of their rights and responsibilities, and review with the respondent the complaint and alleged violation(s) of the code.

(2) If there is more than one respondent involved in the complaint, the student conduct administrator, at their discretion, may conduct the conferences concerning each respondent either separately, or jointly.

(3) Failure to meet with the student conduct administrator at the appointed time during the conduct conference process may subject a respondent to a conduct hold. If the respondent fails to meet with the student conduct administrator as required, a determination of responsibility and required resolution and sanctions may be determined in the respondent's absence.

(4) In addition to information sought from the respondent regarding the allegations, the student conduct administrator may seek additional information from other persons with information relevant to the investigation of the complaint.

(5) If the complaint is determined to have merit, the student conduct administrator will proceed with informal resolution, enter into a contract of accountability with the respondent, or complete an investigation and issue a determination of responsibility and required resolution and sanction(s). If the student conduct administrator determines that the respondent is not responsible for violating the code, no action will be taken and the complaint will be dismissed.)) **The purpose of this code is to provide students with necessary information about their rights and responsibilities, and to inform students of the due process afforded in student conduct proceedings.**

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-130 ((Informal resolution.)) Student rights and responsibilities. ((If the student conduct administrator concludes that efforts at informal resolution are appropriate to resolve a complaint, the administrator will take whatever steps are useful to that end, including mediation, arbitration or a restorative justice conference. The complainant may end the informal resolution process at any time and request formal resolution of the complaint.

If an informal resolution is reached and the respondent complies with the agreed terms and conditions, if any, no further action against the respondent will be taken and the matter will be closed. If a resolution is not reached, or the respondent fails to comply with the agreed terms and conditions of the resolution, the student conduct code administrator may proceed to take action necessary to resolve the complaint.)) **As members of the academic community, students are encouraged to develop the capacity for critical judgment and**

to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students, faculty, and staff create these opportunities and conditions. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following due process rights are guaranteed to each student within the limitations of statutory law and college policy:

(1) To be secure in their persons, housing, papers, and effects against unreasonable searches and seizures;

(2) No conduct sanction may be imposed on any student without notice to the accused of the alleged violations; and

(3) A student accused of violating this code is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-140 ((Contract of accountability.))

Definitions. ~~((1) The student conduct administrator may work with any respondent who acknowledges responsibility for engaging in prohibited conduct to identify the resolution and sanction(s). If an agreement is reached, the resolution and sanction(s) will be contained in a written contract of accountability signed by both the respondent and the student conduct administrator.~~

~~(2) A respondent who enters into a contract of accountability will comply with the resolution and sanction(s) set forth in the contract and will have no further right of appeal under the code. A respondent's failure to comply with a contract of accountability may be the basis for a separate violation of misconduct under the code and may result in the student conduct administrator issuing a conduct hold. The conduct hold will remain in effect until such time that the student satisfactorily completes all of the requirements of the contract of accountability. If a complaint alleges sexual misconduct, sexual harassment, or physical abuse, the complainant is to be informed of the contract of accountability.)~~ **Agreement of accountability** means a written mutual agreement between the respondent and student conduct official which states the violations of the code and the resolution and sanction(s).

Business day means any calendar day, exclusive of weekends and federal and school holidays, in which the college is open to the public for business.

Calendar day means any day of the month including weekends and state holidays.

College means The Evergreen State College.

College official means any person employed by the college performing assigned teaching, administrative, or professional responsibilities.

College premises means all campuses including all land, buildings, facilities, and other property in the possession of or owned, used, leased, or controlled by the college including adjacent streets and sidewalks.

College-sponsored event or activity means activities or events involving planning or funding, or other authorized participation by the college.

Complainant means any person, group, or entity that submits a complaint alleging that a student or recognized organization violated the code and/or a person who believes they have been harmed by another student's behavior.

Complaint means a report that alleges a student or recognized organization violated the code.

Conduct appeal is the process by which a student or recognized organization can appeal their determination of responsibility and/or required resolutions and sanctions.

Conduct hold is a measure restricting release of a student's transcript, diploma(s), or other records; and access to registration prohibiting registration for any program or course.

Consent is affirmative, conscious, voluntary, and clear permission by word(s) or action(s) for specific activity. See the section on sexual misconduct for additional information.

Determination of responsibility means a decision of the student conduct official regarding whether or not the respondent is responsible for the alleged violation(s) of the code, including a required resolution and sanctions if appropriate.

Faculty member means any person employed by the college to conduct teaching activities or who is otherwise considered by the college to be a member of the faculty.

Filing is the process by which a document is officially delivered to a college official responsible for facilitating processes as outlined in the code. Filing will be considered completed upon actual receipt during office hours at the senior college official's office by:

(a) Hand delivery of the document to the senior college official's office; or

(b) Sending the document by email or first class mail to the senior college official's office or college email address.

Final determination means the college's final action with regard to a complaint. A final determination occurs when a conduct official, conduct review officer, senior college official, or student conduct appeal panel determines whether a respondent is responsible for the alleged violation(s) of the code; and

(a) No appeal or request for reconsideration is filed by the applicable deadline set forth in the code; or

(b) No appeal or request for reconsideration is allowed under the code.

Guest means any person who is not a member of the college community and is on college premises or at a college-sponsored event at the invitation and/or hosting of a student.

Informal resolution is the outcome of a conduct conference when a student and a student conduct official enter into an agreement of accountability.

Member of the college community means any person who is a student, faculty, staff, or volunteer. A volunteer is any person who is not receiving compensation for services or work for and/or at the college. A person's status in a particular situation will be determined by the senior conduct official or designee.

Mental safety is a state of mind characterized by the absence of fear or anxiety that substantially limits one's abil-

ity to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in their work duties.

No contact order means an order directing a student to have no contact with a specified member(s) of the college community, visitor(s), or particular college facilities. The order may include, but is not limited to, directives with regard to path of travel, parking, arrival on campus, or specified times for use of campus resources.

Policy means the official written policies and procedures of the college published on the college's web site or in the college catalog, or posted anywhere on college premises or at college-sponsored events or activities; or the individual requirements of a department or office, or course syllabi or covenant.

Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; sex; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

Recognized organization means any group which has complied with the formal requirements for college recognition and is an officially recognized college organization. A group's status in a particular situation will be determined by the senior conduct official or designee.

Required resolution and sanction means the decision of the student conduct official regarding the resolution and sanction(s) appropriate to the level of responsibility for violating the code as conveyed in the determination of responsibility.

Respondent means any student or recognized organization alleged to have violated the code.

Restorative practice process means a process to involve those who have a stake in a specific violation of the code, to the extent possible and with their consent, to collectively identify and address harms, needs, and obligations. It may be part of a decision of the student conduct official regarding resolutions and sanctions in cases where the student or recognized organization has taken responsibility for their actions and a violation of the code.

Senior college official is the person designated by the college president to oversee the administration of the code, and for performing the other duties and obligations of the position.

Senior student conduct official means the primary college official authorized by the senior college official responsible for administration and implementation of the code.

Served notice is the process by which a document is officially delivered to a party. Unless otherwise provided in this code, service upon a party will be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email or certified mail or first class mail to the party's last known address. A student's last known address will be the current address on file with the registrar unless a student has provided written notice of a different address to the office of the senior college official.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed or deposited in the mail.

Sexual misconduct has the meaning ascribed to this term in WAC 174-123-170 Prohibited conduct.

Staff member means any person employed by the college in a nonfaculty role.

Student means:

(a) Any applicant who becomes enrolled, when an applicant commits violations of the code as part of the application process or commits violations of the code following their submittal of the application through official enrollment;

(b) Any applicant accepted for admission or readmission to the college;

(c) Any person currently enrolled at the college;

(d) Any person enrolled at the college in a prior quarter or summer session, and eligible to continue enrollment in the quarter or summer session that immediately follows; or

(e) Any person who was enrolled at the time of alleged violations of the code; or

(f) Any person not employed by the college on a permanent basis who resides in college housing.

Student conduct official means a college official authorized by the senior student conduct official to administer the code in response to a complaint.

Written notice means written communication personally provided to the student or registered organization or delivered via the student's or registered organization leaders' assigned college account electronic mail address.

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-150 ((Notice of determination of responsibility and required resolution and sanctions:)) Jurisdiction. ((1) If a complaint is not resolved through informal resolution or by entering into a contract of accountability, the student conduct administrator will issue a determination of responsibility based on a standard of more likely than not and if appropriate, a required resolution and sanction(s).

(2) The determination of responsibility will identify the specific conduct that has violated the code. The required resolution and sanction(s) will provide for those tasks or consequences, and associated deadlines, the respondent must execute to address violations of the code.

(3) The student conduct administrator's determination of responsibility and required resolution and sanction(s) will be final unless the respondent files a timely appeal to the student conduct appeals board. If a complaint alleges sexual misconduct, sexual harassment, or physical abuse, the complainant is to be informed of the final determination and any sanction imposed against the respondent and may file a timely appeal to the student conduct appeals board.)) (1) The code of student rights and responsibilities will apply to conduct by a student or a recognized organization that occurs:

(a) On college premises; or

(b) At or in connection with a college-sponsored activity or program; or

(c) At an off-campus location and, based on a reasonable person's standard, adversely affects a college community member's ability to participate in or benefit from the college's educational opportunities, programs, or activities, an employee's ability to engage in their work duties, or adversely affects the college's pursuit of its objectives.

(2) Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by student fees, the recognized student government, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social events or recognized organization's activities.

(3) Students are responsible for their conduct as long as they meet the definition of student as defined in this code.

(4) These standards will apply to a student's conduct even if the student withdraws from the college while a complaint is pending.

(5) The senior college official or their designee has sole discretion, on a case-by-case basis, to determine whether the code will be applied to conduct that occurs off campus.

(6) The senior college official or their designee has sole discretion, on a case-by-case basis, to determine whether the code of student rights and responsibilities, or the college's student activities policies, or both will be applied to conduct by a recognized organization.

(7) Nothing in this code will be construed as being intended to create a legal obligation on the part of the college to protect any person or class of persons from injury or harm, or to deny students their legal and/or constitutionally protected rights.

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-160 ((~~Resolution and sanctions~~))
Computation of time. ((The following resolution and sanctions may be agreed to by, or required of, a respondent found to have violated the code. More than one resolution and sanction may be imposed for any single violation. Resolution and sanctions are based on the unique aspects of each situation and should be appropriate to the violation, taking into consideration the context and seriousness of the violation. History, patterns, and frequency of misconduct; severity and level of impact on the community; and a student's motivation and response all determine the resolution and sanction for each individual respondent.)

~~(1) **Warning.** This is a written notice that the student is violating, or has violated, the code.~~

~~(2) **Educational and discretionary actions.** This includes, but is not limited to, work assignments, essays, behavior assessment and recommended treatment, completion of a workshop or training, restorative justice conference, or service to the college.~~

~~(3) **Probation.** A written reprimand and notice that for a designated period of time a student will be on special status with conditions imposed that include the probability of additional required resolution and sanctions if the student is found to violate the code during the probationary period of time.~~

~~(4) **Loss of privileges.** This may include, but is not limited to, limited access or restriction from college premises, college-sponsored activities or events, use of equipment, student employment, or participation in cocurricular activities.~~

~~(5) **Restitution.** Compensation for loss, damage, or expenses for injury incurred by the college or persons resulting from a violation of the code. This may take the form of appropriate service, monetary or material replacement, or a combination of both.~~

~~(6) **No contact order.** A directive that a student may have no contact with other stated members of the college community. In the case where a "no contact order" is issued, a student may be required to organize their activities in order to avoid contact with designated individuals.~~

~~(7) **Residence hall suspension.** Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions allowing for a student to return to the residence hall may be specified in the suspension.~~

~~(8) **Residence hall expulsion.** Permanent separation of the student from the residence halls.~~

~~(9) **College suspension.** Separation of the student from the college for a definite period of time, after which the student is eligible to return, provided that the student has complied with all conditions imposed as part of the suspension and the student is otherwise qualified for reenrolling. Conditions for reenrollment may be specified in the suspension.~~

~~(10) **College expulsion.** Permanent separation of the student from the college with a notation on the student's transcript.~~

~~(11) **Withholding admission or degree.** The withholding of admission to, or the withholding of a degree awarded from, the college for a specified amount of time.~~

~~(12) **Revocation of admission or degree.** The revocation of the admission to or the revocation of a degree from the college in those cases in which egregious academic dishonesty is discovered subsequent to a student's graduation. Degree revocation must be approved by the board of trustees and will be noted on the student's academic record.~~

~~(13) **Records hold.** The placement of a records hold on the student's academic record prohibiting the release of any transcripts, diploma(s) or other records until a student satisfies the terms and conditions of any required resolution and sanction.)~~ In computing any period of time in these rules, the day from which the designated period begins to run will not be included. The last day of the period will be included unless it is a Saturday, Sunday, holiday, or campus closure, in which event the period runs until the end of the next day which is not a Saturday, Sunday, holiday, or campus closure. All college personnel responsible for administering the code will carry out their responsibilities promptly. Promptly means as soon as reasonably practicable under the facts and circumstances at the time, and pursuant to guidelines that may be adopted by the senior college official or their designee.

((STUDENT CONDUCT APPEALS))

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-170 ((Filing of appeal)) Prohibited conduct. ~~((1) A respondent may appeal a student conduct administrator's determination of responsibility and required resolution and sanction(s) to the student conduct appeals board. A complainant, in cases where a complaint alleges sexual misconduct, sexual harassment, or physical abuse may also appeal a student conduct administrator's determination of responsibility and required resolution and sanction(s) to the student conduct appeals board. An appeal must be in writing and received by the vice president for student affairs within twenty calendar days of written notice of the student conduct administrator's determination of responsibility and required resolution and sanction(s).~~

~~(2) Except in cases of an emergency suspension, the respondent's enrollment status, and rights as an enrolled student, will not be altered if a timely appeal is filed with the student conduct appeals board under subsection (1) of this section.)~~ The code of student rights and responsibilities recognizes two types of prohibited conduct: Conduct related to community, and conduct related to persons. The subsections below outline the basic structures of community that the code seeks to uphold, and the basic rights and expectations of students that the code seeks to support.

(1) Conduct related to community.

The Evergreen State College community is a vibrant and engaged collective of individuals who have committed to the mission of the college. The college's mission statement reads as follows: "As an innovative public liberal arts college, Evergreen emphasizes collaborative, interdisciplinary learning across significant differences. Our academic community engages students in defining and thinking critically about their learning. Evergreen supports and benefits from local and global commitments to social justice, diversity, environmental stewardship and service in the public interest." Students are encouraged to continue to grow individually while contributing to and shaping the Evergreen community as each person brings new ideas, new perspectives, and renewed focus that is invaluable at a liberal arts college.

Students in the college community are expected to practice academic integrity: To author their own ideas and critique and evaluate others' ideas in their own voices. The greater learning community of the college can thrive only if each person works with a genuine commitment to make their own authentic intellectual discoveries. To that end it is a community expectation that students and recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Academic dishonesty** which includes, but is not limited to, the following:

(i) **Cheating** includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment;

(ii) **Plagiarism** includes taking and using as one's own without proper attribution the ideas, writings, or work of another person in completing an academic assignment. Pla-

giarism may also include the unauthorized submission of academic work for credit that has been submitted for credit in another course;

(iii) **Fabrication** includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment;

(iv) **Using assistance or materials that are expressly forbidden to complete an academic product or assignment;**

(v) **The unauthorized collaboration with any other person during the completion of independent academic work;**

(vi) **Knowingly falsifying or assisting in falsifying in whole, or in part, the contents of one's academic work;**

(vii) **Permitting any other person to substitute oneself to complete academic work; or**

(viii) **Engaging in any academic behavior specifically prohibited by a faculty member in the course covenant, syllabus, or individual or class discussion.**

(b) **Damaging, defacing, destroying, or tampering with college property or other personal or public property.** This includes, but is not limited to, graffiti and vandalism.

(c) **Disorderly conduct** which includes any individual or group behavior which is abusive, obscene, violent, excessively noisy, or which unreasonably disturbs institutional functions, operations, classrooms, other groups or individuals. These behaviors include, but are not limited to, those which obstruct or interfere with institutional activities, programs, events, or facilities, such as:

(i) **Any unauthorized occupancy of facilities owned or controlled by the college, or blockage of access to or from such facilities, or the occupation of college property after being given notice to depart;**

(ii) **Interference with the ability of any authorized person to gain access to any activity, program, event, or facility sponsored or controlled by the college;**

(iii) **Any obstruction or delay of a public safety officer, police officer, firefighter, EMT, or any official of the college;**

(iv) **The use of force or violence (actual or threatened) to deny, impede, obstruct, impair, or interfere with the freedom of movement of any person, or the performance of duties of any college employee;**

(v) **Participation in a disruptive or coercive demonstration. A demonstration is considered disruptive or coercive if it substantially impedes college operations, interferes with the rights of others, or takes place on premises or at times where students are not authorized to be;**

(vi) **Obstruction of the free flow of pedestrian or vehicular traffic on college property or at college sponsored/supervised functions; or**

(vii) **Public urination or defecation.**

(d) **Disruptive behavior in the classroom** may be defined as, but not limited to, behavior that unreasonably obstructs or disrupts the learning environment (e.g., outbursts which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining the learning community as defined in the course syllabus or covenant, and the continued use, after being given notice to stop, of any electronic or other noise or light emitting device which disturbs others, unless use of such technologies are an autho-

alized accommodation for a documented disability for that program).

The faculty member has responsibility for maintaining a productive classroom and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive behavior or behavior that violates the general rules and regulations of the college for each class session during which the behavior occurs. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further conduct action can be effected only through appropriate procedures of the college. The faculty member may also report incidents of classroom misconduct to the student conduct office.

(e) **Forgery, alteration, or the misuse** of college documents, records or identification cards.

(f) **Failure to comply** with the direction of or failure to identify yourself to a college official or other public official acting in the performance of their duties.

(g) **Unauthorized entry** into or onto, or the unauthorized remaining in, or upon, any college premises; or the unauthorized possession, duplication, or use of a college key or other access device.

(h) **Sounding of a false alarm** which includes, but is not limited to, initiating or causing to be initiated any false report, warning or threat, such as that of fire, explosion or emergency that intentionally causes a false emergency response; and the improper use or disabling of safety equipment and signs.

(2) **Conduct related to persons.**

Students of The Evergreen State College are to practice good citizenship in the campus community and beyond. Our collective efforts include implementation of the education, experiential learning, and skills gained through engagement with the faculty, staff, and students of the college. Engagement can be through civil discussions, a free exchange of ideas, participation in events and programs, or through other interactions where the desire to create spaces for learning are present. Students are encouraged to pursue new opportunities to engage and expand their intellectual curiosities and develop an understanding of the global society in which we live.

Students in the college community participate with fellow community members (faculty, staff, students, and members of the community beyond The Evergreen State College) in dialogue, educational activities, social events, and more with a focus on civil engagement and being one's best self. To that end it is a community expectation that students or recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Alcohol, drug, and tobacco violations.**

(i) **Alcohol.** The use, possession, delivery, sale, manufacture, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(ii) **Cannabis.** The use, possession, delivery, or sale of cannabis or the psychoactive compounds found in cannabis, regardless of form, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis. Cannabis use and possession is illegal under federal law and the college is required to prohibit the possession, use and

distribution of illicit drugs, including cannabis, as a condition of receiving federal funding.

(iii) **Drugs.** The use, possession, delivery, sale, manufacture, or being observably under the influence of any mood altering drug, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(iv) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited except as allowed by college policy in designated smoking areas. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(b) **Assault.** Unwanted touching, physical harm or abuse, or threats of physical harm or abuse which threaten the health or safety of another person.

(c) **Cyber misconduct.** The term "cyber misconduct" includes, but is not limited to, behavior involving the use of a computer, computer network, the internet, or use of electronic communications including, but not limited to, electronic mail, instant messaging, list serves, electronic bulletin boards/discussion boards, ad forums and social media sites or platforms, to disrupt college function, adversely affect the pursuit of the college's objectives, or to stalk, harm or harass, or engage in other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person, or which is sufficiently severe, persistent, or pervasive that it interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(d) **Failure to be truthful to the college or a college official.** This includes, but is not limited to, knowingly making false charges against another member of the college community; and providing false or misleading information in an application for admission or to gain employment.

(e) **Failure to follow fire safety regulations.** Failure to evacuate during a fire alarm; the improper use or damaging of fire prevention or safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations, or emergency exits; or the unauthorized setting of fires.

(f) **Harm.** Behavior directed at an individual that based on a reasonable person's standard is sufficiently severe, pervasive, or persistent such that it diminishes or interferes with the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college or an employee to engage in their work duties. This includes, but is not limited to, intimidation, verbal abuse, threat(s), bullying, or other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person. Bullying is repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates another person.

(g) **Harassment.** Conduct against a person on the basis of protected status that is sufficiently severe, pervasive, or persistent as to interfere with or diminishes the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(h) **Hazing.** Conduct that includes any activity or method of initiation into a recognized organization or student social, living, learning, or athletic group that causes, or is likely to cause, bodily danger or physical or mental harm to any member of the college community.

(i) **Knowingly assisting another person to violate the code** or failing to report to a college official conduct that constitutes significant damage to property or a serious danger to the health or physical safety of an individual.

(j) **Lewd conduct.** Behavior which is sexualized or obscene that is not otherwise protected under the law including, but not limited to, exposing genitalia, and engaging in sexual intercourse or sexual activity in public.

(k) **Obstructive behavior in conduct conferences or hearings.** Any conduct at any stage of a process or investigation that is threatening or disorderly, including:

(i) Failure to abide by the directives of a student conduct official or college official(s) in the performance of their duties;

(ii) Knowing falsification, distortion, or misrepresentation of information before a student conduct official or hearing panel;

(iii) Deliberate disruption or interference with the orderly conduct of a conduct conference or hearing proceeding;

(iv) Making false statements to any student conduct officials or hearing panel;

(v) Attempting to influence the impartiality of a member of a hearing panel or a student conduct official prior to, or during the course of, a proceeding; or

(vi) Harassment or intimidation of any participant in the college conduct process.

(l) **Recording.** The recording of any private conversation, by any device, without the voluntary permission of all persons engaged in the conversation except as permitted by state law, chapter 9.73 RCW. For purposes of this section, the term "permission" will be considered obtained only when one party has announced to all other parties engaged in the communication or conversation that such communication or conversation will be recorded or transmitted; and the announcement itself is recorded as part of the conversation or communication.

(m) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of the code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or conduct proceeding.

(n) **Theft** (attempted or actual) of property, services, or identity. This includes, but is not limited to, using, taking, attempting to take, possessing, or aiding another to take college property or services, or property belonging to any person, without express permission. Identity theft is the use of another person's name and personal information including, but not limited to, private identifying information, without their permission in order to gain a financial advantage or obtain credit or other benefits in the other person's name.

(o) **Viewing,** distributing, photographing, or filming another person without that person's knowledge and voluntary permission, while the person being photographed,

viewed, or filmed is in a place where they would have a reasonable expectation of privacy. The term "permission" will be considered obtained if there are signed waivers, written permission, or verbal agreement recorded with specificity to the content.

(p) **Violation of any college policy** including, but not limited to, residential and dining services policies, appropriate use of information technology resources policies, and WAC 174-136-043 regarding weapons.

(q) **Violation of federal, state, or local law** including being charged by law enforcement, or convicted of a felony or misdemeanor, under circumstances where it is reasonable to conclude that the presence of the person on college premises would constitute a danger to the physical or mental safety of a member(s) of the college community.

(r) **Stalking** is a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

(s) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual exploitation, sexual violence, relationship violence, domestic violence, and stalking.

(3) Sexual misconduct and consent.

In order to understand the definitions of prohibited conduct in this section, and to adjudicate complaints of sexual misconduct, it is necessary to provide a further definition of consent. This section provides information about consent related to sexual misconduct.

Consent is permission expressed by words or actions that is clear, knowing, and voluntary, regarding willingness to engage in sexual activity. Consent is active, not passive. Each party has the responsibility to make certain that the other has consented before engaging in the activity. Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. Previous relationship or prior consent does not imply consent to future sexual acts; this includes "blanket" consent (i.e., permission in advance for any/all actions at a later time or place). Consent can be withdrawn once given, as long as that withdrawal is communicated. There is no requirement for a party to resist the sexual advance or request, and resistance is a clear demonstration of nonconsent.

A person cannot consent if they are incapacitated. Incapacitation is a state where someone cannot make reasoned decisions because they lack the capacity to give consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the complainant is physically or mentally incapacitated has engaged in nonconsensual conduct. The question of what a person should have known is objectively based on what a reasonable person in the place of the participant(s), sober and

exercising good judgment, would have known about the condition of the complainant.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual activity. When someone makes clear to another person that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point is coercive.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

This code is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity. Conduct is determined a violation as per the reasonable person standard.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature that is sufficiently severe, pervasive, or persistent as to deny or limit based on sex, the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college or an employee to engage in their work duties, that creates an intimidating, hostile, or offensive environment for other community members.

(b) **Sexual exploitation.** The term "sexual exploitation" means conduct that takes nonconsensual or abusive sexual advantage of another for their own or another's benefit. Sexual exploitation includes, but is not limited to, nonconsensual recording of sexual activity or the nonconsensual distribution of a consensual or nonconsensual recording or image; going beyond the boundaries of consent; forcing another person to engage in sexual activity for payment; or knowingly exposing someone to or transmitting a sexually transmitted infection.

(c) **Sexual violence.** The term "sexual violence" means an act or acts of a sexual nature against a person without their consent. Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger or another body part or object, or oral copulation by mouth to genital contact. Nonconsensual sexual intercourse also includes forcing a person to engage in vaginal or anal penetration by a penis, object, tongue or finger, or oral copulation by mouth to genital contact.

Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual contact includes intentional contact with the lips, breasts, buttock, groin, or genitals, or clothing covering any of those areas, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, or any other intentional bodily contact in a sexual manner.

(d) **Domestic violence.** The term "domestic violence" means the infliction of physical harm, bodily injury, assault,

or the fear of imminent physical harm, bodily injury, or assault committed against a current or former spouse or intimate partner, current or former cohabitant, a person with whom the person shares a child in common, or a person with whom one resides.

(e) **Relationship violence.** The term "relationship violence," also known as dating violence, means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be presumed based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(f) **Stalking.** The term "stalking" means a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

CODE PROCEDURES

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-180 ((Notice of hearing-)) Purpose. (((1) After receipt of a timely request for a hearing, the vice president for student affairs, or designee, will schedule a hearing before the student conduct appeals board and provide served notice to the respondent at least seven business days in advance of the hearing. The seven days advance notice may be waived by the vice president for student affairs, or designee, with the student's permission.

(2) The served notice provided to the respondent will include the following:

(a) The date, time, location, and nature of the proceeding;

(b) A date by which the respondent and student conduct administrator must identify advisors and/or individuals who will be involved in sharing information on their behalf as well as requests for reasonable accommodations, if any, for these individuals;

(c) A date by which the student conduct administrator and respondent must provide copies of any documents to be provided to the board at the hearing. The date for providing documents must be at least two business days prior to the hearing date.)) The student conduct process provides due process, educates students about their rights and responsibilities, and holds students accountable for their actions. If students believe that a student conduct official is not handling complaints according to these procedures, students should report their concern immediately. Students may report concerns to the senior college official or designee using the procedural review process outlined in WAC 174-123-250.

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-190 ((Procedure at hearing.)) Submitting a complaint. ((The procedures to be followed at hearings conducted by the student conduct appeals board are as follows:

(1) All procedural questions and other decisions are subject to the final decision of the chair of the board unless otherwise provided for in these rules. The chair will ensure that the proceeding is held in an orderly manner such that the rights of all parties to a full, fair and impartial proceeding that adheres to the code is achieved.

(2) The hearing is a closed proceeding which includes only members of the board; the advisor to the board, if any; the student conduct administrator and their advisor, if any; the complainant and the respondent and their advisor(s), if any; and persons requested to provide information at the hearing. Admission of any other person to the hearing is at the discretion of the board's chair and subject to the requirement set forth in subsection (8) of this section.

(3) The complainant and the respondent are neither encouraged nor required to be assisted by an advisor of their choosing at their own expense. The student conduct administrator and respondent are expected to present all information during the proceedings. Proceedings will not be automatically delayed due to the scheduling conflicts of an advisor. In cases where the complaint alleges sexual misconduct, sexual harassment, or physical abuse, the complainant may present information during the proceedings.

(4) There will be a single verbatim sound recording of the hearing, and the record will be on file with the vice president for student affairs and is the property of the college.

(5) The respondent's failure to cooperate with or attend a hearing will not preclude the board from proceeding and issuing a final determination or upholding the determination of the student conduct administrator.

(6) Only those materials and information presented at the hearing will be considered. The chair may exclude or limit ineffectual, irrelevant, or unduly repetitious information.

(7) Any person disrupting the proceeding will be duly warned and subsequently may be excluded from the hearing by the chair. Any student engaging in such interference will be in violation of the student conduct code.

(8) The chair is authorized to take reasonable measures to maintain control over the proceedings in order to elicit relevant information, to prevent the mistreatment of participants, to insure that proceedings are not disrupted and the interests of fairness are served. This may include regulating the timing, length and manner of presentations, declaring recesses in the proceedings, and taking other appropriate actions.

(9) Only members of the student conduct appeals board and the advisor to the board, if any, will be present for deliberations. Deliberations are not recorded. During deliberations the board will consider all the information presented and decide by majority vote whether it is more likely than not that the respondent is responsible for violating each section of the code the respondent is charged with violating and/or what resolution and sanction(s) to impose.)) (1) Any person may submit a complaint alleging a violation of the code. A com-

plaint may be submitted through the online report form, or to a college official who is able to take action. This includes, but is not limited to, the student conduct officials, the Title IX officials, residential life staff, police services, or to the senior college official. Individuals may choose not to submit a report to police services alleging a violation of the code. A complaint should be submitted as soon as possible after the event has taken place. A group of people may make an initial complaint collectively.

(2) The senior student conduct official, or designee, will be responsible for addressing alleged violations of the code. If there is a question about who should be responsible for addressing a complaint, the senior college official, or designee, will assign responsibility for handling the complaint and if necessary, serve as a student conduct official.

(3) A complainant or respondent may request, in writing to the senior college official or designee, to have a complaint addressed by an alternate student conduct official if a bias, prejudice, or conflict of interest is identified. The senior college official or designee will have the final authority to determine the appropriate student conduct official to assign in this case.

(4) Based on the complaint, the senior student conduct official or designee will conduct an initial review of the complaint to determine jurisdiction and if there is clear information to indicate a possible violation of the code in order to determine next steps. The senior student conduct official or designee may elect to initiate a conduct conference, attempt to gather additional information to make a determination, or close the complaint without any further action. If the complaint is closed without any further action by the senior student conduct official or designee, the parties may be referred for additional resources.

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-200 ((Board composition.)) Interim measures. ((1) The board will be composed of five members consisting of one faculty member, one staff member, and three students. One member will be designated by the vice president to serve as the chair of the board for a hearing.

(2) The faculty agenda committee will designate faculty members to serve on the student conduct appeals board as needed.

(3) The vice president for student affairs will be responsible for designating the student and staff members serving on the board. The student members, including the selection of alternate members to serve as necessary, will be done through an open selection process established by the vice president.

(4) A respondent, complainant, and/or the student conduct administrator may request removal of a member of the board at the commencement of the hearing for reasons of bias, prejudice or conflict of interest. The chair of the board will be responsible for making decisions regarding removal, unless the student is requesting removal of the chair. When there is a request to remove the chair, and the chair does not voluntarily step down, a quorum of the remaining members will decide whether removal is warranted. If a member is removed, an appropriate alternate member (i.e., faculty, stu-

dent or staff) will serve on the board for the excused member.) (1) **Interim restrictions.** The student conduct official or designee may institute interim restrictions prior to, or at any stage during, a student conduct proceeding when the physical or mental safety of any member of the college community is deemed at risk. The interim restriction may include a no contact order and/or loss of privileges.

(a) A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the reason for instituting an interim restriction, and advised of the date, time, and place for a hearing regarding the interim restriction before the student conduct official, or their designee. The hearing will take place no later than five business days from the effective date of the interim restriction.

(b) The interim restriction has immediate effect and will remain in place during any procedural review process, until an agreement of accountability exists, a student conduct official issues a determination of responsibility, an appeal panel issues a final determination, or the student conduct official notifies the respondent in writing that the interim restriction has been modified or is no longer in effect.

(2) **Interim suspension.** This is a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while a student conduct proceeding is pending. The senior college official or their designee may impose an interim suspension, which has immediate effect, if there is probable cause to believe that the respondent has violated any provision of the code and presents a substantial or ongoing danger to the physical or mental safety of any member of the college community; or poses an ongoing threat of substantial disruption of, or interference with, teaching, learning, or the operations of the college.

(a) Any student assigned an interim suspension will be provided oral or written notice of the interim suspension. If oral notice is given, a written notification will be served on the respondent within two business days of the oral notice.

(b) The written notice will be entitled "Notice of Interim Suspension" and will include:

(i) The reasons for imposing the interim suspension, including a description of the conduct giving rise to the interim suspension and reference to the provisions of the code allegedly violated;

(ii) The date, time, and location when the respondent must appear before the senior college official or their designee for a hearing on the interim suspension; and

(iii) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been barred from the campus, a notice will be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent will be considered trespassing if the respondent enters the college campus other than as approved by the senior college official or their designee.

(c) The senior college official or their designee will conduct a hearing on the interim suspension within five business days after imposition of the interim suspension.

(d) During the interim suspension hearing, the issue before the senior college official or their designee is whether there are reasonable grounds to believe that the interim suspension should be continued pending the conclusion of student conduct proceedings and/or whether the interim suspension should be less restrictive in scope.

(e) The student will be afforded an opportunity to explain why interim suspension should not be continued while conduct proceedings are pending or why the interim suspension should be less restrictive in scope.

(f) If the student fails to appear at the designated hearing time, the senior college official or their designee may order that the interim suspension remain in place pending the conclusion of the conduct proceedings.

(g) As soon as practicable following the hearing, the senior college official or their designee will issue a written decision which will include a brief explanation for any decision continuing and/or modifying the interim suspension.

(h) To the extent permissible under applicable law, the senior college official or their designee will provide a copy of the decision to all persons or offices who may be bound or protected by it.

(i) In cases involving allegations of sexual misconduct, the complainant will be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the student. The college will also provide the complainant with same day notice of any subsequent changes to the interim suspension order.

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-210 ((Final determination-)) Initiating a conduct conference. ((The board will issue a final determination that:

(1) Upholds part, or all, of the determination of responsibility; and upholds the required resolution and sanction(s), or modifies or develops an alternate resolution and sanction(s); or

(2) Determines that it is more likely than not that the student is not responsible for violating the code, reverse the determination of responsibility issued by the student conduct administrator, and dismiss the case.

The final determination will be provided to the respondent by served notice. If a complaint alleges sexual misconduct, sexual harassment, or physical abuse, the complainant will be informed of the final determination and any sanction imposed against the respondent by written notice.) A conduct conference is a meeting or a series of meetings, held between a respondent and a student conduct official. The student conduct official will explain to the respondent the process for addressing complaints under the code, advise the respondent of their rights and responsibilities, and review with the respondent the complaint and alleged violation(s) of the code.

(1) The respondent will meet with the student conduct official for a conduct conference as directed in a written notice. The notice will briefly describe the allegations and the provision(s) of the code the respondent is alleged to have violated. The notice will direct the respondent to schedule a con-

duct conference or direct the respondent to attend a conduct conference at a specific time and location. At the conduct conference, the student conduct official will present the allegations to the respondent and the respondent will be afforded an opportunity to explain what occurred. If the respondent fails to attend the conduct conference, a determination of responsibility and required resolution and sanction(s) may be determined in the respondent's absence.

(2) If there is more than one respondent involved in the complaint, the student conduct official, at their discretion, may conduct the conferences concerning each respondent either separately or jointly.

(3) In addition to information sought from the respondent regarding the allegations, the student conduct official may seek additional information from other persons with information relevant to the investigation of the complaint.

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-220 ((~~Reconsideration~~)) Informal resolution and agreement of accountability. ~~((1) Within ten business days of the served notice of the final determination, the complainant or the respondent may submit a petition for reconsideration with the student conduct appeals board. The petition must state the specific grounds upon which relief is requested.~~

~~(2) The petition will be deemed submitted on the day of actual receipt by the board. Service on the board can be made by one of the following means:~~

~~(a) Email received by the office of the vice president for student affairs; or~~

~~(b) By deposit in the United States mail, postage prepaid, addressed as follows: The Evergreen State College, Student Conduct Appeals Board, Office of the Vice President for Student Affairs, 2700 Evergreen Parkway N.W., Olympia, Washington 98505; or~~

~~(c) By personal service on the student conduct appeals board which will be deemed accomplished by hand delivering the petition to the office of the vice president for student affairs during regular business hours at the address listed in (b) of this subsection.~~

~~(3) The final determination issued by the student conduct appeals board will remain in effect during the time period that a petition for reconsideration is under review by the board. The board will respond within twenty business days from the date the petition is submitted.) The student conduct official will attempt to resolve a complaint informally using an agreement of accountability. If a complaint is not resolved using an agreement of accountability, the student conduct official will resolve the complaint by issuing a determination of responsibility and required resolution and sanction(s) as described in WAC 174-123-230.~~

(1) The student conduct official may work with any respondent who acknowledges responsibility for engaging in prohibited conduct to identify the resolution and sanction(s). If an agreement is reached, the resolution and sanction(s) will be contained in a written agreement of accountability signed by both the respondent and the student conduct official.

(2) A respondent who enters into an agreement of accountability will comply with the resolution and sanction(s) set forth in the agreement and will have no further right of appeal under the code. A respondent's failure to comply with an agreement of accountability may be the basis for a separate violation of misconduct under the code. A separate violation will be addressed using a conduct hold and/or initiating a conduct conference as described in WAC 172-123-210. The conduct hold will remain in effect until such time that the student satisfactorily completes all of the requirements of the agreement of accountability. If a complaint alleges sexual misconduct or assault, the informal resolution and agreement of accountability will not be used and a notice of determination of responsibility and required resolution and sanctions process (WAC 174-123-230) is used.

(3) A restorative practice process may be a component of an agreement of accountability in cases where the student has taken responsibility for their actions and a violation of the code. An agreement may be entered into as part of an agreement of accountability that the student is choosing to voluntarily participate in a restorative practice process. A restorative practice is intended to provide resolution and restoration for those negatively impacted by the code violation, as well as, give the respondent an opportunity to make the situation as right as possible.

((~~MAINTENANCE OF STUDENT CONDUCT CODE RECORDS~~))

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

WAC 174-123-230 ((~~Retention~~)) Notice of determination of responsibility and required resolution and sanctions. ~~((1) A student's conduct record may be retained for seven years after the final disposition of the case unless the college is required to retain the record for a longer period of time under another provision of state or federal law. When the resolution and sanction(s) includes college expulsion or revocation of a degree the record will be retained in perpetuity. Final disposition is defined as when:~~

~~(a) A respondent fulfills the contract of accountability or the required resolution and sanction(s) issued by the student conduct appeals board; or~~

~~(b) A case is closed at the discretion of the student conduct administrator when the respondent has not completed the required resolution and sanction and has not been enrolled for twelve months.~~

(2) Other than college expulsion, degree revocation, or withholding of a degree, resolution and sanctions will not be made part of the student's permanent academic record, but will be part of the student's conduct record.) (1) If a complaint is not resolved by entering into an agreement of accountability, the student conduct official will issue a determination of responsibility based on a preponderance of the evidence standard. Preponderance of the evidence standard means it is more likely than not that the information and evidence shows that an alleged policy violation did or did not occur.

(2) The student conduct official may take any of the following actions:

(a) Determine the respondent is not responsible for violating the code and end the conduct proceedings.

(b) Determine the available information is inconclusive at this time. The student conduct official may revisit the determination if additional relevant information becomes available.

(c) Determine the respondent is responsible for violating the code and issue required resolution(s) and sanction(s) as described in WAC 174-123-240.

(3) The determination of responsibility will identify the specific conduct that has violated the code. The required resolution and sanction(s) will state the tasks or actions, and associated deadlines, the respondent must execute to address violations of the code.

(4) The student conduct official's determination of responsibility and required resolution and sanction(s) will be final unless the respondent files a timely appeal to the senior college official. If a complaint alleges sexual misconduct or assault, the complainant is to be informed of the final determination and any required resolution and sanction imposed against the respondent and may file a timely appeal to the senior college official.

~~((SIMULTANEOUS CIVIL OR CRIMINAL PROCEEDINGS))~~

AMENDATORY SECTION (Amending WSR 12-03-040, filed 1/10/12, effective 2/10/12)

~~WAC 174-123-240 ((Simultaneous civil or criminal proceedings))~~ Resolution and sanctions. ~~((1) Student conduct code proceedings may be instituted and carried out without regard to any criminal or civil litigation or external processes with which the student may be involved. Issuance of a determination of responsibility or required resolution and sanction(s) by the student conduct administrator or appeals board will not be subject to change because criminal charges or civil litigation from the same facts resulting in an allegation of violation of the code were dismissed, reduced, or resolved in favor of or against the respondent.~~

~~(2) If a respondent charged with misconduct under this code has been charged with a crime for the same act or closely related acts by federal, state, or local authorities, or if it appears that such criminal charge is under consideration, the respondent may petition the vice president for student affairs to postpone action on the complaint until there has been a disposition of the criminal charge or of the consideration of filing such charge. The vice president will have the discretion to grant or deny the request.~~

~~(3) When a respondent is charged by federal, state, or local authorities with a violation of law, the college will not request or agree to special consideration for the individual because of their status as a student. If the alleged criminal offense is also being addressed under the code, the college may advise off-campus authorities of the existence of the code and how such matters are typically handled within the college community.)~~ The following resolution and sanctions may be agreed to by, or required of, a respondent found to

have violated the code. More than one resolution and sanction may be imposed for any single violation. Resolution and sanctions are based on the unique aspects of each situation and take into consideration the context and seriousness of the violation. In determining the resolution and sanctions, the student conduct official, the student conduct officer, or any appeal officer or panel, will consider history, patterns, and frequency of misconduct; severity and level of impact on the community; and a student's motivation and response to the allegations.

(1) **Written warning:** This is a written notice that the student has violated one or more terms of this code and that continuation of the same or similar behavior may result in further sanctions.

(2) **Probation:** A student will be on special status with conditions imposed for a defined period of time and includes the probability of more severe required resolution and sanctions if the student is found to violate the code during the probationary period.

(3) **Suspension:** Separation of the student from the college for a specified period of time, after which the student is eligible to return, provided that the student has complied with all conditions imposed as part of the suspension and the student is otherwise qualified for enrollment.

(4) **Expulsion:** Permanent separation of the student from the college with a notation on the student's transcript. This includes revocation of all rights and privileges of membership in the college community and exclusion from college activities, classes, and programs and college-owned or controlled facilities and property without any possibility of return. There will be no refund of tuition or fees for the quarter in which the sanction takes effect.

(5) **Deferred action:** Deferred action is most commonly applied to college suspension or expulsion, and college housing suspension or eviction. Deferred action may be applied to other sanctions with conditions stated that outline when the sanction will no longer be in a deferred status. Deferred action is a special status issued for a defined period of time in which the student must complete required resolutions and sanctions that are not included in the deferred status. If the student does not complete the required resolutions and sanctions or is found in violation of the code during the time period, the deferred action will take effect immediately without further review. This deferred action will be in addition to any required resolutions or sanctions arising from the new violation.

(6) **Educational actions:** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense. This includes, but is not limited to, work assignments, essays, completion of a workshop or training, restorative practice, or service to the college community.

(7) **Emergency contact or parental notification:** In cases of suspension, expulsion, or significant health and safety concerns, the parent or emergency contact may be contacted to inform them of the suspension, expulsion, or health and safety concern.

(8) **Professional evaluation:** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student

may choose the professional within the scope of practice and having the professional credentials specified by the college. The student will sign all necessary releases: (a) To allow the college to provide the evaluator with all educational and other records in the student's college files; and (b) to allow the evaluator to provide the college with the evaluator's notes and file materials, including the results of tests, assessments, and report. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(9) Loss of privileges: This may include, but is not limited to, the following restrictions:

(a) Attend college-sponsored activities or events;

(b) Hold an office or leadership position in any recognized organization or hold any elected or appointed office of the college;

(c) Limited access or restriction from college premises;

(d) Participate in cocurricular activities;

(e) Participate in study abroad programs or field work;

(f) Represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation;

(g) Student employment;

(h) Reside or be present in college housing;

(i) Use of college equipment.

(10) No contact order: An order directing a student to have no contact with a specified member of the college community, visitor, or particular college facility. The order may include, but is not limited to, directives with regard to path of travel, parking, arrival on campus, or specified times for use of campus resources.

(11) College housing suspension: Separation of the student from the residence halls for a defined period of time that includes being barred from college housing, after which the student is eligible to return. Conditions allowing for a student to return to college housing may be specified in the suspension.

(12) College housing eviction: Permanent separation of the student from college housing that includes being barred from college housing.

(13) Restitution: Reimbursement for loss or damage, to property or for injury to persons. This may take the form of appropriate service, monetary or material replacement, or a combination of both.

(14) Conduct hold: A measure restricting release of a student's transcript, diploma(s), or other records; and access to registration prohibiting registration for any program or course.

(15) Withholding admission or degree: The withholding of admission to, or the withholding of a degree awarded from, the college for a specified amount of time. Withholding of a degree will be noted on the student's academic record.

(16) Revocation of admission: The revocation of admission to the college. The denial of admission to the col-

lege may occur after admission and prior to initial enrollment.

(17) Revocation of degree: The revocation of a degree from the college may be a sanction in those cases in which egregious academic dishonesty is discovered subsequent to a student's graduation. Degree revocation must be approved by the board of trustees and will be noted on the student's academic record.

NEW SECTION

WAC 174-123-250 Procedural review complaint. A procedural review complaint may be used to resolve any student complaint related to a current process in which a determination has not been issued regarding the alleged violations of the code.

A procedural review complaint is a student's formal complaint concerning the application of policy, a procedural concern, or a condition in which a student believes the current process has been impacted. This complaint may include, but is not limited to, the inappropriate application of a policy, the process, or procedures not followed appropriately in the process, or other concerns related to the process.

It is recommended that a student first discuss their concerns with the student conduct official responsible for the process prior to filing a complaint.

No disciplinary or other unfavorable action may be taken against any student or anyone who may support or advise a student using these procedures. A student wishing to report the actions of another student cannot use this process and is to be referred to the submitting a complaint section of WAC 174-123-190.

(1) Making a procedural review complaint:

(a) A student with a procedural review complaint will report their concern in writing to the senior college official. While only one complaint may be made in the course of a proceeding, a complaint may address multiple concerns. A designated staff member will be assigned as the procedural review coordinator (coordinator) and the current code process that is the subject of the procedural review complaint will be put on administrative hold until the resolution of the complaint, except that the filing of a procedural review complaint will not cause any interim measures to be put on hold or halt the implementation of any interim measures.

(b) The coordinator will discuss the concern with the student. If the student has not already discussed the concern with the student conduct official, the coordinator may refer the student to the student conduct official.

(c) If the student elects to not discuss their concern with the student conduct official, or the procedural review complaint is not referred to or resolved by the student conduct official, the student will submit their concern as a written complaint to the coordinator. The written complaint should contain a complete and specific account of the student's complaint, including the policies, practices, procedures, or the condition complained of, with written evidence attached, and stating the remedy the student seeks.

(2) Resolution of procedural review complaint:

(a) The coordinator will investigate the student's written complaint by gathering information from the involved people

named by the student as well as from others as necessary. The coordinator may ask those named to respond to the student's complaint in writing.

(b) The coordinator will make recommendations based on information presented in an effort to resolve the procedural review complaint. The student will be notified of the recommendations within five business days of the close of the investigation.

(c) Any recommendations by the coordinator will be instituted by the senior student conduct official or designee at the resumption of the process.

APPEALS

NEW SECTION

WAC 174-123-260 Filing of appeal. (1) A respondent may appeal a student conduct official's determination of responsibility and required resolution and sanction(s) by filing a written notice of appeal to the senior college official within ten calendar days of service of the student conduct official's determination. Failure to file a notice of appeal within the time period constitutes the waiver of the right to appeal and the student conduct official's determination of responsibility and required resolution and sanction(s) will be final.

(2) The student filing the notice of appeal must include a brief statement explaining why they are seeking review of the determination of responsibility and/or required resolution and sanction(s).

(3) Except in cases of an interim suspension, the required resolutions and sanction(s) will be on hold pending the outcome of an appeal. Interim measures will remain in place pending the outcome of the appeal.

(4) The parties to an appeal will be the appellant and the student conduct official.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the determination of responsibility and required resolution by a preponderance of the evidence.

(6) The appellant has a right to a prompt and fair hearing as provided for in these procedures.

(7) Student conduct appeal to determinations in which the required resolution and sanction(s) include the following will be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten days or less;
- (b) College housing suspension or eviction;
- (c) Deferred action;
- (d) Probation; and
- (e) Any conditions or terms imposed in conjunction with one of the foregoing resolution and sanctions.

(8) Student conduct appeal to determinations in which the required resolution and sanction(s) include the following will be reviewed by the student conduct appeal panel:

- (a) Suspensions in excess of ten days;
- (b) College expulsions; and
- (c) Complaints referred to the panel by the student conduct review officer or senior college official, or designee.

(9) Except as provided elsewhere in this code, warnings and findings of no responsibility are final and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct or assault, the complainant has the right to appeal the following outcomes using the same procedures as set forth above for the respondent:

- (a) The determination of responsibility; or
- (b) Any required resolutions and sanction(s) imposed including a disciplinary warning.

(11) If the respondent appeals a decision imposing discipline for a sexual misconduct violation, the college will notify the complainant of the appeal and provide the complainant an opportunity to participate in the appeal.

(12) Except as otherwise specified in the code, a complainant who appeals a determination of responsibility and required resolution and sanction(s) within ten calendar days of notice of the determination, or who participates as a party to a respondent's appeal of a determination of responsibility and required resolution and sanction(s) will be afforded the same procedural rights as are afforded the respondent.

NEW SECTION

WAC 174-123-270 Brief adjudicative appeal proceedings—Initial hearing. Brief adjudicative proceedings will be conducted by a conduct review officer. Conduct review officers shall be designated by the senior college official. The conduct review officer will not participate in any case in which they are or have been involved; or in which there is direct or personal interest, prejudice, or bias.

(1) The parties to a brief adjudicative proceeding are the respondent, the student conduct official, and the complainant in cases involving sexual misconduct or assault. Before taking action, the conduct review officer will conduct an informal hearing and provide each party:

- (a) An opportunity to be informed of the college's view of the matter; and
- (b) An opportunity to explain the student's view of the matter.

(2) The conduct review officer will schedule an informal hearing and serve written notice of the hearing to the parties at least seven calendar days in advance of the hearing. The notice of informal hearing will include the following:

- (a) The date, time, location, and nature of the hearing;
- (b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;
- (c) A date on which the parties may review documents held by the student conduct official; and
- (d) A date by which the parties must provide a list of witnesses and copies of any documents to other parties and to the conduct review officer.

(3) The conduct review officer will serve an initial decision upon the parties within ten calendar days of the completion of the informal hearing. The initial decision will contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten business days of service of the initial decision, the initial decision will be deemed the final decision.

(4) If the conduct review officer determines that the respondent's conduct may warrant imposition of a college or college housing suspension of more than ten days or college expulsion or college housing eviction, the matter will be referred to the student conduct appeal panel for a new hearing.

NEW SECTION

WAC 174-123-280 Brief adjudicative appeal proceedings—Administrative review of initial decision. (1) An initial decision may be appealed to the senior college official or designee, provided a party files a written request including the grounds for appeal for review with the conduct review officer within ten calendar days of service of the initial decision. The grounds for appeal are limited to new information not available at the time of the initial process, procedural error that impacted the outcome of the process, and/or bias of the student conduct official, or the conduct review officer.

(2) The senior college official or designee will not participate in any case in which they are or have been involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias.

(3) During the appeal, the senior college official or designee will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct appeal panel for a hearing.

(4) The decision on appeal must be in writing and must include a brief statement of the reason for the decision and must be served on the parties within twenty calendar days of the request for appeal. The decision will contain a notice whether appeal to Thurston County superior court is available.

(5) If the senior college official or designee determines that the respondent's conduct may warrant imposition of a college or college housing suspension of more than ten days or college expulsion or college housing eviction, the matter will be referred to the student conduct appeal panel for a hearing.

(6) In cases involving allegations of sexual misconduct or assault, the senior college official or designee, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct or assault were found to have merit and describing any resolution and sanctions and/or conditions imposed upon the respondent, including suspension or expulsion of the respondent. The decision will contain a notice whether appeal to Thurston County superior court is available.

NEW SECTION

WAC 174-123-290 Appeal panel proceedings—Hearing procedures. (1) If not addressed in the code, the proceedings of the student conduct appeal panel will be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The senior college official, or designee, will schedule a hearing before the student conduct appeal panel and serve written notice of the hearing to the parties at least ten calendar days in advance of the hearing. The notice period may be shortened by the senior college official, or designee, with the parties' permission; and the senior college official may reschedule a hearing to a later time for good cause.

(3) The notice of hearing will include the following:

(a) The date, time, location, and nature of the hearing;

(b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;

(c) A date by which the parties must provide a list of witnesses and copies of any documents to be provided to the appeal panel. The date for providing documents must be at least five business days prior to the hearing date. Documents and witness names submitted after the deadline stated in the hearing notice will be admitted at the discretion of the appeal panel. Documents and witness names submitted after the deadline may be excluded from the hearing absent a showing of good cause;

(d) A date on which the parties to the appeal may review documents and witness lists submitted to the panel, which must be no less than three business days prior to the hearing.

(4) The panel chair is authorized to make determinations regarding requests for postponement, release of information, or other procedural requests, provided that good cause for the request is shown. Requests for reasonable accommodations based on disability will be determined by the college's disability compliance officer.

(5) The panel chair may provide to the panel members in advance of the hearing copies of:

(a) The student conduct official's determination of responsibility and required resolution and sanction(s);

(b) The decision of the conduct review officer, if any;

(c) The review on appeal of the senior college official, if any; and

(d) The notice of appeal by the respondent or complainant.

If doing so, the chair should remind the members that these documents are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the panel chair may provide copies of these admissible exhibits to the panel members before the hearing.

(7) Only those materials and information presented at the hearing will be considered. The chair may exclude or limit ineffectual, irrelevant, or unduly repetitious information.

(8) The student conduct official or designee, upon request, will provide reasonable assistance to the parties in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between panel members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper communication, as further provided in RCW 34.05.455, is prohibited.

(10) Each party may be accompanied at the hearing by an advisor of the party's choice. A respondent, or complainant in a case involving allegations of sexual misconduct or assault may elect to be represented by an attorney at their own cost, and will be deemed to have waived that right unless, at least five business days before the hearing, written notice of the attorney's identity and participation is filed with the panel chair with a copy to the student conduct official. The panel will ordinarily be advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct official may also be represented by an assistant attorney general.

(11) The complainant and the respondent are neither encouraged nor required to be assisted by an advisor of their choosing at their own expense. Both the respondent and the complainant will be provided the option to have a trained procedural advisor provided by the college to assist them prior to and during the hearing in order to understand their rights in the appeal process. A college procedural advisor may not represent an individual in the appeal proceeding. Proceedings will not be automatically delayed due to the scheduling conflicts of any advisor.

(12) Each party is expected to present all information during the proceedings.

(13) In cases where the complaint alleges sexual misconduct or assault, the complainant may present information during the proceedings.

(14) Upon the failure of any party to attend or participate in a hearing, the student conduct appeal panel may either:

(a) Proceed with the hearing and issue a determination; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(15) The hearing is a closed proceeding which includes only members of the panel; the advisor to the panel, if any; the student conduct official and their advisor, if any; the complainant and the respondent and their advisor(s), if any; and persons requested to provide information at the hearing. Admission of any other person to the hearing is at the discretion of the panel chair.

(16) All procedural questions and other decisions are subject to the final decision of the panel chair unless otherwise provided for in these rules. The chair will ensure that the proceeding is held in an orderly manner such that the rights of all parties to a full, fair, and impartial proceeding that adheres to the code is achieved.

(17) There will be a single verbatim sound recording of the hearing, and the record will be on file with the senior college official and is the property of the college in accordance with RCW 34.05.449.

(18) All testimony will be given under oath or affirmation. Evidence will be admitted or excluded at the discretion of the panel chair.

(19) In cases involving allegations of sexual misconduct or assault, neither party will directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the other party. All cross examination questions will be directed to the panel chair, who has the discretion to pose the questions on the party's behalf.

NEW SECTION

WAC 174-123-300 Appeal panel proceedings—panel composition. (1) The student conduct appeal panel will be composed of three members consisting of one faculty member, one staff member, and one student. One member will be designated by the senior college official or designee to serve as the chair of the student conduct appeal panel for a hearing.

(2) The faculty agenda committee will designate faculty members to serve on the student conduct appeal panel as needed.

(3) The senior college official or designee will be responsible for designating the student and staff members serving on the panel. The student members, including the selection of alternate members to serve as necessary, will be done through an open selection process established by the senior college official or designee.

(4) All panel members hearing cases involving sexual misconduct will have received training within the previous twelve months on the issues related to domestic violence, relationship violence, sexual misconduct, and stalking and how to conduct an investigation and hearing process that protects the safety of complainants, ensures fair proceedings, and promotes accountability in cases involving allegations of sexual misconduct.

(5) Members of the student conduct appeal panel will not participate in any case in which they are involved as a complainant or witness; or in which there is direct or personal interest, prejudice, or bias; or in which previous actions have been taken in an advisory capacity.

(6) A party may request removal of a member of the panel at the beginning of the hearing for reasons of bias, prejudice, or conflict of interest. The chair of the panel will be responsible for making decisions regarding removal, unless the student is requesting removal of the chair. When there is a request to remove the chair, and the chair does not voluntarily step down, the remaining members will vote on whether removal is warranted. If the remaining members disagree, the chair will be removed, and the senior college official will appoint an appropriate alternate member (i.e., faculty, student or staff) to serve on the panel for the removed member. The senior college official will also appoint the panel chair to replace the removed chair, the parties can agree in writing to proceed with the hearing with only two members setting aside the replacement measures.

NEW SECTION

WAC 174-123-310 Appeal panel proceedings—Determination. (1) At the conclusion of the hearing, the student conduct appeal panel will permit the parties to make closing statements in whatever form it wishes to receive them. The panel also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Only members of the student conduct appeal panel and the advisor to the panel, if any, will be present for deliberations. Deliberations are not recorded.

(3) Within fifteen calendar days following the conclusion of the hearing, or the panel's receipt of closing arguments, whichever is later, the panel will issue a decision in

accordance with RCW 34.05.461 and WAC 10-08-210 or written notice specifying the date by which it will issue a decision. The decision will include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses will be so identified.

(4) The panel's decision will also include a determination on appropriate resolution and sanction(s), if any. The panel may affirm, reverse, or modify the required resolution and sanction(s) issued by the student conduct official and/or issue additional sanction(s) or condition(s) as authorized herein.

(5) The panel's decision will also include a statement of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

(6) The panel chair will serve copies of the decision on the parties through the senior college official's office. It is the responsibility of the student to forward any notice or communication to their advisor. If a student signs a release of information, the chair of the panel will provide the decision to legal counsel representing a student.

(7) In cases involving allegations of sexual misconduct or assault, the chair of the student conduct appeal panel, on the same date as the decision is served to the respondent, will serve a written notice to the complainant informing the complainant of the panel's decision and describing any sanction(s) and/or condition(s) issued to the respondent, including suspension or expulsion of the respondent. The complainant may request reconsideration of the panel's decision subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

NEW SECTION

WAC 174-123-320 Reconsideration. (1) Within five business days of the written notice of the final determination, a party may submit a petition for reconsideration with the senior college official. The petition must state the specific grounds upon which relief is requested. The grounds for reconsideration are limited to new information not available at the time of the hearing, procedural error that impacted the outcome of the process, and/or bias of the student conduct official.

(2) The petition will be deemed submitted on the day of actual receipt by the senior college official's office. Service can be made by one of the following means:

(a) Email received by the office of the senior college official; or

(b) By deposit in the United States mail, postage prepaid, addressed as follows: The Evergreen State College, Student Conduct Appeal Panel, Office of the Senior College Official, 2700 Evergreen Parkway N.W., Olympia, Washington 98505; or

(c) By personal service which will be deemed accomplished by hand delivering the petition to the office of the

senior college official during regular business hours at the address listed in (b) of this subsection.

(d) Within two days of being served, the senior college official will provide notice to all other parties, who have five calendar days to file their opposition to the petition for reconsideration.

(3) All reasonably available members of the panel that heard the original appeal will review the request for reconsideration and determine whether or not to grant the reconsideration. If a reconsideration is granted, the panel will review the submitted materials and make a determination.

(4) The final determination issued by the student conduct appeal panel will remain in effect during the time period that a petition for reconsideration is under review by the panel. Within twenty business days from the date of the petition the student conduct appeal panel will provide a determination or written notice specifying the date by which it will act on the petition.

MAINTENANCE OF RECORDS

NEW SECTION

WAC 174-123-330 Retention of records. (1) A student's conduct record may be retained for seven years after the final disposition of the case unless the college is required to retain the record for a longer period of time under another provision of state or federal law. When the resolution and sanction(s) includes college expulsion, or revocation of a degree the record will be retained in perpetuity. Final disposition is defined as when: A respondent fulfills the agreement of accountability or the required resolution and sanction(s) issued by the student conduct appeal panel.

(2) Other than college expulsion, degree revocation, or withholding of a degree, resolution and sanctions will not be made part of the student's permanent academic record, but will be part of the student's conduct record.

SIMULTANEOUS CIVIL OR CRIMINAL PROCEEDINGS

NEW SECTION

WAC 174-123-340 Simultaneous civil or criminal proceedings. (1) Code of student rights and responsibilities proceedings may be instituted and carried out without regard to any criminal or civil litigation or external processes with which the student may be involved. Issuance of a determination of responsibility or required resolution and sanction(s) by the student conduct official or appeal panel will not be subject to change because criminal charges or civil litigation from the same facts resulting in an allegation of violation of the code were dismissed, reduced, or resolved in favor of or against the respondent.

(2) If a respondent charged with misconduct under this code has been charged with a crime for the same act or closely related acts by federal, state, or local authorities, or if it appears that such criminal charge is under consideration, the respondent may petition the senior college official or designee to postpone action on the complaint until there has been

a disposition of the criminal charge or of the consideration of filing such charge. The senior college official or designee has the discretion to grant or deny the request.

(3) When a respondent is charged by federal, state, or local authorities with a violation of law, the college will not request or agree to special consideration for the individual because of their status as a student. If the alleged criminal offense is also being addressed under the code, the college may advise off-campus authorities of the existence of the code and how such matters are typically handled within the college community.

CODE REVIEW

NEW SECTION

WAC 174-123-350 Code review. This code will be reviewed at least once within every five-year period, and such review will include students, faculty and staff. The senior college official or designee will conduct the review.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 174-123-010 The Evergreen State College student conduct code.
- WAC 174-123-020 Purpose.
- WAC 174-123-030 Student rights and responsibilities.
- WAC 174-123-040 Definitions.
- WAC 174-123-050 Jurisdiction.
- WAC 174-123-060 Computation of time.
- WAC 174-123-070 Prohibited conduct.
- WAC 174-123-080 Emergency suspension.
- WAC 174-123-090 Purpose.
- WAC 174-123-100 Submitting a complaint.

WSR 18-17-111

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 15-07—Filed August 16, 2018, 3:29 p.m., effective September 16, 2018]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Chapter 173-400 WAC includes the following provisions that remain in effect until the effective date of a Federal Register notice published by Environmental Protection Agency (EPA) that removes WAC 173-400-107 from Washington's state implementation plan (SIP):

- Unavoidable excess emissions, WAC 173-400-107.
- Exemptions from opacity emission standards for soot blowing/grate cleaning and orchard heating.

When EPA removes WAC 173-400-107 from SIP, the following provisions become effective:

- Alternative opacity emission standards for:
 - Soot blowing/grate cleaning.
 - Hog fuel or wood-fired boiler with dry particulate matter controls.
 - Furnace refractory.
- Excess emissions reporting, WAC 173-400-108.
- Unavoidable excess emissions, WAC 173-400-109.

Purpose: The amendments focus on the general regulations for air pollution sources, the operating permit regulation, and revising SIP. Because of federal court rulings, the United States EPA has officially notified Washington (and thirty-five other states) to change their current rules and update their SIPs to correct the identified deficiencies (a SIP call).

The primary purpose of this revision is to align chapter 173-400 WAC with federal court decisions holding that emission standards apply at all times, even during periods of startup, shutdown and malfunction (SSM), and without automatic or discretionary exemptions. These decisions and EPA's SIP call require us to correct overly broad enforcement discretion and other provisions that would bar enforcement by EPA or other parties in federal court. Existing ecology rules exempt exceedances of an emission standard during SSM, or allow avoidance of enforcement actions against a company for these emissions.

Under ecology's existing rule, facilities are not required to meet emission limits during periods of SSM, and EPA interprets our rule language to bar enforcement of excess emissions during periods of SSM under the federal Clean Air Act. Additionally, the state rule includes director's discretion provisions and automatic exemptions that violate the federal Clean Air Act. This rule making aligns our rule with the current federal requirements by:

- Removing impermissible provisions,
- Establishing new alternative standards for opacity during startup or shutdown, and
- Establishing a process to allow a facility's permit to contain a permit limit during startup and shutdown that exceeds a Washington state emissions standard for opacity, sulfur dioxide, and particulate matter in SIP.

We also changed public notification procedures based on a recent EPA rule that allows web site posting of public notice of the start of a public comment period and draft permits in the prevention of significant deterioration (PSD) and air operating permit programs. We extended web site posting to these programs and our small source preconstruction permitting program. We will continue requiring publishing notice in a local newspaper until June 30, 2019, to provide a transition period to web posting for communities that still rely on the one-day newspaper notice.

This rule making also addresses stakeholder concerns about impacts from small nonroad engines (such as lawn-mowers, small generators, and outdoor power tools) while providing ongoing environmental protection by evaluating impacts from nonroad engines on a project-by-project basis rather than on a site-wide basis. We concluded that a project

basis is more representative of operations performed by non-road engines and of the original intent for how the section would operate.

Other rule amendments include:

- Outlawing wigwam and silo burners.
- Updating the definition of volatile organic compounds (VOC) to reflect the current federal definition.
- Correcting typos and clarifying rule language without changing its effect.
- Updating the adoption by reference of federal rules from January 1, 2016, to January 24, 2018.
- Deleting redundant requirements for catalytic cracking unit and sulfuric acid plants.

Below is a summary of the rule amendments.

Startup, shutdown, malfunction-related provisions:

- Remove exemptions from emissions standards and replace the exemptions with opacity standards for some types of sources.
- Create a process to establish facility specific permit limits that exceed a Washington state emissions standard in SIP during startup and shutdown.
- Simplify the notification process related to excess emission events.
- Align unavoidable excess emission provisions with the current interpretation of the Clean Air Act, EPA policy, and the state law.

Other provisions:

- Require an agency to post notice of a public comment period and draft permits on its web site instead of requiring publication in a newspaper and providing a physical location for permit materials for the following permit actions: Prevention of significant deterioration and air operating permits, permit actions with a mandatory public comment period, and permit actions with significant public interest. Publication in a newspaper is required through June 30, 2019.
- Outlaw existing and new wigwam and silo burners on January 1, 2020.
- Simplify the application of nonroad engine requirements.
- Update the definition of VOC to reflect the current federal definition.
- Delete requirements for catalytic cracking unit and sulfuric acid plants.
- Correct typos and clarify rule language without changing the effect.
- Update adoption by reference of federal rules from January 1, 2016, to January 24, 2018.

Citation of Rules Affected by this Order: New WAC 173-400-082; and amending WAC 173-400-025, 173-400-030, 173-400-035, 173-400-040, 173-400-050, 173-400-070, 173-400-081, 173-400-107, 173-400-108, 173-400-109, 173-400-171, 173-400-740, and 173-401-800.

Statutory Authority for Adoption: Chapter 70.94 RCW, Washington Clean Air Act.

Adopted under notice filed as WSR 18-04-085 on February 5, 2018.

Changes Other than Editing from Proposed to Adopted Version: For more details, refer to the concise explanatory statement.

Chapter 173-400 WAC, throughout rule.

- We retained the publication date of the ecology "Source Test Manual - Procedures for Compliance Testing" because the date establishes the version of the document that had been available for review during the public comment period.
- We added both "malfunction or upset" when the text referenced either term because the provisions apply to both events, which are not the same thing.

WAC 173-400-025 Definitions.

- Alternative emission limitation: Expanded to include "alternative emission limit."
- Industrial furnace: Deleted the confusing and unnecessary definition.
- Federally enforceable: Deleted the reference to an engineering calculation that does not exist.
- Hog fuel: Clarified that the term includes hogged fuel.
- VOC: Added alternate names of several chemicals that are not VOC.
- Excess emissions: Clarified that the term also applies to permit-established limits that could be lower than an applicable emission standard.
- Wood waste: Changed the name of the defined term to "waste wood" to remove confusion between air quality and solid waste rules, and clarified that the term also applies to wood materials from forest health logging, land clearing or pruning. Replaced "wood waste" with "waste wood" throughout rule.

WAC 173-400-040(2), visible emissions.

- (e)(i) We added omitted language that specified that a planned startup or shutdown of a hog fuel or wood fired boiler means the owner or operator provides notice. We clarified the period for a restart after an unplanned shutdown, and that an unplanned shutdown includes an upset, to distinguish that a malfunction and upset are not the same thing.
- (e)(vi) We deleted "work practice" because only one of the two requirements is a work practice requirement.
- (e)(vi)(B)(II) We clarified that the federal rule identifies what constitutes clean fuel.
- (e)(vi)(B)(III) We clarified that the rule requires compliance with the twenty percent opacity standard within four hours after the start of supplying useful thermal energy. We removed text to reduce confusion on whether the use of nonclean fuels or the start of supplying useful thermal energy is used as a reference to the four-hour limit.
- (f) To reduce confusion around our intent, we deleted "existing" to clarify that the provision applies to all lime kilns, both current and future. We also deleted "industrial furnace" because the proposed definition for this term was confusing and unnecessary; lime kilns and boilers more appropriately reflect the universe of sources covered by this provision.

WAC 173-400-050 Emission standards for combustion and incineration units.

- (1) We substituted the newly defined term "waste wood" for the undefined and therefore confusing phrase "wood derived fuels" to clarify intent.
- (4)(c)(ix) We clarified that the federal rule provides the definition for wood waste terms.

WAC 173-400-082 Alternative emission limit that exceeds an emission standard in the SIP.

- (2)(a)(iii) We revised the incorrect reference to WAC 173-415-030(3).
- (3)(c)(iii) We corrected the term to "alternative emission limit."
- (4)(a)(i)(B) We clarified the intent of the provision.

WAC 173-400-108 Excess emissions reporting.

- (2)(b) We consolidated all excess emissions reporting for chapter 401 sources (Title V) in one location.
- (4)(c) We removed unnecessary references to WAC 173-400-109 because only subsection (5) requires additional information.

WAC 173-400-109 Unavoidable excess emissions.

- (2) We corrected the reference from subsection (4) to (5).
- (5) We deleted "equipment" in "equipment malfunction" for consistent application of the term "malfunction."

WAC 173-400-171 Public notice and opportunity for public comment.

- (6)(a)(vi), (7)(a) and (10)(a) We removed the requirement to exclude a Washington state holiday that falls within a public comment period from the day count because a simple count of days was easier to understand and reduced the possibility for errors in calculating the length of a public comment period.
- (6)(a)(vi) and (8) We removed "thirty-day" before "public comment period" because thirty-days is a minimum comment period.
- (6) We deleted the time to post notice by noon because that requirement is outside the scope of the content of a public notice.
- (6)(a)(vi) We simplified the requirement.
- (7)(a) We clarified existing requirements and simplified the method to count the days in a public comment period.
- (10)(a) We clarified that providing notice is mandatory.
- (10)(a)(i) We added a reference to subsection (7) for requirements on the length of a public comment period.

WAC 173-400-740 PSD permitting public involvement requirements.

- (2)(b)(i) We clarified the length of the web site posting and simplified the method to count the days in a public comment period.
- (2)(b)(iii)(A) We clarified that ecology must post an extension notice on the same location (web page) as the original notice.
- (2)(b)(iv) We clarified that ecology must notify the public at least thirty days prior to the date of the hearing and

keep the public comment period open through the hearing date.

- (3) We streamlined the content of a public notice by:
 - Removing the posting date because the notice must include the start and end date of the public comment period.
 - Consolidating requirements.
 - Simplifying the method to count days in a comment period.
 - Removing the "thirty day" reference to a public comment period because this is a minimum length.
 - Removing the requirement to exclude a Washington state holiday that falls within a public comment period from the day count because a simple count of days is easier to understand and reduces the possibility for errors in calculating the length of a public comment period.
- (4)(a) We removed the "thirty day" reference to a public comment period because this is a minimum length and added a reference to the subsection on the length of comment period.
- (6)(b) We clarified that an extension notice must be posted on the same location (web page) as the original notice.

WAC 173-401-800 Public involvement.

- (2)(d) We streamlined the content of a public notice by removing the:
 - Posting date because the notice already includes the start and end date of a public comment period.
 - "Thirty day" reference to a public comment period because this is a minimum length.
 - Requirement to exclude a Washington state holiday that falls within a public comment period from the day count because a simple count of days is easier to understand and reduces the possibility for errors in calculating the length of a public comment period.
- (2)(e)(i) We added the correct title of the technical support document for an air operating permit.
- (3)(a) We simplified the method to count the days in a public comment period.

A final cost-benefit analysis is available by contacting Elena Guilfoil, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6855, people with speech disability may call TTY 877-833-6341. People with impaired hearing may call Washington relay service 711, email elena.guilfoil@ecy.wa.gov, web site <https://fortress.wa.gov/ecy/publications/SummaryPages/1802016.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 7, Repealed 0; Federal Rules or Standards: New 0, Amended 5, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, Repealed 0.

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

Date Adopted: August 16, 2018.

Maia Bellon
for Polly Zehm
Director

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-025 Adoption of federal rules. Federal rules mentioned in this rule are adopted as they exist on (~~January 1, 2016~~) January 24, 2018. Adopted or adopted by reference means the federal rule applies as if it was copied into this rule.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-030 Definitions. The definitions in this section apply statewide except where a permitting authority has redefined a specific term. Except as provided elsewhere in this chapter, the definitions in this section apply throughout the chapter:

(1) **"Actual emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) **"Adverse impact on visibility"** is defined in WAC 173-400-117.

(3) **"Air contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is

likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(5) **"Allowable emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as in 40 C.F.R. Part 60, 61, 62, or 63;

(b) Any applicable SIP emissions (~~(limitation)~~) standard including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable approval condition, including those with a future compliance date.

(6) **"Alternative emission limit" or "alternative emission limitation"** means an emission limitation that applies to a source or an emissions unit only during a specifically defined transient mode of operation. An alternative emission limitation is a component of a continuously applicable emission limit. An alternative emission limit may be a numerical limit or a design characteristic of the emission unit and associated emission controls, work practices, or other operational standard, such as a control device operating range.

(7) **"Ambient air"** means the surrounding outside air.

~~((7))~~ (8) **"Ambient air quality standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

~~((8))~~ (9) **"Approval order"** is defined in **"order of approval."**

~~((9))~~ (10) **"Attainment area"** means a geographic area designated by EPA at 40 C.F.R. Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

~~((10))~~ (11) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

~~((11))~~ (12) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an emission unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

~~((12))~~ (13) **"Best available control technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and

available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

~~((13))~~ (14) **"Best available retrofit technology (BART)"** means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

~~((14))~~ (15) **"Brake horsepower (BHP)"** means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

~~((15))~~ (16) **"Bubble"** means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

~~((16))~~ (17) **"Capacity factor"** means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

~~((17))~~ (18) **"Class I area"** means any area designated under section 162 or 164 of the federal Clean Air Act (42 U.S.C., Sec. 7472 or 7474) as a Class I area. The following areas are the Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

~~((18))~~ (19) **"Combustion and incineration units"** means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes outdoor burning.

~~((19))~~ (20)(a) **"Commence"** as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(b) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

~~((20))~~ (21) **"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

~~((21))~~ (22) **"Criteria pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 C.F.R. Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O₃) sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

~~((22))~~ (23) **"Director"** means director of the Washington state department of ecology or duly authorized representative.

~~((23))~~ (24) **"Dispersion technique"** means a method that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

~~((24))~~ (25) **"Ecology"** means the Washington state department of ecology.

~~((25))~~ (26) **"Electronic means"** means email, fax, FTP site, or other electronic method approved by the permitting authority.

(27) **"Emission"** means a release of air contaminants into the ambient air.

~~((26))~~ (28) **"Emission reduction credit (ERC)"** means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

~~((27))~~ (29) **"Emission standard,"** ~~(and)~~ **"emission limitation" and "emission limit"** means a requirement established under the federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the federal Clean Air Act or chapter 70.94 RCW.

~~((28))~~ (30) **"Emission threshold"** means an emission of a listed air contaminant at or above the following rates:

Air Contaminant	Annual Emission Rate
Carbon monoxide:	100 tons per year
<u>Fluorides:</u>	<u>3 tons per year</u>
<u>Hydrogen sulfide (H₂S):</u>	<u>10 tons per year</u>
<u>Lead:</u>	<u>0.6 tons per year</u>
Nitrogen oxides:	40 tons per year

Air Contaminant	Annual Emission Rate
((Sulfur dioxide:	40 tons per year))
Particulate matter (PM):	25 tons per year of PM emissions
	((15 tons per year of PM-10 emissions)) 10 tons per year of PM-2.5
	<u>15 tons per year of PM-10 emissions</u>
((Volatile organic compounds:	40 tons per year
Fluorides:	3 tons per year
Lead:	0.6 tons per year))
<u>Reduced sulfur compounds (including H₂S):</u>	10 tons per year
<u>Sulfur dioxide:</u>	40 tons per year
Sulfuric acid mist:	7 tons per year
((Hydrogen sulfide (H ₂ S):	10 tons per year))
Total reduced sulfur (including H ₂ S):	10 tons per year
((Reduced sulfur compounds (including H ₂ S):	10 tons per year))
<u>Volatile organic compounds:</u>	40 tons per year

((29)) (31) "**Emissions unit**" or "**emission unit**" means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter 70.94 or 70.98 RCW.

((30)) (32) "**Excess emissions**" means emissions of an air pollutant in excess of any applicable emission standard or an emission limit established in a permit or order, including an alternative emission limit.

((31)) (33) "**Excess stack height**" means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).

((32)) (34) "**Existing stationary facility (facility)**" is defined in WAC 173-400-151.

((33)) (35) "**Federal Clean Air Act (FCAA)**" means the federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

((34)) (36) "**Federal Class I area**" means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness.

((35)) (37) "**Federal land manager**" means the secretary of the department with authority over federal lands in the United States.

((36)) (38) "**Federally enforceable**" means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 C.F.R. Parts 60, 61, 62 and 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 C.F.R. 52.21 or under a SIP approved new source review regulation, ((and)) emissions limitation orders issued under WAC 173-400-081(4), 173-400-082, or 173-400-091.

((37)) (39) "**Fossil fuel-fired steam generator**" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

((38)) (40) "**Fugitive dust**" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

((39)) (41) "**Fugitive emissions**" means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

((40)) (42) "**General process unit**" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

((41)) (43) "**Good engineering practice (GEP)**" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

((42)) (44) "**Greenhouse gases (GHGs)**" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

((43)) (45) "**Hog fuel**" means waste wood that is reduced in size to facilitate burning.

(46) "**Incinerator**" means a furnace used primarily for the thermal destruction of waste.

((44)) (47) "**In operation**" means engaged in activity related to the primary design function of the source.

((45)) (48) "**Mandatory Class I federal area**" means any area defined in Section 162(a) of the federal Clean Air Act 42 U.S.C., 7472(a). The following areas are the mandatory Class I federal areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness;

((46)) (49) "**Masking**" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

((47)) (50) "**Materials handling**" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

((48)) (51) "**Modification**" means any physical change in, or change in the method of operation of, a station-

ary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

~~((49))~~ (52) "**National Ambient Air Quality Standard (NAAQS)**" means an ambient air quality standard set by EPA at 40 C.F.R. Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

~~((50))~~ (53) "**National Emission Standards for Hazardous Air Pollutants (NESHAP(S))**" means the federal rules in 40 C.F.R. Part 61.

~~((51))~~ (54) "**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 C.F.R. Part 63.

~~((52))~~ (55) "**Natural conditions**" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((53))~~ (56) "**New source**" means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new source under the federal Clean Air Act.

~~((54))~~ (57) "**New Source Performance Standards (NSPS)**" means the federal rules in 40 C.F.R. Part 60.

~~((55))~~ (58) "**Nonattainment area**" means a geographic area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

~~((56))~~ (59) "**Nonroad engine**" means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the federal Clean Air Act (42 U.S.C., Sec. 7521); or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the federal Clean Air Act (42 U.S.C., Sec. 7411); or

(ii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

~~((57))~~ (60) "**Notice of construction application**" means a written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

~~((58))~~ (61) "**Opacity**" means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((59))~~ (62) "**Outdoor burning**" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. ~~((Wood-waste))~~ Waste wood disposal in wigwam burners or silo burners is not considered outdoor burning.

~~((60))~~ (63) "**Order**" means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

~~((61))~~ (64) "**Order of approval**" or "**approval order**" means a regulatory order issued by a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

~~((62))~~ (65) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 C.F.R. Part 82.

~~((63))~~ (66) "**Particulate matter**" or "**particulates**" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((64))~~ (67) "**Particulate matter emissions**" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

~~((65))~~ (68) "**Parts per million (ppm)**" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

~~((66))~~ (69) "**Permitting authority**" means ecology or the local air pollution control authority with jurisdiction over the source.

~~((67))~~ (70) **"Person"** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((68))~~ (71) **"PM-10"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 C.F.R. Part 50 Appendix J and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

~~((69))~~ (72) **"PM-10 emissions"** means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in ~~((Appendix M of))~~ 40 C.F.R. Part 51, Appendix M (in effect on the date in WAC 173-400-025) or by a test method specified in the SIP.

~~((70))~~ (73) **"PM-2.5"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 C.F.R. Part 50 Appendix L and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

~~((71))~~ (74) **"PM-2.5 emissions"** means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) or by a test method specified in the SIP.

~~((72))~~ (75) **"Portable source"** means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

~~((73))~~ (76) **"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

~~((74))~~ (77) **"Prevention of significant deterioration (PSD)"** means the program in WAC 173-400-700 to 173-400-750.

~~((75))~~ (78) **"Projected width"** means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~((76))~~ (79) **"Reasonably attributable"** means attributable by visual observation or any other technique the state deems appropriate.

~~((77))~~ (80) **"Reasonably available control technology (RACT)"** means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available

considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

~~((78))~~ (81) **"Regulatory order"** means an order issued by a permitting authority that requires compliance with:

(a) Any applicable provision of chapter 70.94 RCW or rules adopted there under; or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.

~~((79))~~ (82) **"Secondary emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

~~((80))~~ (83) **"Shutdown"** means, generally, the cessation of operation of a stationary source or emission unit for any reason.

(84) **"Source"** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

~~((81))~~ (85) **"Source category"** means all sources of the same type or classification.

~~((82))~~ (86) **"Stack"** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

~~((83))~~ (87) **"Stack height"** means the height of an emission point measured from the ground-level elevation at the base of the stack.

~~((84))~~ (88) **"Standard conditions"** means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

~~((85))~~ (89) **"Startup"** means, generally, the setting in operation of a stationary source or emission unit for any reason.

(90) **"State implementation plan (SIP)"** or **"Washington SIP"** means the Washington SIP in 40 C.F.R. Part 52, Subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of imple-

menting, maintaining, and enforcing the National Ambient Air Quality Standards.

~~((86))~~ (91) "**Stationary source**" means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the federal Clean Air Act (42 U.S.C., 7550(11)).

~~((87))~~ (92) "**Sulfuric acid plant**" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

~~((88))~~ (93) "**Synthetic minor**" means any source whose potential to emit has been limited below applicable thresholds by means of an enforceable order, rule, or approval condition.

~~((89))~~ (94) "**Total reduced sulfur (TRS)**" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by ~~((EPA method 16 in Appendix A to))~~ 40 C.F.R. Part 60, Appendix A, Test Method 16 (in effect on the date in WAC 173-400-025) or an EPA approved equivalent method and expressed as hydrogen sulfide.

~~((90))~~ (95) "**Total suspended particulate**" means particulate matter as measured by the method described in 40 C.F.R. Part 50 Appendix B.

~~((91))~~ (96) "**Toxic air pollutant (TAP)**" or "**toxic air contaminant**" means any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

~~((92))~~ (97) "**Transient mode of operation**" means a short-term operating period of a source or an emission unit with a specific beginning and end, such as startup, shutdown, or maintenance.

(98) "**Unclassifiable area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 C.F.R. Part 81.

~~((93))~~ (99) "**United States Environmental Protection Agency (USEPA)**" shall be referred to as EPA.

~~((94))~~ (100) "**Useful thermal energy**" means energy (steam, hot water, or process heat) that meets the minimum operating temperature, flow, and/or pressure required by any system that uses energy provided by the affected boiler or process heater.

(101) "**Visibility impairment**" means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

~~((95))~~ (102) "**Volatile organic compound (VOC)**" means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTf); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10me); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃ or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅ or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₂); methyl acetate((~~;~~); 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C₃F₇OCH₃ or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH₃); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; trans-1,3,3,3-tetrafluoropropene; HCF₂OCF₂H (HFE-134); HCF₂OCF₂OCF₂H (HFE-236cal2); HCF₂OCF₂CF₂OCF₂H (HFE-338pcc13); HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2-tetrafluoro -1-(2,2,2-trifluoroethoxy) ethane; and perfluorocarbon compounds that fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 C.F.R. Part 60, Appendix A (in effect on the date in WAC 173-400-025). Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.

(c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology, the authority, or EPA the amount of negligibly reactive compounds in the source's emissions.

~~((d) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: Tertiary-butyl acetate.))~~

(103) **"Wigwam"** or **"silo burner"** means a cone-shaped or cylindrical structure that burns waste wood for disposal. A silo burner is a cylinder and may be made with refractory material rather than metal.

(104) **"Wood-fired boiler"** means an enclosed device using controlled flame combustion of wood or waste wood with the primary purpose of recovering thermal energy in the form of a steam or hot water boiler that burns wood or waste wood for fuel for the primary purpose of producing hot water or steam by heat transfer. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel and/or air feed rates are controlled.

(105) **"Waste wood"** means wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, and the handling and storage of raw materials, trees, and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, log sort yard waste, and wood materials from forest health logging, land clearing or pruning, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-035 Nonroad engines. (1) **Applicability.** This section applies to any nonroad engines as defined in WAC 173-400-030, except for:

(a) Any nonroad engine that is:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function; or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function.

(b) Nonroad engines with a cumulative maximum rated brake horsepower of 500 BHP or less.

(c) Engines being stored in work centers, garages, or engine pool sites prior to being dispatched to the field for use and that do not provide back-up power at the work center, garage, or engine pool. Such engines may be operated at

these facilities only for the purpose of engine maintenance, testing, and repair.

(d) A back-up nonroad engine demonstrated to have the same or lower emissions than the primary power nonroad engine.

(2) **Nonroad engines are not subject to:**

(a) New source review.

(b) Control technology determinations.

(c) Emission limits set by the ~~((state implementation plan,))~~ SIP.

(d) Chapter 173-460 WAC.

(3) **Fuel standards.** All nonroad engines must use ultra low sulfur diesel or ultra low sulfur ~~((bio-diesel))~~ biodiesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG). A facility that receives deliveries of only ultra low sulfur diesel or ultra low sulfur ~~((bio-diesel))~~ biodiesel is deemed to be compliant with this fuel standard.

(4) **> 500 and ≤ 2000 BHP.** This section applies to a project that requires the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 500 BHP and less than or equal to 2000 BHP.

(a) Notification of intent to operate is required before operations begin.

The owner or operator must notify the permitting authority of their intent to operate prior to beginning operation. The notice must contain the following information:

(i) Name and address of owner or operator;

(ii) Site address or location;

(iii) Date of equipment arrival at the site;

(iv) Cumulative engine maximum rated BHP.

(b) Recordkeeping. For each site, the owner or operator must record the following information for each nonroad engine:

(i) Site address or location;

(ii) Date of equipment arrival at the site;

(iii) Date of equipment departure from the site;

(iv) Engine function or purpose;

(v) Identification of each component as follows:

(A) Equipment manufacturer, model number and its unique serial number;

(B) Engine model year;

(vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(c) Record retention requirements. The owner or operator must keep the records of the current engine and equipment activity in hard copy or electronic form. These records can be maintained on-site or off-site for at least five years and must be readily available to the permitting authority on request.

(5) **> 2000 BHP.** This section applies to a project that requires the installation and operation of ~~((any))~~ nonroad engines with a cumulative maximum rated brake horsepower greater than 2000 BHP.

(a) Notification of intent to operate.

(i) Prior to operation, the owner or operator must notify the permitting authority of the intent to operate and supply sufficient information to enable the permitting authority to determine that the operation will comply with national ambi-

ent air quality standards as regulated by WAC 173-400-113 (3) and (4).

(ii) The notification must contain, at a minimum, the information in subsection (4)(a) of this section.

(b) Approval is required before operations begin. The owner or operator must obtain written nonroad engine approval to operate, from the permitting authority, prior to operation.

(c) Recordkeeping. The owner or operator must meet all of the requirements of subsection (4)(b) and (c) of this section.

~~((6))~~ (6) Integrated review. Applicants seeking approval to construct or modify a stationary source that requires review under WAC 173-400-110 or 173-400-560 and to operate one or more nonroad engines in conjunction with the new or modified stationary source may elect to integrate the reviews. The notification process for integrated review must comply with the new source review public involvement procedures for the stationary source as applicable (i.e., WAC 173-400-171 or 173-400-740).

~~((7))~~ (7) Enforcement. All persons who receive a nonroad engine approval to operate must comply with all conditions contained in the approval.

~~((8))~~ (8) Permitting authority review period. Within fifteen days after receiving a complete notice of intent to operate, the permitting authority must either issue the approval to operate or notify the applicant that operation must not start until the permitting authority has set specific operating conditions. The permitting authority must promptly provide copies of the final decision to the applicant.

~~((9))~~ (9) Conditions to assure compliance with NAAQS. Subject to the limitations of subsection (2) of this section, the permitting authority may set specific conditions for operation as necessary to ensure that the nonroad engines do not cause or contribute to a violation of National Ambient Air Quality Standards.

~~((10))~~ (10) Appeals. Final decisions and orders of ecology or a permitting authority may be appealed to the pollution control hearings board as provided in chapters 43.21B RCW and 371-08 WAC.

~~((11))~~ (11) Change of conditions. The owner or operator may request, at any time, a change in conditions of an approval to operate. The permitting authority may approve the request provided that the permitting authority finds that the operation will comply with WAC 173-400-113 (3) and (4).

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-040 General standards for maximum emissions. (1) **General requirements.**

(a) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter.

(b) When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual

emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

(c) All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity ~~((except:))~~ as determined by ecology method 9A. The following are exceptions to this standard:

(a) Soot blowing or grate cleaning alternate visible emission standard.

(i) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. The opacity emission standard in subsection (2) of this section shall apply except when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the permitting authority must be advised of the schedule.

(ii) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur due to soot blowing or grate cleaning of a hog fuel or wood-fired boiler: Visible emissions (as determined by ecology method 9A) shall not exceed twenty percent opacity; except that opacity shall not exceed forty percent for up to a fifteen minute period in any eight consecutive hours. For this provision to apply, the owner or operator must:

(A) Schedule the soot blowing and/or grate cleaning for the same approximate time(s) each day;

(B) Notify the permitting authority in writing of the schedule before using the forty percent standard; and

(C) Maintain contemporaneous records sufficient to demonstrate compliance. Records must include the date, start time, and stop time of each episode, and the results of opacity readings conducted during this time.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent or an alternative opacity standard established in this section.

(c) When two or more emission units are connected to a common stack, the permitting authority may allow or require

the use of an alternate time period if it is more representative of normal operations.

(d) When an ~~((alternate))~~ alternative opacity limit has been established per RCW 70.94.331 (2)(c), WAC 173-400-081(4) or 173-400-082.

~~(c) ((Exemptions from twenty percent opacity standard.~~

~~(+))~~ Alternative visible emission standard for a hog fuel or wood-fired boiler in operation before January 24, 2018. This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur due to planned startup or shutdown of a hog fuel or wood-fired boiler with dry particulate matter controls, an owner or operator may use the alternative standard in this subsection when all of the following requirements are met.

Note: This subsection does not apply to a combustion unit with wet particulate matter controls.

(i) A planned startup or shutdown means that the owner or operator notifies the permitting authority:

(A) At least twenty-four hours prior to the planned boiler startup or shutdown; or

(B) Within two hours after restarting the boiler for a startup within twenty-four hours after the end of an unplanned shutdown (i.e., malfunction or upset).

Note: A shutdown due to a malfunction is part of the malfunction.

(ii) Startup begins when fuel is ignited in the boiler fire box.

(iii) Startup ends:

(A) When the boiler starts supplying useful thermal energy; or

(B) Four hours after the boiler starts supplying useful thermal energy if the facility follows the work practices in (e)(vi)(B) of this subsection.

(iv) Shutdown begins when the boiler no longer supplies useful thermal energy, or when no fuel is being fed to the boiler or process heater, whichever is earlier.

(v) Shutdown ends when the boiler or process heater no longer supplies useful thermal energy and no fuel is being combusted in the boiler.

(vi) The facility complies with one of the following requirements:

(A) Visible emissions during startup or shutdown shall not exceed forty percent opacity for more than three minutes in any hour, as determined by ecology method 9A; or

(B) During startup or shutdown, the owner or operator shall:

(I) Operate all continuous monitoring systems;

(II) In the boiler, use only clean fuel identified in 5.b. in Table 3 in 40 C.F.R. Part 63, Subpart DDDDD;

(III) Engage all applicable control devices so as to comply with the twenty percent opacity standard within four hours of the start of supplying useful thermal energy;

(IV) Engage and operate particulate matter control within one hour of first feeding fuels that are not clean fuels; and

(V) Develop and implement a written startup and shutdown plan. The plan must minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or

operator shall use the recommended startup procedure for a unit of a similar design. The plan must be maintained on-site and available upon request for public inspection.

(vii) The facility maintains records sufficient to demonstrate compliance with (e)(i) through (v) of this subsection. The records must include the following:

(A) The date and time of notification of the permitting authority;

(B) The date and time when startup and shutdown began;

(C) The date and time when startup and shutdown ended;

(D) The compliance option in (e)(vi) of this subsection that was chosen (either (A) or (B)) and documentation of how the conditions of that option were met.

(f) Furnace refractory alternative visible emission standard. This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur during curing of furnace refractory in a lime kiln or boiler, visible emissions (as determined by ecology method 9A) shall not exceed forty percent opacity for more than three minutes in any hour, except when (b) of this subsection applies. For this provision to apply, the owner or operator must meet all of the following requirements:

(i) The total duration of refractory curing shall not exceed thirty-six hours; and

(ii) Use only clean fuel identified in 5.b. in Table 3 in 40 C.F.R. Part 63, Subpart DDDDD; and

(iii) The owner or operator provides a copy of the manufacturer's instructions on curing refractory to the permitting authority; and

(iv) The manufacturer's instructions on curing refractory must be followed, including all instructions on temperature increase rates and holding temperatures and time; and

(v) The emission controls must be engaged as soon as possible during the curing process; and

(vi) The permitting authority must be notified at least one working day prior to the start of the refractory curing process.

(g) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used ~~((for))~~ during testing and ~~((certification of))~~ certifying visible emission ~~((s))~~ readers ~~((per the))~~ are exempt from the twenty percent opacity limit. Testing must follow testing and certification requirements ~~((of))~~ in 40 C.F.R. Part 60, Appendix A, Test Method 9 (in effect on the date in WAC 173-400-025) and ~~((ecology))~~ Source Test Methods 9A and 9B ~~((shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers))~~ in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

~~((+))~~ (h) Military training exercises. Visible emissions ~~((resulting from))~~ during military obscurant training exercises are exempt from ~~((compliance with))~~ the twenty percent opacity ~~((limitation provided))~~ limit when the following ~~((criteria))~~ requirements are met:

~~((A))~~ (i) No visible emissions shall cross the boundary of the military training site/reservation.

~~((B))~~ (ii) The operation shall have in place methods, which have been reviewed and approved by the permitting

authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

~~((iii)) (i)~~ Firefighter training. Visible emissions from fixed and mobile firefighter training facilities ~~((while being used to train firefighters and while complying with the requirements of))~~ occurring during the training of firefighters are exempt from the twenty percent opacity limit. Compliance with chapter 173-425 WAC is required.

(3) **Fallout.** No person shall cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of her or his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.** No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes ~~((except: When the owner or operator of an emissions unit supplies emission data and can demonstrate to the permitting authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, the permitting authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved loca-~~

~~tions. All sampling results will be made available upon request and a monthly summary will be submitted to the permitting authority)).~~

(8) **Concealment and masking.** No person shall cause or allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(9) **Fugitive dust.**

(a) The owner or operator of a source or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4).

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting waste wood ~~((derived fuels))~~ for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by ~~((test method 5 in Appendix A to))~~ 40 C.F.R. Part 60, Appendix A, Test Method 5 (in effect on the date in WAC 173-400-025) or approved procedures ~~((contained))~~ in ~~(())~~ Source Test Manual - Procedures for Compliance Testing, ~~(())~~ state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures ~~((contained))~~ in ~~(())~~ Source Test Manual - Procedures for Compliance Testing, ~~(())~~ state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements in WAC 173-400-075 (40 C.F.R. Part 63, Subpart EEE in effect on the date in WAC 173-400-025) and WAC 173-400-115 (40 C.F.R. Part 60, Subparts E, Ea, Eb, Ec, AAAA, and CCCC (in effect on the date in WAC 173-400-025)) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by ~~((the Ecology))~~ Source Test Method 14 ~~((contained))~~ procedures

in ((²))*Source Test Manual - Procedures for Compliance Testing*,((²)) state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999.

Note: Subsection (2) of this section (a state-only provision) does not apply to a unit subject to this subsection because this section is based on federal requirements.

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units*. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this ((^{subpart})) section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units*. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this ((^{subpart})) section if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units*. Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, Subpart Ea or Subpart Eb (in effect on the date in WAC 173-400-025); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), Subparts Ea, Eb, and AAAA, and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units*. Incineration units regulated under 40 C.F.R. Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on the date in WAC 173-400-025);

(v) *Small power production facilities*. Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities*. Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under ~~((subpart EEE of))~~ 40 C.F.R. Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on the date in WAC 173-400-025).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 (in effect on the date in WAC 173-400-025).

(A) 100 percent wood waste, as defined in 40 C.F.R. 60.2265.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste, as these terms are defined in 40 C.F.R. 60.2265.

(x) *Cyclonic barrel burners.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xi) *Rack, part, and drum reclamation units.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xii) *Cement kilns.* Kilns regulated under ~~((subpart LLL of))~~ 40 C.F.R. Part 63, Subpart LLL (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on the date in WAC 173-400-025).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 C.F.R. Part 60, Subpart O (Standards of Performance for Sewage Treatment Plants) (in effect on the date in WAC 173-400-025).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815) (in effect on the date in WAC 173-400-025).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 (in effect on the date in WAC 173-400-025) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875 (in effect on the date in WAC 173-400-025). The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;

- Waste management plan requirements in 60.2620 through 60.2630;

- Operator training and qualification requirements in 60.2635 through 60.2665;

- Emission limitations and operating limits in 60.2670 through 60.2685;

- Performance testing requirements in 60.2690 through 60.2725;

- Initial compliance requirements in 60.2700 through 60.2725;

- Continuous compliance requirements in 60.2710 through 60.2725;

- Monitoring requirements in 60.2730 through 60.2735;

- Recordkeeping and reporting requirements in 60.2740 through 60.2800;

- Title V operating permits requirements in 60.2805;

- Air curtain incinerator requirements in 60.2810 through 60.2870;

- Definitions in 60.2875; and

- Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted. Each CISWI unit, regardless of whether it is a

major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999.

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, ((~~liquified~~) liquefied) petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 C.F.R. 60.1910 combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 (in effect on the date in WAC 173-400-025).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 (in effect on the date in WAC 173-400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 (in effect on the date in WAC 173-400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 (in effect on the date in WAC 173-400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, Subpart BBBB (in effect on the date in WAC 173-400-025) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, Subpart HHH (in effect on the date in WAC 173-400-025).

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable stan-

dards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.** As of January 1, 2020, it is illegal to use a wigwam or silo burner in Washington. A wigwam or silo burner may operate until midnight December 31, 2019, provided it complies with the following:

(a) All wigwam and silo burners designed to dispose of (~~wood~~) waste wood must meet all provisions of WAC 173-400-040 (~~2~~), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4) (~~or~~), 173-400-115 (~~(f)~~), or 40 C.F.R. Part (~~60~~) 62, Subpart (~~DDDD~~) III in effect on the date in WAC 173-400-025(~~a~~) as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include, but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions. (~~An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.~~)

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1) (~~, except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes.~~).

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(c) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate an orchard-heating device that causes a visible emission exceeding twenty percent opacity as specified in WAC 173-400-040(2).

(4) Grain elevators.

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

~~(5) ((Catalytic cracking units.~~

~~(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:~~

~~(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.~~

~~(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.~~

~~(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.~~

~~(6)) Other ((wood)) waste wood burners.~~

~~(a) ((Wood waste)) Waste wood burners not specifically provided for in this section shall meet all applicable provisions of:~~

~~(i) WAC 173-400-040((. In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 C.F.R. Part 60, subpart DDDD in effect on the date in WAC 173-400-025) must meet all applicable provisions of those sections)) and 173-400-050;~~

~~(ii) 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025); and~~

~~(iii) 40 C.F.R. Part 62, Subpart III (in effect on the date in WAC 173-400-025).~~

~~(b) Such ((wood)) waste wood burners shall utilize RACT and shall be operated and maintained to minimize emissions.~~

~~((7) Sulfuric acid plants.~~

~~No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.~~

~~(8)) (6) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.~~ A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Resource Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 C.F.R. Part 60

rules mean those rules in effect on the date in WAC 173-400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 C.F.R. 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 C.F.R. 60.757 (submittal of an initial design capacity report) and 40 C.F.R. 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 C.F.R. 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 C.F.R. 60.753.

(B) The systems must follow the compliance provisions in 40 C.F.R. 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 C.F.R. 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 C.F.R. 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 C.F.R. 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 C.F.R. 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to

chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 C.F.R. 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 C.F.R. 60.752 (b)(2)(v).

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-081 Emission limits during startup and shutdown. (1) In promulgating technology-based emission standards and ~~((making control technology determinations (e.g., BACT, RACT, LAER, BART)))~~ establishing emission limits in a permit or order the permitting ~~((authorities))~~ authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

(2) ~~((Where))~~ When the permitting authority determines, as part of its control technology determination, that the source or source category, when operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission limit or standard during startup or shutdown, the permitting authority must include in the ~~((standard))~~ rule, order, or permit appropriate alternative emission limitations ~~((operating parameters, or other criteria))~~ to regulate the performance of the source during startup or shutdown conditions.

(3) In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, the permitting ~~((authorities))~~ authority shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule.

(4) ~~((Any))~~ An emission limitation or other parameter adopted under this ~~((rule))~~ section which increases allowable emissions during a startup or shutdown ~~((conditions))~~ event over levels authorized in Washington's ~~((state implementation plan))~~ SIP shall not take effect until:

(a) Approved by EPA as a SIP amendment; and

(b) The permitting authority has complied with WAC 173-400-082 (4)(c)(i)(A) and (B) and (iv) when applicable.

NEW SECTION

WAC 173-400-082 Alternative emission limit that exceeds an emission standard in the SIP. (1) Applicability. The owner or operator may request an alternative emission limit for a specific emission unit(s) that exceeds a limit in the SIP. The new limit would apply during a clearly defined transient mode of operation. An alternative emission limit established under this section becomes a facility-specific SIP emission standard once EPA approves the new limit in the SIP. This section does not apply to the approval of a revised emission limit that does not exceed a limit in the SIP.

(2) Pollutant scope. An alternative emission limit may be established under this section for any of the following emission standards in Washington's SIP in 40 C.F.R. 52.2470:

(a) Opacity emission standard in:

(i) WAC 173-400-040(2);

- (ii) WAC 173-405-040(6);
- (iii) WAC 173-415-030(3); and
- (iv) WAC 173-434-130(4).
- (b) Sulfur dioxide emission standard in:
 - (i) WAC 173-400-040(7);
 - (ii) WAC 173-405-040(11);
 - (iii) WAC 173-410-040(1);
 - (iv) WAC 173-415-030(5); and
 - (v) WAC 173-434-130(3).
- (c) Particulate matter emission standards in:
 - (i) WAC 173-400-050(1) and 173-400-060;
 - (ii) WAC 173-405-040 (1)(a), (2), (3)(a), and (5);
 - (iii) WAC 173-410-040(2);
 - (iv) WAC 173-415-030(2); and
 - (v) WAC 173-434-130(1).
- (d) Emission standards or limits in a local air pollution control authority rule, order, or plan referenced in 40 C.F.R. 52.2470.
- (3) Requirements for an owner or operator requesting an alternative emission limit.
 - (a) The owner or operator may request an alternative emission limit for a specific transient mode of operation for an emission unit that exceeds a standard in the SIP.
 - (b) A request for an alternative emission limit must be submitted to the permitting authority in writing. The permitting authority shall determine the adequacy of the information.
 - (c) A request for an alternative emission limit must provide data and documentation sufficient to:
 - (i) Specify which emission unit(s) and specific transient mode(s) of operation the requested alternative emission limit is to cover;
 - (ii) Demonstrate that the operating characteristics of the emission unit(s) prevent meeting the applicable emission standard during the specific transient mode of operation. Operating characteristics may include the operational variations in the emission unit, installed emission control equipment, work practices, or other means of emission control that could affect the frequency, or duration and quantity of emissions during the transient mode of operation;
 - (iii) Demonstrate why it is not technically feasible to use the existing control system or any practicable operating scenario that would enable the emission unit to comply with the SIP emission standard, and avoid the need for an alternative emission limit;
 - (iv) Demonstrate that PSD increments, when applicable, and ambient air quality standards in chapter 173-476 WAC will not be exceeded by emissions from the proposed alternative limit;
 - (v) Determine best operational practices for the emission unit(s) involved;
 - (vi) Demonstrate that the frequency and duration of the specific transient mode of operation is limited to the shortest practicable amount of time;
 - (vii) Demonstrate the quantity and impact of the emissions resulting from the specific transient mode of operation are the lowest practicably possible; and
 - (viii) Demonstrate that the emissions allowed by the alternative emission limit will not exceed an applicable emission standard in 40 C.F.R. Parts 60, 61, 62, 63, or 72 (in effect

on the date in WAC 173-400-025). For the purpose of this subsection, an automatic or discretionary exemption in any of these federal rules does not apply.

- (4) Requirements for processing a request for an alternative emission limit.
 - (a) Completeness determination.
 - (i) Within sixty days of receiving a request, the permitting authority must:
 - (A) Notify the applicant that the request is complete or incomplete;
 - (B) Specify the reason(s) for determining the request is incomplete, if applicable.
 - (ii) The permitting authority may request or accept additional information after determining a request complete.
 - (b) Denial. The permitting authority or ecology may deny a request. The denial must include the basis for the denial.
 - (c) Final determination.
 - (i) Within ninety days of receipt of a complete application, the permitting authority must:
 - (A) Initiate notice, a thirty-day public comment period (required by WAC 173-400-171), and a mandatory hearing (when required by RCW 70.94.380) followed as promptly as possible by a final decision; and
 - (B) Send the draft order and supporting materials electronically to ecology at least thirty days in advance of the public hearing.
 - (ii) A permitting authority may extend the deadline for making a determination due to the complexity of the request.
 - (iii) Ecology recommends combining the public comment period for the draft order (permitting authority responsibility) and the ecology approval and SIP hearing (ecology responsibility).
 - (iv) A permitting authority shall not issue a final order until ecology notifies the permitting authority in writing that the proposed alternative emission limit is consistent with the purposes of the Washington Clean Air Act as required by RCW 70.94.380. If on review, ecology denies the request, ecology will inform the permitting authority and the applicant of the reason(s) for the denial; and
 - (v) The final order shall not be effective until the effective date of EPA's approval of the order as a SIP amendment.
 - (5) The draft regulatory order must include:
 - (a) The name or other designation to identify the specific emission unit(s) subject to the alternative emission limit;
 - (b) A clearly defined specific transient mode of operation during which the alternative emission limit applies, including parameters for determining the starting and stopping point, and when the alternative emission limit applies;
 - (c) The emission limit for the specific transient mode of operation;
 - (d) A requirement that the applicable emission unit(s) be operated consistent with good operating practices for minimizing emissions during the time the alternative emission limit applies; and
 - (e) Monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with each condition in the order.
 - (6) Fees. A permitting authority may assess and collect fees for processing the request for an alternative emission

limit according to its fee schedule for processing a permit application.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-107 Excess emissions. This section is in effect until the effective date of EPA's ~~((incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for this section))~~ removal of the September 20, 1993, version of this section from the SIP. This section is not effective starting on that date.

(1) The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.

(2) Excess emissions determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to penalty.

(3) Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable shall be reported to ecology or the authority as soon as possible. Other excess emissions shall be reported within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports. Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(4) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(5) Maintenance. Excess emissions due to scheduled maintenance shall be considered unavoidable if the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(6) Excess emissions due to a malfunction or upset(s) shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(c) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution

control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-108 Excess emissions reporting. (State-only requirement not federally enforceable.) This section takes effect on the effective date of EPA's ~~((incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.~~

~~(1) Excess emissions must be reported to the permitting authority. Excess emissions which represent a potential threat to human health or safety must be reported as soon as possible, but in no case later than twelve hours after the excess emissions were discovered. Excess emissions which the owner or operator of the source believes to be unavoidable, per the criteria under WAC 173-400-109, must be reported to the permitting authority as soon as possible after the excess emissions were discovered. Other excess emissions must be reported to the permitting authority within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports or, for chapter 173-401 WAC sources, as provided in WAC 173-401-615.~~

~~(2) For those sources not required to report under WAC 173-401-615,))~~ removal of the September 20, 1993, version of WAC 173-400-107 from the SIP.

(1) Notify the permitting authority.

(a) When excess emissions represent a potential threat to human health or safety, the owner or operator must notify the permitting authority by phone or electronic means as soon as possible, but not later than **twelve hours** after the excess emissions were discovered.

(b) For all other excess emissions, the owner or operator must notify the permitting authority in a report as provided in subsection (2) of this section.

(2) Report. The owner or operator must report all excess emissions to the permitting authority:

(a) To claim emissions as unavoidable under WAC 173-400-109, the report must contain the information in subsection (4) of this section.

(b) Chapter 173-401 WAC source: As provided in WAC 173-401-615(3) and subsection (4) of this section. Subsection (3) of this section does not apply to a chapter 401 source reporting under WAC 173-401-615.

(c) All other sources:

(i) Within thirty days after the end of the month during which the event occurred; or

(ii) As part of the next routine emission monitoring report.

(3) The report must contain at least the following information:

(a) Date, time, duration of the episode;

(b) Known causes;

(c) For exceedances of ~~((nonopacity))~~ an emission limitation((s)) other than opacity, an estimate of the quantity of excess emissions;

(d) The corrective actions taken; and

(e) The preventive measures taken or planned to minimize the chance of recurrence.

~~((3))~~ (4) For ((any)) an excess emission event that the owner or operator claims ((to be)) was unavoidable under WAC 173-400-109, the report must also include the following information ((in addition to that required in subsection (2) of this section)):

(a) Properly signed~~((s))~~ contemporaneous records or other relevant evidence documenting the owner or operator's actions in response to the excess emissions event;

(b) Information on whether installed emission monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage; and

(c) All additional information required under WAC 173-400-109 ~~((3), (4) or)~~ (5) supporting the claim that the excess emissions were unavoidable.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-109 Unavoidable excess emissions. (State-only requirement not federally enforceable.) This section takes effect on the effective date of EPA's ~~((incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107))~~ removal of the September 20, 1993, version of WAC 173-400-107 from the SIP.

(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, ~~((regulation))~~ rule, permit, or regulatory order. ~~((Unavoidable excess emissions are subject to injunctive relief but not penalty. The decision that excess emissions are unavoidable is made by the permitting authority, however, in a federal enforcement action filed under 42 U.S.C. § 7413 or 7604 the decision-making authority shall determine what weight, if any, to assign to the permitting authority's determination that an excess emissions event does or does not qualify as unavoidable under the criteria in subsections (3), (4), and (5) of this section.))~~

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source and the criteria in subsection (5) of this section.

(b) Excess emissions determined by the permitting authority to be unavoidable are:

(i) A violation subject to WAC 173-400-230 (3), (4), and (6); but

(ii) Not subject to civil penalty under WAC 173-400-230(2).

Note: Nothing in a state rule limits a federal court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action.

~~((a))~~ (2) The owner or operator of a source shall have the burden of proving to the permitting authority ((or the decision-making authority)) in an enforcement action that excess emissions were unavoidable. This demonstration shall

be a condition to obtaining relief under subsection~~((s (3), (4) and))~~ (5) of this section.

~~((b) Excess emissions that cause a monitored exceedance of any relevant ambient air quality standard do not qualify for relief under this section.~~

~~((c))~~ (3) This section does not apply to an exceedance((s)) of an emission standard~~((s promulgated under))~~ in 40 C.F.R. Parts 60, 61, 62, 63, and 72, or a permitting authority's adoption by reference of ~~((such))~~ these federal standards.

~~((d) This section does not apply to exceedance of emission limits and standards contained in a PSD permit issued solely by EPA.~~

~~(3) Excess emissions due to startup or shutdown conditions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates that:~~

~~(a) Excess emissions could not have been prevented through careful planning and design;~~

~~(b) Startup or shutdown was done as expeditiously as practicable;~~

~~(c) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;~~

~~(d) The emissions were minimized consistent with safety and good air pollution control practice during the startup and shutdown period;~~

~~(e) If a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage; and~~

~~((f))~~ (4) Excess emissions that occur due to an upset((s)) or malfunction((s)) during ~~((routine))~~ a startup or shutdown event are treated as an upset((s)) or malfunction((s)) under subsection (5) of this section.

~~((4) Maintenance. Excess emissions during scheduled maintenance may be considered unavoidable if the source reports as required by WAC 173-400-108 and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.))~~

(5) Excess emissions due to an upset((s)) or ((equipment)) malfunction((s)) will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates to the permitting authority that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(c) When the operator knew or should have known that an emission standard or other permit condition was being exceeded, the operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action~~((, including))~~. Actions taken could include slowing or shutting down the emission unit as necessary to minimize emissions~~((, when the operator knew or should have known that an emission standard or permit condition was being exceeded; and))~~;

(d) If the emitting equipment could not be shutdown during the malfunction or upset to prevent the loss of life, prevent personal injury or severe property damage, or to minimize overall emissions, repairs were made in an expeditious fashion;

(e) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

((e)) (f) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible; and

(g) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-171 Public notice and opportunity for public comment. The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) Applicability to prevention of significant deterioration, and relocation of portable sources.

This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) Internet notice of application.

(a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet web site.

(b) The internet posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, ~~((fax;))~~ or electronic ~~((mail))~~ means during the fifteen-day internet posting period.

(e) A public comment period must be provided for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the fifteen-day internet posting period.

(3) Actions subject to a mandatory public comment period.

The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC; or

(c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review under WAC 173-400-110, 173-400-113, or 173-400-117; or

(d) Any order to determine reasonably available control technology, RACT; or

(e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

(f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, GEP, formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission ~~((limitation))~~ limit; or

(g) An order to authorize a bubble; or

(h) ~~((Any))~~ An action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or

(i) ~~((Any))~~ A regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

(j) ~~((Any))~~ A notice of construction application or regulatory order used to establish a creditable emission reduction; or

(k) ~~((Any))~~ An order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or

(l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

(m) ~~((Any))~~ An extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

(n) ~~((Any))~~ An application or other action for which the permitting authority determines that there is significant public interest; or

(o) An order issued under WAC 173-400-081(4) or 173-400-082 that establishes an emission limitation that exceeds a standard in the SIP.

(4) Advertising the mandatory public comment period.

(a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must be ~~((given by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal.))~~ posted on the permitting authority web site for the duration of the public comment period.

(i) The permitting authority may supplement this method of notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. The applicant or other initiator of the action must pay the publishing cost for all supplemental noticing.

(ii) A permitting authority must publish a notice of the public comment period in a newspaper of general circulation in the area of the proposed action until June 30, 2019. We recommend that a permitting authority continue publishing a notice in a newspaper for a project with high interest. The applicant or other initiator of the action must pay this publishing cost.

(b) This public notice can be ~~((published))~~ posted or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made.

(c) The notice must be ~~((published))~~ posted or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied. ~~((The applicant or other initiator of the action must pay the publishing cost of providing public notice.))~~

(5) Information available for public review.

(a) Administrative record. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection. A permitting authority may comply with this requirement by making these materials available on its web site or in at least one physical location near the proposed project.

(b) The permitting authority must post the following information on its web site for the duration of the public comment period:

(i) Public notice complying with subsection (6) of this section;

(ii) Draft permit, order, or action; and

(iii) Information on how to access the administrative record.

(c) Exemptions from this requirement include information protected from disclosure under any applicable law including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(6) Public notice components.

(a) The notice must include:

(i) The date the notice is posted;

(ii) The name and address of the owner or operator and the facility;

~~((iii))~~ (iii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

~~((iii))~~ (iv) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

~~((iv))~~ (v) The location where those documents made available for public inspection may be reviewed;

~~((v))~~ A thirty-day period for submitting written comment to the permitting authority;

(vi) Start date and end date for a public comment period consistent with subsection (7) of this section;

(vii) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

~~((vii))~~ (viii) The name, address, and telephone number and email address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas, as required by WAC 173-400-117, public notice must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval.

(7) Length of the public comment period.

(a) The public comment period must ~~((extend))~~ consist of a minimum of thirty days and start at least thirty days prior to any hearing. The first day of the public comment period begins on the next calendar day after the permitting authority posts the public notice on their web site.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

(8) Requesting a public hearing. The applicant, any interested governmental entity, any group, or any person may request a public hearing within the ~~((thirty-day))~~ public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, ~~((fax,))~~ or electronic ~~((mail))~~ means. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(9) Setting the hearing date and providing hearing notice. If the permitting authority determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

(10) Notice of public hearing.

(a) At least thirty days prior to the hearing the permitting authority ~~((will))~~ must provide notice of the hearing as follows:

~~((Give public hearing notice by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal.))~~ Post the public hearing notice on the permitting

authority web site as directed by subsection (4) and (7) of this section;

(ii) The permitting authority may supplement the web posting by advertising in a newspaper of general circulation in the area of the proposed source or action, or by other methods appropriate to notify the local community; and

~~((ii) Mail)~~ (iii) Distribute by electronic means or via the United States postal service the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) In the case of a permit action, the applicant must pay all ~~((publishing costs associated with meeting the requirements of this subsection))~~ supplemental notice costs when the permitting authority determines a supplemental notice is appropriate. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(11) **Notifying the EPA.** The permitting authority must ~~((send))~~ distribute by electronic means or via the United States postal service a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

(a) This subsection applies to ecology only actions including:

(i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;

(ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC 173-400-118, and rules to strengthen the SIP.

(b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least thirty days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.

(c) The public notice for ecology only actions must comply with the requirements of 40 C.F.R. 51.102 (in effect on the date in WAC 173-400-025).

(13) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-740 PSD permitting public involvement requirements. (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

(b) An extension of the time to begin construction or suspend construction under a PSD permit; or

(c) A revision to a PSD permit, except an administrative amendment to an existing permit; or

(d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review of air quality impacts.

(2) **Notification of the public.** As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or after receipt of a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Administrative record. Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Ecology may comply with this requirement by making these materials available on ecology's web site or at a physical location.

(i) Some materials comprising the administrative record (such as air quality modeling data) may be too large to post on a web site but may be made available as part of the record either in hard copy or on a data storage device.

(ii) Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(b) Notify the public ~~((by: (i) Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC 173-400-730(4). The date the public notice is published in the newspaper starts the required thirty day comment period.~~

~~((ii)).~~

(i) Public notice must be posted on ecology's web site for a minimum of thirty days. Day one of the public comment period begins on the next calendar day after ecology posts the public notice.

(ii) The following information must be posted for the duration of the public comment period:

(A) Public notice elements in subsection (3) of this section;

(B) PSD draft permit;

(C) PSD technical support document; and

(D) Information on how to access the administrative record.

~~((iii))~~ If ecology grants a request to extend the public comment period, ~~((the extension notice must also be published in a newspaper as noted above))~~ ecology must:

(A) Post the extension notice on the same web page where the original notice was posted;

(B) Specify the closing date of the extended comment period in the extension notice; and

(C) Distribute a copy of the extension notice ((sent to)) by electronic means or via the United States postal service to whomever requested the extension and the organizations and individuals listed in (c) and (d) of this subsection. ((The closing date of the extended comment period shall be as defined in the public comment period extension notification.

~~((iii))~~

(iv) If a hearing is held, the public comment period must extend through the hearing date and comply with the notice requirements in subsection (4)(c) of this section.

~~((iv))~~ (v) If ecology determines a supplemental notice is appropriate, the applicant or other initiator of the action must pay the cost of providing this supplemental public notice. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

~~((c))~~ (c) ((Send)) Distribute by electronic means or via the United States postal service a copy of the public notice to:

(i) Any Indian governing body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

~~((d))~~ (d) ((Send)) Distribute by electronic means or via the United States postal service a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected federal land manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC; and

(v) Individuals or organizations who request a copy(~~s~~ ~~and~~

~~(vi) The location for public inspection of material required under (a) of this subsection)).~~

(3) Public notice content. The public notice shall contain at least the following information:

(a) The name and address of the applicant;

(b) The location of the proposed project;

(c) A brief description of the project proposal;

(d) The preliminary determination to approve or disapprove the application;

(e) How much increment is expected to be consumed by this project;

(f) The name, address, and telephone number of the person to contact for further information;

(g) A brief explanation of how to comment on the project;

(h) An explanation on how to request a public hearing;

~~((i) The location of the documents made available for public inspection;~~

~~(j) There is a thirty day period from the date of publication of the notice for submitting written comment to ecology;~~
~~(k))~~

(i) The start date and end date of the public comment period consistent with subsection (2)(b)(i) of this section;

(j) A statement that a public hearing may be held if ecology determines within ((a thirty day)) the public comment period((s)) that significant public interest exists;

~~((h))~~ (k) The length of the public comment period in the event of a public hearing; and

~~((m))~~ (l) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) Public hearings.

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the ~~((thirty day))~~ public comment period established consistent with subsection (2)(b)(i) of this section. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).

(5) Consideration of public comments. Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same ~~((locations))~~ web site where the pre-construction information on the proposed major source or major modification was made available.

(6) Issuance of a final determination.

(a) The final approval or disapproval determination must be made within one year of receipt of a complete application and must include the following:

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

(iv) A description of what approval conditions changed from the preliminary determination; and

(v) A cover letter that includes an explanation of how the final determination may be appealed.

(b) Ecology shall post the final determination on the same web page where the draft permit and public notice was posted according to subsection (2)(b) of this section.

(c) Ecology shall ~~((mail))~~ distribute by electronic means or via the United States postal service a copy of the cover letter that accompanies the final determination to:

(i) Individuals or organizations that requested notification of the specific project proposal; and

(ii) Other individuals who requested notification of PSD permits.

~~((e))~~ (d) Ecology shall distribute a copy of the final determination ~~((shall be sent))~~ to:

(i) The applicant;

(ii) U.S. Department of the Interior - National Park Service;

(iii) U.S. Department of Agriculture - Forest Service;

(iv) EPA Region 10;

(v) The permitting authority with authority over the source under chapter 173-401 WAC; and

(vi) Any person who commented on the preliminary determination ~~((; and~~

~~((vii) The location for public inspection of material required under subsection (2)(a) of this section)).~~

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

WAC 173-401-800 Public involvement. (1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a statewide process to be followed by all permitting authorities.

(2) Public notice.

(a) The permitting authority shall provide public notice for the following actions:

(i) Issuance of a draft permit or permit renewal;

(ii) Intended denial of a permit application;

(iii) Issuance of a draft permit modification;

(iv) Issuance of a draft general permit;

(v) Scheduling of a public hearing under subsection (4) of this section; and

(vi) Any other related activities that the permitting authority considers to involve substantial public interest.

(b) ~~((Public notice shall be provided by the permitting authority by prominent advertisement in the area affected by the facility applying for a permit. Publication in *Ecology's Operating Permit Register* does not satisfy this requirement. Prominent advertisement may be by publication in a newspaper of general circulation in the area affected by the facility applying for a permit as determined by the permitting authority. The permitting authority may provide additional notice to the public through other methods, such as newsletters and press releases. Notice shall also be published in the *Ecology Permit Register*. The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.))~~ Notice shall be given by the following methods:

(i) Permitting authority web site. A permitting authority must post notice on its web site for the duration of the public

comment period. Public notice must be posted by noon of the first day of the public comment period.

(ii) A permitting authority may supplement notice on an individual permit or action. Additional notice may include, but is not limited to, a newspaper of general circulation in the area of the permittee.

(iii) *Permit Register*.

(A) Ecology shall publish notice in the *Permit Register* according to WAC 173-401-805.

(B) The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.

(c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive ~~((such))~~ this notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists based on geographical location. The mailing list may be electronic or hardcopy, or both. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.

(d) Public notice must include:

(i) The start date and end date of the public comment period;

(ii) Name and address of the permitting authority;

~~((ii))~~ (iii) Name and address of the permit applicant, and if different, the name and address of the facility or activity regulated by the permit, unless it is a general permit;

~~((iii))~~ (iv) A brief description of the business conducted at the facility and activity involved in the permit action;

~~((iv))~~ (v) Name, address, and telephone number of a person (or an email or web address) from whom interested persons may obtain further information such as copies of the draft permit, the application, and relevant supporting materials;

~~((v))~~ (vi) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of any hearings scheduled for the permit; and

~~((vi))~~ (vii) A description of the emission change involved in any permit modification.

(e) Availability for public inspection.

(i) The permitting authority must post the draft permit and statement of basis (technical support document) on its web site for the duration of the public comment period.

(ii) Administrative record. The permitting authority must make the administrative record available for public inspection ~~((;))~~ for the duration of the public comment period. The administrative record must:

(A) Be available in at least one location near the chapter 401 source ~~((;))~~. This may be at a physical location and/or posted on the permitting authority web site; and

(B) Include all nonproprietary information contained in the permit application ~~((; draft permit))~~ and supporting materials. ~~((Public inspections of materials for nonstationary sources or general permits may be located at the discretion of the permitting authority.))~~ Supporting materials available

only in hardcopy or too large for posting on a web site must be identified and made available on request.

(3) Public comment. Except as otherwise provided in WAC 173-401-725, the permitting authority shall provide a minimum of thirty days for public comment on actions described in subsection (2)(a) of this section.

(a) This comment period begins on the ((date of publication of notice in the *Permit Register* or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, whichever is later.)) next calendar day after the permitting authority posts the public notice on their web site;

(b) No proposed permit shall be issued until the public comment period has ended and the permitting authority has prepared a response to the comments received.

(4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The permitting authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held at a time(s) and place(s) as the permitting authority deems reasonable. The permitting authority shall provide at least thirty days prior notice of any hearing.

(5) The permitting authority shall keep a record of the commentors and issues raised during the public participation process. Such records shall be available to the public.

WSR 18-17-129
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed August 20, 2018, 11:12 a.m., effective September 21, 2018]

Effective Date of Rule: September 21, 2018.

Purpose: The purpose is to align Title 357 WAC with the changes made to RCW 41.06.475 which removes the requirement for the office of financial management (OFM) to adopt background check rules for the department of early learning and requires OFM to adopt background check rules for the department of children, youth, and families.

Citation of Rules Affected by this Order: Amending WAC 357-19-183, 357-19-184, 357-19-186, 357-19-187, 357-19-188, 357-19-189, and 357-19-191.

Statutory Authority for Adoption: RCW 41.06.475.

Adopted under notice filed as WSR 18-14-054 on June 28, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: August 20, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-19-183 Must ~~((DEL))~~ DCYF conduct background checks on all employees in covered positions and individuals being considered for a covered position?

(1) The ~~((director))~~ secretary of the department of ~~((early learning ~~(DEL))~~)) children, youth and families (DCYF) or designee must conduct background checks on all employees in covered positions and individuals being considered for a covered position.~~

(2) The requirement for background checks must include the following:

(a) Current employees in covered positions.

(b) Any employee considered for a covered position because of a layoff, reallocation, transfer, promotion, demotion, or other actions that result in the employee being in a covered position.

(c) Any individual being considered for positions which are covered positions.

(3) Considered for positions includes decisions about:

(a) Initial hiring, layoffs, reallocations, transfers, promotions, demotions, or

(b) Other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-184 Besides the ~~((DEL))~~ DCYF, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees?

(1) Employers may conduct background checks on applicants and/or employees if required by state or federal law, or if the employer identifies the need for a background check to verify that the applicant or employee satisfies the position requirements.

(2) Employers who conduct background checks must develop procedures regarding how and when background checks will be conducted. The procedures must include notification to applicants and/or employees if a background check is required.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by ((~~DEL~~)) DCYF and what are the results of the background check used for? (1) The background check information considered by the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF will include but not be limited to conviction records, pending charges, and disciplinary board final decisions.

(2) The results of the background check must be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee.

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-19-187 For purposes of WAC 357-19-183, must an employee and/or individual being considered for a covered position authorize the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF or designee to conduct a background check and what happens if the employee or individual being considered for a covered position does not provide authorization? An employee and/or individual applying for or being considered to remain in a covered position must authorize the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF or designee to conduct a background check.

Failure to authorize the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF or designee to conduct a background check disqualifies an employee or individual from consideration for any covered position including their current covered position.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-188 What happens when a permanent ((~~DEL~~)) DCYF employee is disqualified because of a background check? (1) A permanent employee with a background check disqualification may be subject to any of the following actions in no specific order:

- (a) Voluntary demotion;
- (b) Job restructuring;
- (c) Voluntary resignation;
- (d) Job reassignment;
- (e) Nondisciplinary separation in accordance with WAC 357-46-195; or
- (f) Disciplinary action in accordance with WAC 357-40-010.

(2) An appointing authority may use the following interim measures while exploring the availability of actions (not to exceed thirty calendar days except in cases where there are investigations of pending charges):

- (a) Voluntary use of accrued vacation, exchange, and/or compensatory time;
- (b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; and/or
- (c) Reassignment to another work location.

(d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(3) Before a permanent employee may be separated due to a background check disqualification, the search for a non-covered position will occur over a period of thirty calendar days.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-189 What are the responsibilities of the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF in carrying out the requirement to conduct background checks? (1) In order to implement the requirements of WAC 357-19-183, the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF or designee must:

(a) Notify employees and individuals being considered for covered positions that a background check is required for covered positions; and

(b) Develop policies and procedures pertaining to background checks.

(2) Information contained in background checks must be used solely for the purpose of determining the character, suitability and competence of the employee and/or individual being considered for covered positions. The information must not be disseminated further. Dissemination and use of such information is governed by the criminal records privacy act, chapter 10.97 RCW. Unlawful dissemination of information protected by the criminal records privacy act is a criminal offense and may result in prosecution and/or disciplinary action as provided in chapter 357-40 WAC. However, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-191 Does a permanent employee of ((~~DEL~~)) DCYF who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification? A permanent employee of ((~~DEL~~)) DCYF who is disqualified from a covered position as a result of a background check has the right to present to the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF or designee evidence that mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

(1) The employee's background check authorization and disclosure form;

(2) The employee's age at the time of conviction, charge, or disciplinary board final decision;

(3) The nature and severity of the conviction, charge, or disciplinary board final decision;

(4) The length of time since the conviction, charge, or disciplinary board final decision;

(5) The nature and number of previous offenses;

(6) Vulnerability of the child to which the employee will or may have unsupervised access; and

(7) The relationship between the potentially disqualifying event and the duties of the employee.

WSR 18-17-130
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed August 20, 2018, 11:12 a.m., effective September 21, 2018]

Effective Date of Rule: September 21, 2018.

Purpose: The purpose is to align Title 357 WAC with the changes in chapter 39, Laws of 2018 (ESHB 1434). This bill expands the use of shared leave to employees who are sick or temporarily disabled because of a pregnancy disability and for the purposes of parental leave. This bill also allows an employee to maintain up to forty hours of vacation and forty hours of sick leave while using shared leave for this purpose. The purpose of the other amendments are to cleanup WAC by condensing language and are housekeeping in nature.

Citation of Rules Affected by this Order: Amending WAC 357-31-380, 357-31-390, 357-31-395, 357-31-405, 357-31-415, and 357-31-435.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Adopted under notice filed as WSR 18-14-055 on June 28, 2018.

Changes Other than Editing from Proposed to Adopted Version: Since the proposed version, WAC 357-31-405 (6) and (7) and 357-31-435(4) were changed. WAC 357-31-405(6) was updated to include a court document to satisfy the documentation required for foster care or placement. WAC 357-31-405(7) was updated due to a housekeeping change. WAC 357-31-435(4) was updated to correct a reference from WAC 357-31-895 to WAC 357-31-797.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: August 20, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-380 What is the purpose of the state leave sharing program? The purpose of the state leave sharing program is to permit state employees, at no significantly increased cost to the state for providing leave, to come to the aid of another state employee who is likely to take leave without pay or terminate (~~his or her~~) employment (~~because~~:

~~(1) The employee has been called to service in the uniformed services;~~

~~(2) The employee is volunteering with a governmental agency or a nonprofit organization when a state of emergency has been declared within the United States;~~

~~(3) The employee or a relative or household member is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; or~~

~~(4) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655)).~~

AMENDATORY SECTION (Amending WSR 17-18-030, filed 8/28/17, effective 10/2/17)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment(;) or physical or mental condition which is of an extraordinary or severe nature;

(b) (~~The employee~~) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) (~~The employee~~) Is a victim of domestic violence, sexual assault(;) or stalking as defined in RCW 41.04.655;

(e) (~~The employee~~) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability; (~~or~~)

(f) (~~The employee~~) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC 357-31-395(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC 357-31-395(4).

(2) The (~~illness, injury, impairment, condition, call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, or~~) condi-

tion(s) listed in subsection (1) of this section is likely to cause, the employee to(:

~~(a))~~ go on leave without pay status(~~(:)~~) or (~~((b))~~) terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete ~~((their:~~

~~(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or~~

~~(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or~~

~~(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) of this section))~~ leave in accordance with WAC 357-31-435. If the employee qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC 357-31-435.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-395 What definitions apply to shared leave? (1) As defined in RCW 41.04.655, "employee" means any employee of the state, including employees of school districts and educational service districts, who ((is)) are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, grandparent(~~(:)~~) or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care, for a period of up to sixteen weeks after the birth or placement.

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(5) "Severe" or "extraordinary" condition is defined as serious (~~((or))~~), extreme (~~(and/or)~~) or life threatening.

~~((4))~~ (6) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty(~~(:)~~) and a period for

which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

~~((5))~~ (7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard(~~(:)~~) and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit? An employee may be required to submit the following documentation before the employer approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition (~~((before the employer approves or disapproves the request))~~).

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required (~~((absence before the employer approves or disapproves the request))~~).

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a non-profit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault(~~(:)~~) or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault(~~(:)~~) or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault(~~(:)~~) or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault(~~(:)~~) or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault(~~(:)~~) or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault(~~(:)~~) or stalking: An advocate for victims of domestic violence, sexual assault(~~(:)~~)

or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) Employees seeking shared leave under WAC 357-31-390 (1)(e) or (f), the employee must provide documentation in accordance with WAC 357-31-805.

(6) Employees seeking shared leave under WAC 357-31-390 (1)(g), the employer may require verification of the birth or adoption of the child or proof of a current foster parent license or a court document for foster care or placement.

(7) Employees seeking shared leave under WAC 357-31-390 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the employee has a pregnancy disability.

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-415 Can donated leave be used for any purpose? Vacation leave, sick leave, or all or part of a personal holiday transferred from a donating employee under these rules must be used solely for the purpose stated in WAC ((357-31-380)) 357-31-390.

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

WAC 357-31-435 Must employees use their own leave before using shared leave? (1) Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave((;)) and vacation leave that they have accrued before using shared leave.

(2) Employees who qualify for shared leave under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave((;)) and paid military leave allowed under RCW 38.40.060 before using shared leave.

(3) Employees who qualify for shared leave under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday((;)) and vacation leave that they have accrued before using shared leave.

(4) Employees who qualify for shared leave under WAC 357-31-390 (1)(e) or (f) must first use all leave as described in WAC 357-31-797.

(5) Employees who qualify for shared leave under WAC 357-31-390 (1)(g) and/or (h) must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565 and personal holiday before using shared leave. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

**WSR 18-17-131
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT**

[Filed August 20, 2018, 11:12 a.m., effective September 21, 2018]

Effective Date of Rule: September 21, 2018.

Purpose: The purpose is to place new provisions in Title 357 WAC as a result of chapter 117, Laws of 2018 (SSB 5996). This bill states that an employer may not require an employee, as defined in chapter 49.44 RCW, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault.

Citation of Rules Affected by this Order: Amending WAC 357-25-027.

Statutory Authority for Adoption: RCW 43.01.135.

Adopted under notice filed as WSR 18-14-057 on June 28, 2018.

Changes Other than Editing from Proposed to Adopted Version: Since the proposed version the reference to section 1, chapter 117, Laws of 2018, have been codified to RCW 49.44.210, therefore the reference to this RCW has been updated in the adopted version.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 20, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-25-027 What must be included in the agency's sexual harassment policy? Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

- (1) Indicate who is covered by the policy;
- (2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;
- (3) State that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;

(4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;

(5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;

(6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;

(7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;

(8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;

(9) State that the complainant shall be informed of the status and the outcome of an investigation;

(10) Identify the agency's investigation or response procedure;

(11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:

- (a) Preventing or not engaging in sexual harassment;
- (b) Responding to concerns or allegations of violations of the policy;
- (c) Participation in an investigation under the policy; and
- (d) The prohibition against retaliation.

(12) State that confidentiality cannot be guaranteed;

(13) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;

(14) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal; ~~(and)~~

(15) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal; and

(16) State an employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with RCW 49.44.210.

For the purposes of this subsection, "employee" has the same meaning as defined in RCW 49.44.210.

WSR 18-17-132
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed August 20, 2018, 11:12 a.m., effective September 21, 2018]

Effective Date of Rule: September 21, 2018.

Purpose: These changes are housekeeping in nature.

Citation of Rules Affected by this Order: Amending WAC 357-31-010 and 357-31-165.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 18-14-059 on June 28, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 20, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

WAC 357-31-010 Which employees qualify for holiday compensation? (1) Full-time general government employees who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month. Time spent on temporary layoff

as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection ~~((+))~~ (2) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 17-20-052, filed 9/29/17, effective 10/31/17)

WAC 357-31-165 At what rate do general government employees accrue vacation leave? (1) Full-time general government employees accrue vacation leave at the following rates:

(a) During the first and second years of current continuous state employment - Nine hours, twenty minutes per month;

(b) During the third year of current continuous state employment - Ten hours per month;

(c) During the fourth year of current continuous state employment - Ten hours, forty minutes per month;

(d) During the fifth and sixth years of total state employment - Eleven hours, twenty minutes per month;

(e) During the seventh, eighth and ninth years of total state employment - Twelve hours per month;

(f) During the tenth, eleventh, twelfth, thirteenth and fourteenth years of total state employment - Thirteen hours, twenty minutes per month;

(g) During the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth years of total state employment - Fourteen hours, forty minutes per month;

(h) During the twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth years of total state employment - Sixteen hours per month; and

(i) During the twenty-fifth and succeeding years of total state employment - Sixteen hours, forty minutes per month.

(2) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or incumbent for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection ~~((1)(k)-(1)(j)))~~ (1)(i) of this section.

(3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

(c) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

WSR 18-17-133

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed August 20, 2018, 11:13 a.m., effective September 21, 2018]

Effective Date of Rule: September 21, 2018.

Purpose: The purpose is to align Title 357 WAC with the changes made to RCW 38.40.060 which clarifies the calculation of military leave for officers and employees that work shifts spanning more than one calendar day.

Citation of Rules Affected by this Order: Amending WAC 357-31-360.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Adopted under notice filed as WSR 18-14-058 on June 28, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 20, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 10-23-041, filed 11/10/10, effective 12/13/10)

WAC 357-31-360 Must employees who have been ordered to required military duty, training, drills, or required to appear for a physical examination be granted paid military leave? (1) Employees must be granted military leave with pay not to exceed twenty-one working days during each year, beginning October 1st and ending the following September 30th, in order to report for required military duty, training duty in the Washington National Guard or the Army, Navy, Air Force, Coast Guard, or Marine Corps reserves of the United States or any organized reserve or armed forces of the United States, or to report for drills including those in the National Guard under Titles 10 and 32 U.S.C., or state active status.

(2) The employee is charged military leave only for the days that ((they are)) the employee is scheduled to work. If the employee is scheduled to work a shift that begins on one calendar day and ends on the next calendar day, the employee is charged military leave only for the first calendar day. If the employee is scheduled to work a shift that begins on one calendar day and ends later than the next calendar day, the employee is charged military leave for each calendar day except the calendar day on which the shift ends.

~~((2))~~ (3) Military leave with pay is in addition to any vacation and sick leave to which an employee is entitled and does not reduce benefits, performance ratings, privileges(;) or pay.

~~((3))~~ (4) During paid military leave, the employee must receive the normal base salary.

~~((4))~~ (5) Employees required to appear during working hours for a physical examination to determine physical fitness for military service must receive full pay for the time required to complete the examination.

Employees who are not yet in the military may use paid miscellaneous leave for this purpose. Employees who are already in the military may use paid military leave as described in this section. An employee who is currently in the military may use paid miscellaneous leave for this purpose if they do not have paid military leave available.

WSR 18-17-140
PERMANENT RULES
DEPARTMENT OF COMMERCE

[Filed August 21, 2018, 7:46 a.m., effective September 21, 2018]

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

Purpose: These rules implement RCW 43.330.480 through 43.330.488. Their purpose is to set forth the conditions and procedures for how funds for the low-income home rehabilitation revolving loan program will be administered and used to serve low-income clients living in rural areas.

Citation of Rules Affected by this Order: New WAC 365-175-010, 365-175-020, 365-175-030, 365-175-040, 365-175-050, 365-175-060, and 365-175-070.

Statutory Authority for Adoption: RCW 43.330.482.

Adopted under notice filed as WSR 18-13-097 on June 19, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 20, 2018.

Brian Bonlender
Director

Chapter 365-175 WAC

RULES FOR LOW-INCOME HOME REHABILITATION REVOLVING LOAN PROGRAM

NEW SECTION

WAC 365-175-010 Authority. These rules implement RCW 43.330.480 through 43.330.488 and are adopted under the authority in RCW 43.330.482.

NEW SECTION

WAC 365-175-020 Purpose. To set forth the conditions and procedures for how funds for the low-income home rehabilitation revolving loan program will be administered and used to serve low-income clients living in rural areas.

NEW SECTION

WAC 365-175-030 Definitions. "Commerce" means the Washington state department of commerce.

"Consumer price index" means the annual average consumer price index for all urban consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor.

"Home" means a single-family residential structure.

"Home rehabilitation" means residential repairs and improvements that address health, safety, and durability issues in existing housing in rural areas.

"Homeowner" means a person who owns and resides permanently in the home the person occupies.

"Low-income" means persons or households with income at or below two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services.

"Rehabilitation agency" means any approved department grantee, tribal nation, or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for rehabilitating residences under this chapter and has been approved by the department.

"Rural areas" means areas of Washington state defined as nonentitlement areas by the United States Department of Housing and Urban Development.

NEW SECTION

WAC 365-175-040 What agencies are eligible to use funds from the low-income home rehabilitation revolving loan program? A local agency must apply to and receive approval from commerce to become an authorized rehabilitation agency. The application must show that the agency is eligible to participate and must show that the agency has established procedures to administer the program in compliance with the statute and these rules. Commerce will give preference to local agencies that are grantees of the state low-

income weatherization assistance program. Authorized rehabilitation agencies must comply with reporting requirements established in grant agreements and must adopt operating procedures that are subject to approval by commerce.

NEW SECTION

WAC 365-175-050 How do authorized rehabilitation agencies receive funds from the low-income home rehabilitation revolving loan fund? (1) Commerce will initially allocate funds to authorized rehabilitation agencies using a formula developed for the low-income rural rehabilitation revolving loan fund. Initial funding levels may be adjusted based on the capacity and capability of each rehabilitation agency as determined through the application process.

(2) Commerce may reallocate funds to other authorized rehabilitation agencies if doing so will better achieve the objectives of the program.

(3) Authorized rehabilitation agencies will receive a grant for funds each biennium funding is available. Funding is subject to a grant agreement between commerce and the authorized rehabilitation agency.

(4) Authorized rehabilitation agencies must report to commerce quarterly or in line with reporting for federal weatherization grants. Commerce will provide reporting instructions to authorized rehabilitation agencies. Timely reporting will be considered when determining future funding opportunities.

NEW SECTION

WAC 365-175-060 What clients are eligible to receive program loans from the low-income home rehabilitation revolving loan program? (1) An authorized rehabilitation agency may provide a program loan to a person only if the agency determines that all of these eligibility criteria are met:

(a) The person owns and occupies the home that will receive the rehabilitation services.

(b) The income of the person is at or below two hundred percent of the federal poverty level, as adjusted for family size and as determined annually by the federal Department of Health and Human Services.

(c) The property is located in a rural area.

(2) An authorized rehabilitation agency must give priority to rehabilitation applications from persons who are senior citizens, persons with disabilities, families with children five years old and younger, and veterans.

NEW SECTION

WAC 365-175-070 What criteria must a program loan meet? (1) The loan amount may not exceed any of the following limits:

(a) Forty thousand dollars.

(b) The direct costs paid to one or more rehabilitation agency for necessary improvements, plus seven percent for administrative costs to the authorized rehabilitation agency.

(c) An amount equal to eighty percent of the assessed value of the property.

(d) An amount equal to eighty percent of the assessed value of the property minus the sum of the unpaid principal amounts of all existing loans that are secured by the property. (For example, if the assessed value of the property is \$100,000 and an existing mortgage has an unpaid principal amount of \$50,000, the limitation under this is \$30,000, which is eighty percent of \$100,000 minus \$50,000.)

(2) The loan must be secured by a lien against the property that is in favor of the Washington department of commerce and subordinate to no lien other than a first mortgage or deed of trust or liens for general taxes, amounts deferred under chapter 84.37 or 84.38 RCW, or special assessments as defined in RCW 84.38.020.

(3) The loan must specify a rate of interest equal to the annual change in consumer price index for the prior calendar year. (For loans closed in calendar year 2018, the interest rate is 2.1 percent.)

(4) The loan must require repayment of principal, interest, and any administrative fee upon the sale or any other change in ownership of the property.

(5) The loan must provide the borrower with the option for early repayment without prepayment penalty.

(6) Authorized rehabilitation agencies must file lien paperwork in compliance with local recording office requirements and consistent with operating procedures approved by commerce.

WSR 18-17-145

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed August 21, 2018, 8:54 a.m., effective September 21, 2018]

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

Purpose: Rule making is needed to correct the board contact information due to recent changes.

Citation of Rules Affected by this Order: Amending WAC 4-30-026.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 18-13-083 on June 18, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 21, 2018.

Charles E. Satterlund, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-026 How can I contact the board? The board's administrative office, executive director and staff are located in Olympia, Washington. You may utilize the following numbers or addresses to contact the board:

- 711 Capitol Way South, Suite 400, Olympia, WA 98501 (physical address);
- P.O. Box 9131, Olympia, Washington 98507-9131 (mailing address);
- 360/753-2586 (telephone);
- 360/664-9190 (fax);
- ((~~800/833-6388~~ (TF)) 7-1-1 (TTY service));
- 800/833-6385 (Telebraille services);
- ((~~customerservice@cpaboard.wa.gov~~)) customerservice@acb.wa.gov (email address); and
- ((~~www.cpaboard.wa.gov~~)) www.acb.wa.gov (web site address).

WSR 18-17-149
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 21, 2018, 10:19 a.m., effective October 10, 2018]

Effective Date of Rule: October 10, 2018.

Purpose: The apprenticeship system in Washington state is authorized under the federal system of apprenticeship, specifically 29 C.F.R. Parts 29 and 30. The statute that the apprenticeship rules implement, RCW 49.04.010, provides for a state system of apprenticeship regulated by the department of labor and industries and an apprenticeship council. The objective of the statute is to designate the authority for approving and regulating apprenticeship in Washington for state and federal purposes. This rule making reviewed the existing apprenticeship rules for changes in order to reduce redundancy, clarify and reorganize the rules for ease of use by regulated parties.

Citation of Rules Affected by this Order: Repealing WAC 296-05-209 Voting, 296-05-211 Rules of order, 296-05-213 Retroactivity, 296-05-215 Limitations, 296-05-300 Apprenticeship and training programs—Approval, 296-05-302 Apprenticeship committee/program approval process, 296-05-303 Apprenticeship committees—Duties and responsibilities, 296-05-305 Apprenticeable occupations, 296-05-307 Types of apprenticeship agreements recognized by the WSATC, 296-05-309 Apprenticeship programs approved by the WSATC, 296-05-311 On-the-job training programs, 296-05-313 Apprenticeship committees—Composition, 296-05-314 Nonjoint and waiver committees—Additional requirements, 296-05-315 Term of apprenticeship—Standards requirement, 296-05-316 Apprenticeship agreements—Standards requirements, 296-05-317 Related/supplemental instruction, 296-05-318 Records required by the WSATC, 296-05-319 Apprenticeship agreement—Individual registration, 296-05-321 Apprenticeship agreement—Cancellation, 296-05-323 Certificate of completion, 296-05-325 Union waiver, 296-05-327 Reciprocity, 296-05-329 Certification of

apprentice labor standard on renewable energy projects, 296-05-449 Program registration cancellation procedures, 296-05-451 Reinstatement of program registration and 296-05-453 Adoption of consistent state plans; and amending WAC 296-05-001 Purpose, scope, and authority, 296-05-003 Definitions, 296-05-005 Rules development, 296-05-007 Rules of procedure, 296-05-008 Process for objections to apprenticeship program standards, 296-05-009 Complaint review procedures, 296-05-011 Compliance review, 296-05-013 Sanctions for noncompliance, 296-05-015 Decisions against training agent for violating ratio, supervision and/or approved work process requirements, 296-05-100 WSATC composition, 296-05-103 Officers, 296-05-105 Officer duties, 296-05-107 Additional duties for the supervisor administrator of WSATC, 296-05-109 Merit awards, 296-05-200 Regular meetings, 296-05-203 Special meetings, 296-05-205 Petitions, requests, and correspondence submitted to the WSATC, 296-05-207 Other regulations that apply to council meeting conduct, 296-05-400 Equal employment opportunity plan—Purpose, scope and authority, 296-05-409 Affirmative action information required by WSATC, 296-05-411 Affirmative action plan, 296-05-413 Outreach and recruitment requirements—Specific, 296-05-441 Noncompliance with federal and state equal opportunity requirements, and 296-05-443 Complaint filing.

Statutory Authority for Adoption: RCW 49.04.010 and 19.285.040.

Adopted under notice filed as WSR 18-11-112 on May 22, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 26.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 26.

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

Date Adopted: August 21, 2018.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

WAC 296-05-001 Purpose, scope, and authority. (1) These rules apply to apprenticeships in Washington. The intent of these rules is to carry out the purposes of chapter 49.04 RCW, the National Apprenticeship Act 29 U.S.C. 50, and 29 C.F.R. Parts 29 and 30 to promote apprenticeship, labor standards and to protect the welfare of apprentices.

(a) The Washington ((State Apprenticeship and Training Act (chapter 49.04 RCW) establishes the Washington)) state

apprenticeship and training council (WSATC) ~~((as regulatory and designates as its administrative arm the apprenticeship section of the department of labor and industries. The WSATC, acting in compliance))~~ regulates apprenticeships for state and federal purposes. These rules explain how the WSATC regulates apprenticeships.

(b) The apprenticeship section of the department of labor and industries administers apprenticeships for state and federal purposes. These rules explain how the apprenticeship program administers apprenticeships.

(2) These rules establish procedures for administering and regulating apprenticeships. These rules are intended to be read in conjunction with chapter 49.04 RCW ((and in harmony with)), 29 U.S.C. 50, 29 C.F.R. Parts 29 and ((29 C.F.R. Part)) 30, ((has adopted these rules to:

(a) Establish operating procedures for the WSATC;
(b) Establish standards for apprenticeship programs;
(c) Implement the intent and purpose of the Washington State Apprenticeship and Training Act;

(d) Perform other duties directed by the statute;
(e) Promote labor standards and the registration of approved programs to protect the welfare of the apprentice; and

(f) Encourage the establishment of apprenticeship programs and agreements.

(2) These rules are necessary to:

(a) Strengthen apprenticeship and training in the state of Washington;

(b) Facilitate approval and registration of apprenticeship and training programs;

(c) Explain factors related to apprenticeship and training in Washington state and federal laws;

(d) Establish procedures for presenting matters to the WSATC;

(e) Govern the WSATC's operation and ability to carry out its statutory obligations;

(f) Establish a specific procedure to resolve an impasse if a tie vote occurs on the WSATC; and

(g) Regulate registered apprenticeship and training programs)) and other applicable laws as described in these rules.

AMENDATORY SECTION (Amending WSR 14-23-065, filed 11/18/14, effective 12/19/14)

WAC 296-05-003 Definitions. The following definitions apply to this chapter:

Adjudicative proceeding: A proceeding before the WSATC in which an opportunity for a hearing before the WSATC is authorized by chapter 49.04 RCW or these rules before or after the entry of an order by the WSATC.

Apprentice: ~~((is))~~ A worker at least sixteen years of age ((who is)) employed to learn an apprenticeable occupation and ((is)) registered with a sponsor in an approved apprenticeship program ((according to)) under chapter 49.04 RCW and these rules. Building and construction trade occupations require an apprentice to be at least seventeen years of age to register with a sponsor in an approved apprenticeship.

~~((Exception: Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations:))~~

Apprenticeable occupation: ~~((Is a skilled))~~ A specified occupation which ((is recognized by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship or the WSATC and meets the criteria established in WAC 296-05-305)) must:

(a) Involve skills customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;

(b) Be clearly identified and commonly recognized throughout an industry;

(c) Involve the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least two thousand hours of on-the-job learning to attain;

(d) Require a minimum of one hundred forty-four hours of related instruction per program year to supplement on-the-job work experience;

(e) Involve sufficient skill to establish career sustaining employment;

(f) Not be part of an occupation previously recognized by the registering agency as apprenticeable.

Apprenticeship agreement: A written agreement between an apprentice and either the apprentice's ~~((employer(s)))~~ program sponsor, or an apprenticeship committee acting as agent for ~~((employer(s), containing))~~ the program sponsor(s), which contains the terms and conditions of the employment ~~((and)),~~ training and education of the apprentice.

Apprenticeship cohort: The group of individual apprentices registered to a specific program during a one year time frame, not including those whose agreements have been canceled during the initial probationary period.

Apprenticeship committee: A quasi-public entity approved by the WSATC to administer and perform apprenticeship and training services ~~((for employers and employees)).~~

Apprenticeship program: A plan for administering an apprenticeship ~~((agreement(s). The plan must contain))~~ agreement containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices ~~((, including such matters as the requirement for a written)).~~ Apprenticeship programs must include apprenticeship agreements.

~~((Approved: Approved by the WSATC or a person or entity authorized by the WSATC to do so.~~

~~C.F.R.: The Code of Federal Regulations.))~~ **Apprenticeship section:** The division of the department of labor and industries administering registered apprenticeships for state and federal purposes.

Cancellation: The termination of ~~((the))~~ registration or cancellation of approval ((status of a)) for an apprenticeship program at the request of the supervisor or sponsor ((Cancellation also refers to)), or the termination of registration or approval of an apprenticeship agreement at the request of the apprentice, supervisor, or sponsor.

Certificate of completion: A record of the successful completion of a term of apprenticeship ~~((see WAC 296-05-323))~~ issued by the department on behalf of the WSATC.

Certification: Written approval ~~((by))~~ from the WSATC ~~((of))~~ that:

~~((1))~~ (a) A set of apprenticeship standards established by an apprenticeship program sponsor ~~((and))~~ substantially ~~((conforming to the))~~ complies with standards established by the WSATC ~~((~~

~~((2))~~; and

(b) An individual ~~((as))~~ is eligible for probationary employment as ~~((an))~~ a registered apprentice ~~((under a registered))~~ as part of an apprenticeship program.

~~((Committee program: All apprenticeship programs as further described in WAC 296-05-309.))~~ **C.F.R.:** Code of Federal Regulations.

Competent instructor: An instructor providing related supplemental instruction who has demonstrated ~~((a))~~ satisfactory ~~((employment))~~ performance in ~~((his/her))~~ the occupation for a minimum of three years beyond the customary learning period for that occupation and who:

~~((1))~~ (a) Meets the requirements of the state board for community and technical colleges ~~((requirements))~~ for a vocational-technical instructor ~~((or be a subject matter expert, which is an individual, such as a journey worker, who))~~; or

(b) Is recognized within an industry as having expertise in a specific occupation ~~((;))~~ and is a subject matter expert; and

~~((2))~~ (c) Has training in teaching techniques and adult learning styles ~~((, which may occur before or))~~. The training may be acquired before, or within one year after, the ~~((apprenticeship))~~ competent instructor ~~((has started))~~ begins to provide ~~((the))~~ related ~~((technical))~~ supplemental instruction.

Competitor: ~~((A competing))~~ An apprenticeship program ~~((that provides))~~ providing training in the same or ~~((overlapping))~~ similar occupation as ~~((the proposed program in the same))~~ one already existing in a certain geographic area ~~((proposed. In determining whether an occupation is the same or overlapping as the proposed program's))~~. To determine whether a program provides training in the same or similar occupation, the ~~((council))~~ WSATC may consider ~~((the following))~~:

~~((1))~~ Washington state apprenticeship and training council ~~((a))~~ Approved apprenticeship standards;

~~((2))~~ (b) Collective bargaining agreements;

~~((3))~~ (c) Dictionaries of occupational titles;

~~((4))~~ (d) Experts from organized labor, licensed contractors, and contractors' associations;

~~((5))~~ (e) Recognized labor and management industry practice;

~~((6))~~ (f) Scope of work descriptions issued by the department.

Completion rate: The percentage of an apprenticeship cohort ~~((who receives))~~ receiving a certificate of ~~((apprenticeship))~~ completion within one year of the projected completion date. ~~((An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been canceled during the initial probationary period.))~~

~~**Compliance review:** A comprehensive review conducted by the apprenticeship section of the department of labor and industries regarding all aspects of an apprenticeship program's performance including, but not limited to, determining if apprentices are receiving: On-the-job training in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the registration agency is receiving notification of all new registrations, cancellations, and completions as required in this chapter.~~

~~**Current instruction:** The related/supplemental instructional content is and remains reasonably consistent with the latest occupational practices, improvements, and technical advances.))~~

~~**Department:** ((The)) Department of labor and industries.~~

~~**Employer:** Any person or organization with a valid Washington state unified business identifier (UBI) number employing an apprentice ((whether or not such person or organization is a party to an apprenticeship agreement with the apprentice. "Employer" includes both union and open shop employers)).~~

~~**Federal purposes:** ((Includes)) Any federal contract, grant, agreement, or arrangement dealing with apprenticeship ~~((; and))~~. Includes any federal financial or other assistance, benefit, ~~((privilege,))~~ contribution, privilege, allowance, exemption, preference, or right pertaining to apprenticeship ~~((as per))~~. See e.g., 29 C.F.R. Part 29.2.~~

~~**File:** To send to:~~

Supervisor of Apprenticeship and Training
Department of Labor and Industries
Apprenticeship Section
Post Office Box 44530
Olympia, Washington 98504-4530

Or deliver to and receipt at:
Department of Labor and Industries
7273 Linderson Way S.E.
Tumwater, Washington 98501

Filing is complete upon deposit in the United States mail, properly addressed, postage prepaid, or personal service.

First full training cycle: A full training cycle begins with the registration of the first apprentice and continues for one calendar year regardless of completion, cancellation and/or suspension of the apprentice.

Individual agreement: A written agreement between an apprentice and/or trainee and either the apprentice's employer or an apprenticeship committee acting as agent for the employer.

Industry-wide standards: The current, acceptable practices, including technological advancements, being used in the different occupations.

Journey level: An individual ~~((who has))~~ having sufficient skills and knowledge of an occupation ~~((, either through formal apprenticeship training or through practical on-the-job work experience,))~~ to be recognized by a state or federal registration agency and/or an industry as being fully qualified to perform the ~~((work of the))~~ occupation. An individual can

be fully qualified either through formal apprenticeship training or practical on-the-job work experience (~~(must be)~~) equal to or greater than the term of apprenticeship.

(Notice: Where not otherwise specified, notice means posted in United States mail to the last known address of the person to be notified. Notice may be given by telefacsimile where copies are mailed simultaneously or by a commercial parcel delivery company.)

On-the-job training program: A program that is set up in the same manner as an apprenticeship program with any exceptions authorized by the WSATC and as further described in WAC ~~(296-05-311.~~

Petitions, requests, and correspondence: Any written business brought before the WSATC (examples may include: (1) Requests for new committees; (2) Requests for revisions to the standards; and (3) Appeals)) 296-05-013.

(Probation) Probationary period: ~~((+))~~ A period of time during which the apprentice has not yet reached full status or is subject to corrective action.

(a) Initial probationary period: A period of time (~~(reasonable)~~) in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship (~~(-The initial probationary period)~~), which cannot exceed twenty percent of the apprenticeship term (~~(of the program)~~), or one year from the date of registration, whichever is shorter. Apprentices within the initial probationary (~~(apprentices are not subject to an appeal under the complaint review procedures as defined in WAC 296-05-009. Transferred apprentices)~~) period may not file apprenticeship complaints with the program sponsor. Apprentices transferring from another program are not subject to additional initial probationary periods.

~~((2))~~ (b) Disciplinary probationary period: A period of time (~~(assessed when)~~) after the initial probationary period during which the apprentice's progress is not satisfactory. (~~(During this time)~~) The program sponsor may withhold periodic wage advancements, suspend or cancel the apprenticeship agreement, or take further disciplinary action. Apprentices subject to a disciplinary (~~(probation may only be assessed after the initial probation is completed. During the disciplinary probation, the apprentice has the right to file an appeal of the committee's action with the WSATC (as described in WAC 296-05-009))~~) probationary period may file complaints with the program sponsor.

Provisional registration: (~~(The one-year)~~) Initial one-year approval of (~~(newly)~~) a registered program (~~(s that meet)~~) meeting the required standards for (~~(program)~~) registration (~~(, after which the program approval)~~). After one year, the provisional registration may be made permanent (~~(;)~~) or continued as provisional through the first full training (~~((eye/term))~~) cycle, or rescinded following a compliance review (~~(by the apprenticeship section of the department)~~).

RCW: (~~(The)~~) Revised Code of Washington.

Registration: (~~((+)) For the purposes of an~~) Both apprenticeship agreements and apprenticeship program standards are registered.

(a) Apprenticeship agreement (~~(means)~~) registration: The acceptance and recording of an (~~(apprenticeship)~~) agreement by the apprenticeship section of the department of labor

and industries as evidence of the apprentice's participation in a particular registered apprenticeship program.

~~((2)) For the purposes of an~~ (b) Apprenticeship program (~~(means the acceptance)~~) registration: The approval and recording of (~~(such)~~) the program standards by the WSATC and the apprenticeship section (~~(of the department of labor and industries, as meeting the basic standards and requirements of the department for approval of such program. Approval is evidenced by a certificate of registration or other written indicia)~~) as meeting the basic standards and requirements for such approval.

Registration agency: The apprenticeship section of the (~~(Washington state))~~ department of labor and industries (~~(is)~~) responsible for registering apprenticeship programs and apprentices (~~(;)~~), providing technical assistance (~~(;)~~), and conducting reviews for compliance with (~~(29 C.F.R. parts 29 and 30,)~~) chapter (~~(s)~~) 49.04 RCW and (~~(296-05-WAC)~~) these rules.

~~((Regular quarterly meeting:~~ A public meeting held quarterly by the WSATC as described in WAC 296-05-200.))

Related/supplemental instruction (RSI): An organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the apprentice's occupation. (~~(Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the registration agency.)~~) It may be provided in any form approved in advance by the WSATC. Apprentices must receive not less than one hundred forty-four hours of RSI per program year.

Secretary: The individual appointed by the director of the department according to RCW 49.04.030.

~~((Special meeting:~~ A public meeting of the council as described in WAC 296-05-203.))

Sponsor: Any person, firm, association, committee, or organization operating as an apprenticeship and training program and in whose name the program is registered (~~(or is to be registered)~~).

Standards: (~~(Is)~~) A written agreement containing specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices, as further defined in WAC (~~(296-05-316)~~) 296-05-015.

Supervision: The necessary education, assistance, and control provided by a journey-level employee (~~(that is)~~) to an apprentice. Apprentices must be supervised by a journey-level worker on the same job site at least seventy-five percent of each working day, unless otherwise approved by the WSATC.

Supervisor: The individual appointed by the director of the department (~~(according to RCW 49.04.030)~~) who acts as the secretary of the WSATC. (~~(Where)~~) When these rules (~~(indicate)~~) create a duty of the supervisor or secretary of the WSATC, the supervisor may designate (~~(a)~~) department of labor and industries' employees to assist in the performance of those duties subject to the supervisor's oversight and direction.

Trainee: An individual enrolled in an on-the-job training program, but who is not registered with ((the supervisor according to WAC 296-05-311)) a sponsor in an approved apprenticeship program under chapter 49.04 RCW and these rules.

Training agent: Employer of registered apprentices approved by the program sponsor to furnish on-the-job training ((to satisfy the approved apprenticeship program standards who agrees to employ registered apprentices in that work process)). The training agent shall use only registered apprentices to perform ((the)) work processes ((of the)) in accordance with approved program standards.

Training agreement: A written agreement between a training agent and a program sponsor ((that contains)) containing the provisions of the apprenticeship program applicable to the training agent and the duties of the training agent in providing on-the-job training.

Transfer: A shift of apprenticeship registration from one sponsor to another ((where there is)) with a written agreement between the apprentice and the affected apprenticeship committees or program sponsors.

WAC: ((The)) Washington Administrative Code.

WSATC: ((The)) Washington state apprenticeship and training council.

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

WAC 296-05-005 ((Rule development.)) WSATC officers, members, and administrator duties. ((+)) In developing and adopting rules, the director of labor and industries:

(a) Seeks the cooperation and assistance of all interested persons, organizations, and agencies affected by its rules.

(b) Promotes the operation of apprenticeship programs to satisfy the needs of employers and employees for high quality training.

(c) Recognizes that rapid economic and technological changes require that workers must be trained to meet the demands of a changing marketplace.

(d) Recognizes employers will benefit if graduates of state approved apprenticeship programs are skilled workers trained to industry wide standards rather than the exclusive standards of an individual employer or group of employers.

(e) Acknowledges that approved apprenticeship programs should be organized and administered to assure the maximum protection of apprentices' rights.

(f) Recognizes that the number of apprentices in an occupation or group of occupations in any geographic area must be sufficient to meet the needs of all employers.

(g) Promotes comprehensive training and a variety of work experiences relevant to the occupations and seeks to assure that during the approval process all apprenticeship standards are open to employers on an equal and nondiscriminatory basis.

(h) Recognizes that quality training, equal treatment of apprentices, and efficient delivery of apprenticeship training are best provided by registered apprenticeship programs.

(2) All amendments to this chapter must be developed and adopted according to the provisions of chapter 49.04

RCW, Apprenticeship Act; chapter 34.05 RCW, Administrative Procedure Act; and Executive Order 97-02. All proposed amendments to these rules must be approved by a two-thirds majority vote of regular WSATC members before they are published for public hearing. All WSATC members, the apprenticeship supervisor, committees and any other interested parties must be promptly notified, in writing, of any proposed rule amendments, public hearings on proposed rule amendments and new rule adoptions.

(3) The specific procedure(s) and form(s) for petitions requesting the making, amendment, or repeal of a rule are in chapter 34.05 RCW, as are the specific procedure and form for requesting declaratory rulings.

(4) Such petitions and requests must be addressed to:

The Washington State Apprenticeship and Training Council

Attention: Supervisor of Apprenticeship and Training
Department of Labor and Industries

Post Office Box 44530

Olympia, Washington 98504-4530

Or email address: apprentice@LNI.wa.gov))

(1) Officers: The WSATC shall have three officers. The chair and vice chair shall be elected by majority vote of the WSATC members present. Election takes place in odd-numbered years at the regular quarterly meeting in April. Once elected, officers remain in office for a term of two years, until the successor is elected, or until resignation, incapacitation, or death. Officers follow *Robert's Rules of Order* to conduct meetings. Officers may have other powers and duties as provided in these rules and by law. The secretary, chair, and vice chair are required officers, as described in chapter 49.04 RCW and these rules:

(a) Secretary: The supervisor of the apprenticeship section of the department of labor and industries is the secretary of the WSATC. The secretary, with the assistance of a recording secretary, takes minutes of all special and regular meetings. Minutes are kept in the supervisor's office.

(b) Chair: The presiding officer at all meetings. The chair may vote on and participate in discussion about all matters before the WSATC as a regular member.

(c) Vice chair: Presides over meetings in the absence of the chair. Holds all the powers of the chair when the chair is absent.

(2) Members: WSATC members are appointed for three-year terms and remain on the council until replaced by a qualified successor. When vacancies occur, vacancies must be filled.

(a) Voting members: The director of the department of labor and industries appoints three voting members from employer organizations, three voting members from employee organizations, and a public member.

(b) Nonvoting members: The WSATC may also include members who may participate in discussion of matters before the WSATC, but they may not vote.

(3) Administrator: The supervisor serves as the WSATC administrator and is the supervisor of the apprenticeship section of the department of labor and industries.

(4) All amendments to this chapter must be developed and adopted according to the provisions of chapter 49.04 RCW, Apprenticeship Act; chapter 34.05 RCW, Administra-

tive Procedure Act; and Executive Order 97-02. All proposed amendments to these rules must be approved by a two-thirds majority vote of regular WSATC members before they are published for public hearing. All WSATC members, the apprenticeship supervisor, committees and any other interested parties must be promptly notified, in writing, of any proposed rule amendments, public hearings on proposed rule amendments and new rule adoptions.

AMENDATORY SECTION (Amending WSR 14-23-065, filed 11/18/14, effective 12/19/14)

WAC 296-05-007 ((Rules of procedure.)) Duties of the apprenticeship supervisor. ((All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapter 34.05 RCW, the Administrative Procedure Act and chapter 10-08 WAC, Model Rules of Procedure. The chair (or designee) is the presiding officer for adjudicative proceedings, held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication has been held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

(1) The WSATC upon its own motion determines that the initial order should be reviewed; or

(2) A party to the proceedings files a petition for review of the initial order.

The WSATC, upon review of the initial order shall enter the final order. The WSATC may appoint a person to review the initial order and prepare and enter the final WSATC order.

(3) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within thirty calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal.

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt.

(iii) The respondent parties may file with the director or designee written arguments within thirty calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(e) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in WAC 296-05-321(11).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties: (1) In addition to serving as the WSATC administrator, the duties of the supervisor and their designee may include, but are not limited to:

(a) Conducting compliance reviews of apprenticeship programs;

(b) Notifying the program sponsor when there is a finding that a program is not in compliance with required standards;

(c) Investigating complaints from individual apprentices;

(d) Assisting in resolving complaints against apprenticeship programs, committees, and entities administering agreements;

(e) Recommending sanctions against programs, committees, and entities administering agreements.

(2) The apprenticeship supervisor provides general information and assistance about apprenticeships and training programs to interested parties.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-008 ((Process for objections to apprenticeship program standards.)) Meetings and adjudicative proceedings. ((1) If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must provide timely and specific written objections. Objections shall be submitted to the department for WSATC consideration twenty calendar days prior to the regular quarterly WSATC meeting on a form provided by the department and approved by the WSATC.

(2) The department shall notify the petitioning program sponsor of objections no more than two business days after the department receives the objection.

(3) In accordance with WAC 296-05-007, the WSATC may either adjudicate matter(s) itself or refer matter(s) to the office of administrative hearings for initial adjudication.

(a) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, a hearing on the objections shall take place at the regular quarterly WSATC meeting or at a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program sponsor that the objection is on the agenda for consideration and shall give its recommendation ten calendar days prior to the WSATC meeting.

(b) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters on which the WSATC is requesting the office of administrative hearings provide findings and conclusions for the initial order.

(4) The department may attempt to facilitate a resolution to any objections during the process identified in this section.) (1) Regular meetings: Convened on the third Thursday of January, April, July, and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than thirty calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

- (i) All transactions of official business;
- (ii) All commitments or promises;
- (iii) All collective discussions;
- (iv) All collective decisions; and
- (v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting.

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally or by mail, at least twenty calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least forty-five days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least fifteen business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within thirty calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within thirty cal-

endar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within thirty calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8 (b)(5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-009 ((Complaint review procedures.)) Apprenticeship committees—Composition, duties, responsibilities, and standards. ((If a local committee or other organization administering the agreement cannot satisfactorily resolve a complaint, any apprentice who has completed his/her initial probationary period may submit the complaint to the apprenticeship program for resolution. Complaints that involve matters covered by a collective bargaining agreement are not subject to the complaint review procedures in this section. The investigation or review of any controversy by the supervisor or the WSATC will not affect any action taken or decision made by a committee or other organization until a final decision resolving the matter is issued.

(1) ~~Within thirty calendar days of documented, written notification of the action leading to the complaint, the apprentice must request the local committee or other organization to reconsider action.~~

~~(2) The local committee or other organization must, within thirty calendar days of the apprentice's request, provide written notification to the apprentice of its decision on the request for reconsideration. This notification shall be considered the final action of the committee.~~

~~(3) If the apprentice chooses to pursue the complaint further, the apprentice must submit a written complaint describing the controversy to the supervisor of the apprenticeship division within thirty calendar days of the final action taken on the matter by the local committee or other organization. The written complaint must be specific and include all relevant facts and circumstances contributing to the complaint. Any documents or correspondence relevant to the complaint must be attached to the complaint. The apprentice must send a copy of the complaint to the interested local committee or other organization.~~

~~(4) The supervisor must investigate complaints received from an apprentice. The supervisor must complete the investigation within thirty business days. During the investigation, the supervisor must attempt to effect a settlement between the parties. During the investigation the apprentice and the committee or other organization must fully cooperate with the supervisor by providing any relevant information or documents requested. The supervisor may delegate the investigation to any employee in the apprenticeship division. If the controversy is not settled during the investigation, the supervisor must issue a written decision resolving the controversy when the investigation is concluded.~~

~~(5) If the apprentice, committee or other organization is dissatisfied with the decision of the supervisor, they may request the WSATC to review the decision. The request must be in writing and made within thirty calendar days of the supervisor's decision. It must specify the reasons supporting the request. The party requesting review must provide a copy of the request to the other parties involved in the controversy. The WSATC must conduct an informal hearing to consider the request for review of the supervisor's decision. Unless special circumstances dictate, the hearing must be held in conjunction with the regular quarterly meeting.~~

~~At the hearing, the WSATC must review the supervisor's decision and all records of the investigation. The WSATC may also accept testimony or documents from any person, including the supervisor and the supervisor's staff, who has knowledge relating to the controversy. Parties at the informal hearing may be represented by counsel and may, at the WSATC's discretion, present argument concerning the controversy. The WSATC must not apply formal rules of evidence.~~

~~(6) Within thirty calendar days after the hearing, the WSATC must issue a written decision resolving the controversy. The WSATC's decision may be to affirm the decision of the supervisor. In that case, the supervisor's decision becomes the decision of the WSATC. All parties to the informal hearing must be sent a copy of the WSATC's decision. The chair may sign the decision for the WSATC.)~~ (1) A sponsoring apprenticeship committee is responsible for the day-to-day operations of the apprenticeship and training program and operating the program consistent with the standards of the WSATC. Committees may be either:

(a) Group: Representing more than one employer or employer association; or

(b) Individual: Representing an individual employer.

(2) An apprenticeship committee consists of at least four but not more than twelve members, of an equal number of management and worker representatives, and may be either:

(a) Joint: Composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s); or

(b) Nonjoint: Composed of an equal number of employer and employee representatives but does not have a bona fide collective bargaining agent as a participant.

(3) Apprenticeship committee members must:

(a) At least fifty percent of the members must hold journey-level status, or greater, in their specific occupation when representing one occupation;

(b) Be qualified by education and experience in the areas the committee represents and able to represent the interests of the multiple occupations when representing multiple occupations;

(c) Familiar with the applicable apprenticeship standards.

(4) In order to be considered for approval by the WSATC, a sponsoring apprenticeship committee must ensure as follows for:

(a) Employers: That signing a collective bargaining agreement as a condition of participation in an apprenticeship program is not required; and that a request for approved training agent status requires compliance with WSATC approved agreements and all federal and state apprenticeship rules and standards.

(b) Apprentices: That apprentices work only for approved training agents.

(c) Program sponsors: That training agent agreements are approved and signed; that copies of agreements and lists of approved employers/training agents are furnished to the department within thirty calendar days of approval; and that when training agent agreements are rescinded, notice is sent to the department within thirty calendar days.

(5) An apprenticeship committee must offer apprenticeship and training opportunities on an equal basis to all eligible apprentices and employers, unless the committee represents individual or plant programs. If an existing group committee fails to do so, the WSATC may take action to ensure compliance with chapter 49.04 RCW and these rules.

(6) Apprenticeship committees must meet at least three times per year and elect a chair and secretary to conduct and record meetings. Records of meetings must be kept and forwarded to the department.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-011 ((Compliance reviews)) Apprenticeship and training programs—Approval, registration, and objections. ((1) The purpose of a compliance review is to systematically and periodically review apprenticeship programs to ensure that the sponsor is complying with the approved program standards and these rules. Compliance reviews consist of a comprehensive analysis and evaluations

of each aspect of the apprenticeship program. They must include on-site investigations and audits.

(2) A compliance review may be required:

(a) For all existing programs on a regular and comprehensive basis.

(b) When the WSATC receives a complaint, which has not been referred to a private review body. (See WAC 296-05-009.)

(c) When a sponsor seeks to reregister a program.

(d) When a sponsor seeks to register a new program.

(3) If a compliance review indicates that the sponsor is not operating as required by these rules, the supervisor must notify the sponsor in writing of the results of the review. The supervisor must:

(a) Make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before penalizing as authorized in WAC 296-05-013.

(b) Provide recommendations to the sponsor to assist in achieving compliance.) (1) The WSATC approves and registers apprenticeship and training programs. At the regular quarterly meeting, the proposed committee and/or standards will be considered by the WSATC. The WSATC will approve provided the sponsor accepts changes recommended by the WSATC, or disapprove.

At the regular quarterly meeting, the WSATC will allow changes to correct clerical errors. The addition of standard language will be allowed if authorized representatives of the sponsor are present and authorized to accept changes. At the regular quarterly meeting, the WSATC will not accept changes to the format, language, or provisions of the submitted program standards which are not reasonably consistent with previously approved program standards.

(a) Approval: The WSATC may approve an apprenticeship program when:

(i) If applicable, an apprenticeship and training committee is organized consistent with WAC 296-05-009;

(ii) Standards are proposed by the committee consistent with WAC 296-05-015;

(iii) Standards are presented to the WSATC consistent with WAC 296-05-008;

(b) The WSATC approves the following types of apprenticeship and training programs:

(i) Group joint: Sponsored by both a group of employers and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(ii) Individual joint: Sponsored by an individual employer and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(iii) Group nonjoint: A program sponsored only by an employer association and administered only by the employer association.

(iv) Individual nonjoint: A program sponsored and administered by an individual employer with no labor organization.

(v) Group waiver: A program sponsored by an employer association and a labor organization but one group waives participation in administering the program.

(vi) Individual waiver: A program sponsored by an individual person or plant and a labor organization, but one party waives participation in administering the program.

(vii) Plant: A program sponsored by the owner of a plant or plants at a particular location or locations. Plant programs are administered in accordance with chapter 49.04 RCW and these rules.

(c) Registration: If a program is approved, it is registered with the WSATC. An initial registration is provisional and lasts one year.

(i) If a program is not approved, the department will inform the sponsor in writing and explain the reasons for denying approval.

(ii) If a program is not initially approved, the WSATC may ask a sponsor to modify the program. The program may be approved with modifications.

(d) Waiver: A party may seek to waive labor union participation in administering a program when apprentices will be union members.

(i) If a program includes labor union participation, the program sponsor must obtain a written statement, known as a "no objection" statement, from the union in support of the program.

(ii) When a labor union chooses not to participate in administering the program, the employer or employers' association must furnish copies of the registration application and the proposed program standards to the union serving as the collective bargaining agent of the employees to be trained. Before taking a final action on the application, the supervisor must give the union forty-five calendar days to respond before final action is taken on the registration.

(iii) If the union fails to comment within forty-five days, it will have waived its right to participate in the program and the supervisor will grant the waiver.

(e) Nonjoint and waiver committees - Additional requirements.

(i) The WSATC shall only recognize nonjoint and waiver standards for a specific occupation or directly related occupations.

(ii) When multiple related occupations are approved on a single standard, each occupation shall be considered as an individual standard.

(iii) Unrelated occupations shall be submitted under separate standards.

(f) Related/supplemental instruction: The WSATC may approve apprentice related/supplemental instruction for apprenticeable occupations based on recommendations from the state board for community and technical colleges. Program sponsors may allow credit for previously completed related/supplemental instruction under WAC 296-05-015(11).

(2) Objections: If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must:

(a) Provide timely and specific objections in writing to the apprenticeship supervisor twenty calendar days prior to the next regular quarterly WSATC meeting on a form provided by the department;

(b) Upon receipt of a competitor's objections, the apprenticeship supervisor notifies the program sponsor within two business days and forwards the matter to the WSATC.

(c) The WSATC may adjudicate the matter itself or refer the matter to the office of administrative hearings for initial adjudication:

(i) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, a hearing on the objections shall take place at the regular quarterly WSATC meeting or at a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program sponsor that the objection is on the agenda for consideration and shall give its recommendation ten calendar days prior to the WSATC meeting.

(ii) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters on which the WSATC is requesting the office of administrative hearings provide findings and conclusions for the initial order.

(d) The department may attempt to facilitate a resolution to any objections during the process identified in this section.

(3) Reciprocity: The WSATC may recognize out-of-state apprenticeship programs when:

(a) The program complies with federal requirements; or

(b) The program is recognized by a recognized state apprenticeship agency; and

(c) The program sponsor agrees to comply with Washington wage and hour laws; and

(d) The program sponsor asks for recognition from the WSATC.

The WSATC may revoke reciprocity agreements at any time.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-013 ((Sanctions for noncompliance.))
On-the-job training programs. ((The WSATC is responsible to take the necessary action to bring a noncomplying program into compliance with these rules.

When the apprenticeship supervisor, based upon a compliance review or other reason, concludes that an apprenticeship program is not in compliance with the rules of this chapter and that the sponsor will not take voluntary corrective action, the WSATC must:

(1) Institute proceedings to withdraw the program registration;

(2) Refer the matter to the equal employment opportunity commission;

(3) Refer the matter to the attorney general with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended; or

(4) Refer the matter to the attorney general for other court action as authorized by law.

(5) For provisionally approved programs (see WAC 296-05-003) the WSATC may continue approval as provisional through the first full training cycle/term, or rescind approval following a compliance review by the apprenticeship section of the department of labor and industries.)) (1) An on-the-job

training program involves two thousand or fewer hours of employment in an occupation for which there is no registered apprenticeship program established in accordance with these rules.

(2) On-the-job training programs may be established in accordance with these rules.

(3) The supervisor of apprenticeship may approve on-the-job training programs. The WSATC may review the supervisor's approval, or make exceptions to these rules for on-the-job training programs.

AMENDATORY SECTION (Amending WSR 11-23-138, filed 11/22/11, effective 12/31/11)

WAC 296-05-015 ((Decisions against training agent for violating ratio, supervision and/or approved work process requirements.)) Apprenticeship program standards. ((Based on a complaint, compliance review, or other reason, the supervisor may investigate, in accordance with the rules in this chapter, whether a training agent is in compliance with the program standards relating to the ratio, supervision, or approved work processes requirements for purposes of responsible bidder status for public works under RCW 39.04.350 (1)(e), or for purposes of prohibitions on bidding on public works contracts under RCW 39.12.055(3).

(1) The supervisor shall notify the training agent and the program sponsor that an investigation has commenced.

(2) The supervisor shall prepare a report identifying the results of the investigation. If the results indicate that the training agent is not operating as required by the program standards, the supervisor will notify the training agent and program sponsor in writing of the results, with a copy of the report to the WSATC. Additionally:

(a) The supervisor will make a reasonable effort to secure compliance on the part of the training agent by requiring the training agent to submit to the supervisor a proposed plan identifying voluntary corrective action. The supervisor shall review the proposed corrective action plan and approve it, or work with the training agent to modify it, before its implementation. If the supervisor does not receive notice, within sixty calendar days, that action has been taken to correct violations, the supervisor may refer the matter to the WSATC for action. The program sponsor shall assist the training agent in developing a proposed corrective action plan and shall assist the supervisor in monitoring the training agent's compliance with the terms of the approved corrective action plan.

(b) If the supervisor is unable to obtain compliance from the training agent under (a) of this subsection, or if a second investigation within one year of the initial inspection reveals the training agent is not operating as required by the program standards, the supervisor shall refer the matter to the WSATC for action.

(3) The WSATC will take action upon the supervisor's referral under subsection (2)(b) of this section. After a hearing, the WSATC will decide by a majority vote of the members present whether to issue a determination under RCW 39.04.350 (1)(e) and 39.12.055(3) that the training agent is out of compliance with program standards relating to the ratio, supervision, or approved work processes requirements.

(4) A determination by the WSATC that a training agent is out of compliance with program standards relating to the ratio, supervision, or approved work processes requirements shall be stated in writing, along with the reasons supporting it, and shall be served upon the training agent, program sponsor, and supervisor as provided by RCW 34.05.010(19). Judicial review of the WSATC's written decision under this section shall be as provided in chapter 34.05 RCW.

(5) The supervisor shall place WSATC determinations under this section on file for public review. The supervisor shall maintain a list of all training agents who, as a result of a determination they are out of compliance pursuant to RCW 39.04.350 (1)(e) and 39.12.055(3), are ineligible to bid on a public works contract, or to have a bid accepted. The supervisor shall make the list available to the public upon request.)) Apprenticeship program standards govern apprenticeship agreements between a program sponsor and an individual apprentice and define the term of the apprenticeship. The WSATC develops, administers, and enforces apprenticeship program standards, which are incorporated into apprenticeship agreements. Proposed standards must be reasonably consistent with existing standards in the trade or occupation. Proposed standards are reasonably consistent with existing standards when standards meet or exceed the minimum number of hours approved by the United States Department of Labor in the trade or occupation, if approval has been made. If not, the WSATC may use its discretion to determine whether standards are reasonably consistent with existing standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the occupation to be taught and the required hours for completion of apprenticeship which must not be less than two thousand hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee;

Exception: This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Disciplinary action may only be taken at a face-to-face meeting;

(c) Explain the program sponsor's request for apprentices in the area covered by the apprenticeship standards established under these rules and a plan to include reasonable continuous employment;

(d) Establish minimum standards of education and skilled occupational experience required of apprentices;

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker;

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards;

Exception: This does not apply to plant programs.

(g) Recommend competent instructors as defined in WAC 296-05-003 and related/supplemental instruction in accordance with state board for community and technical college requirements;

(h) Coordinate related/supplemental instruction with on-the-job work experience;

(i) Hear and adjust all complaints of violations of apprenticeship agreements;

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules;

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period;

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules (see WAC 296-05-100).

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, genetic information, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an equal employment opportunity plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in a collective bargaining agreement, if any. The ratio must be described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, and hours of study per year. Related/supplemental instruction shall not be less than one hundred forty-four hours per year and shall be defined in the standards per:

(a) Twelve-month period from date of registration; or

(b) Defined twelve-month school year; or

(c) Two thousand hours of on-the-job training.

If a sponsor does not prescribe hours of study, the WSATC shall adopt (a) of this subsection for compliance purposes.

(7) An attendance policy which includes the following provisions:

(a) If the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the apprenticeship agreement.

(b) That time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not required to be paid for the classroom time.

(c) That all hours of actual attendance by the apprentice in related/supplemental instruction classes must be reported to the department on a quarterly basis.

(d) That the hours reported to the department will clearly identify unpaid, supervised related/supplemental instruction time versus paid or unsupervised time for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the supervisor.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including: Certificate of completion; additional credit; suspension; military service; reinstatement; cancellation; and corrections.

(11) A provision for granting of advanced standing or credit for demonstrated competency, acquired experience, training, education, or skills in or related to the occupation and:

(a) In licensed trades regulated by electrical, plumbing, and elevator programs at the department, apprenticeship sponsors may give advanced credit or grant hours to apprentices only up to the hours that have been approved by the appropriate licensing entity prior to the sponsor granting credit to the registered apprentice. Programs are not required to use all hours granted by the regulatory section of the department.

(b) All apprenticeship programs need to ensure that a fair and equitable process is applied to apprentices seeking advanced standing or credit.

(12) A provision for the transfer of an apprentice from one training agent to another training agent of the sponsor in order to provide to the extent possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04 and 34.05 RCW, and these rules.

(15) A statement of the processes within the occupation in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in

related/supplemental instruction. For competency based and hybrid models, the program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than sixteen years of age.

Note: Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established apprenticeship standards procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement, it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.

(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

(a) Withhold periodic wage advancements;

(b) Suspend or cancel the apprenticeship agreement;

(c) Take further disciplinary action; or

(d) The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal of the committee's action to the WSATC.

(22) A provision for an initial probation period. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause.

(23) Provisions prohibiting discrimination on the race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, genetic information, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

(25) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry occupation in question. The goal is to achieve general statewide uniformity of standards in each industry occupation. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship for a given occupation. If the United States Department of Labor has not established a minimum number of hours for an occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must

be achieved. In addition, the course content and delivery method must be designed to achieve reasonably consistent skills as existing standards within the state for that industry occupation.

(26) A provision to ensure progressively increasing wage scales based on specified percentages of journey-level wage. Sponsors must submit the journey-level wage at least annually or whenever changed to the department. Wage reports may be submitted on a form provided by the department.

(27) A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

(28) An apprenticeship term may be:

(a) Time-based: Measured by skill acquisition. The apprentice must complete at least two thousand hours of on-the-job learning as described in a work process schedule; or

(b) Competency-based: The apprentice successfully demonstrates acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of registered apprenticeship. The program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies; or

(c) Hybrid: The apprentice acquires skills through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

~~((PART A — WSATC MEMBERS — COMPOSITION, OFFICERS, AND DUTIES))~~

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

WAC 296-05-100 Records required by the WSATC ((composition)). ~~((1) The director of the department appoints three voting representatives each from employer and employee organizations, respectively. Each member shall be appointed for a three year term.~~

~~(2) The director of labor and industries shall also appoint a public member to the apprenticeship council for a three-year term.~~

~~(3) The WSATC may also include ex officio members. These members have the right to participate in the discussion of any matter before the council but they may not vote.~~

~~(4) An appointed member shall remain on the council until replaced by a qualified successor. When a vacancy does occur, it shall be filled for the remaining portion of the vacated term.))~~

(1) Program sponsors must keep adequate records including, but not limited to, the following:

(a) Selection of applicants:

(i) A summary of the qualifications of each applicant;

(ii) The basis for evaluation and for selection or rejection of each applicant;

(iii) The records pertaining to the interviews of applicants; and

(iv) The original application for each applicant.

(b) Operation of the apprenticeship program:

- (i) On-the-job training assignments;
- (ii) Promotion, demotion, layoff, or termination;
- (iii) Rates of pay or other forms of compensation or conditions of work;
- (iv) Hours of training provided on-the-job by work process and in related/supplemental instruction in accordance to the sponsor's approved plan;
- (v) Signed and approved training agency agreement forms; and
- (vi) Any other records needed by the WSATC to determine compliance with these rules.

(2) Equal employment opportunity plans:

(a) A copy of the program's complete equal employment opportunity plan. All data and analysis made to determine enrollment deficiencies;

(b) Evidence that equal employment opportunity plans are reviewed on an annual basis; and

(c) Evidence that equal employment opportunity plans, goals, and timetables are updated when necessary.

(3) Documentation necessary to establish a sponsor's good faith effort in implementing its equal employment opportunity plan:

(a) Who was contacted;

(b) When the contacts were made;

(c) Where the contacts occurred;

(d) How the contacts were made; and

(e) The content of each contact.

(4) Qualification standards: Evidence that the sponsor's qualification standards meet the requirements of WAC 296-05-015.

Program sponsors must keep adequate records related to operations of the apprenticeship program including, but not limited to, records reflecting selection of applicants, equal employment opportunity plans and implementation of plans for a minimum of five years. Program sponsors must provide access to records when requested by the WSATC or the apprenticeship supervisor.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-103 ((~~Officers.~~) **Apprenticeship agreements.** ((1) To carry out the business of the WSATC and to conduct business efficiently the WSATC has three officers:

• Chair;

• Vice chair; and

• Secretary.

(2) The chair and vice chair shall be elected by majority vote of the WSATC members present. This election will take place in odd-numbered years at the April regular quarterly meeting. They shall hold office for a term of two years and until the successor(s) are elected, or until death, resignation, or incapacitation. The supervisor of apprenticeship shall be the secretary of the WSATC.)) (1) Individual apprentices enter into apprenticeship agreements with the program sponsor. Agreements must be filed with the apprenticeship supervisor. The apprenticeship supervisor approves and registers the agreements.

(2) The WSATC recognizes apprenticeship agreements as follows:

(a) Between an employer association and an employee organization;

(b) Between an individual employer and an employee organization;

(c) Between an individual apprentice and an apprenticeship program.

(3) When a program is canceled by the WSATC, agreements under the program are also canceled.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-105 ((~~Officer duties.~~) **Individual apprentice complaints—Procedures.** ((1) The chair shall preside over all meetings, conducting them in accordance with *Robert's Rules of Order* as modified by these rules and regulations. The chair may vote in all matters before the WSATC as a regular member and may participate in discussion of all matters before the WSATC. The chair may also have other powers and duties that are provided in these rules; and are usual or necessary with the office of the chair; and as provided in *Robert's Rules of Order*.

(2) The vice chair shall preside over all WSATC meetings in the absence of the chair. When presiding, the vice chair shall have all of the powers and duties of the chair.

(3) The secretary, with the assistance of a recording secretary, must take and keep minutes of all special and regular meetings on file in the supervisor's office. The secretary must forward copies of minutes of all meetings to all regular and ex-officio members of the WSATC. The secretary must also make copies of the minutes of all meetings available to the public upon written request. The secretary may also have other powers and duties that are provided in these rules or are usual or customary to the office of secretary; and as provided in *Robert's Rules of Order*.) (1) Except as provided otherwise by federal or state law, the apprentice must complete the initial probationary period in order to be eligible to appeal the program sponsor's decision on a complaint.

(2) Complaints involving matters covered by a collective bargaining agreement are not subject to the complaint procedures in this section.

(3) Complaints regarding nondisciplinary matters must be filed with the program sponsor within thirty calendar days from the date of the last occurrence. Complaints must be in writing.

(4) If the apprentice disagrees with the resolution of the complaint or wishes to contest the outcome of a disciplinary action by the program sponsor, the apprentice must file a written request for reconsideration with the program sponsor within thirty calendar days from the date the apprentice received written notice of action by the program sponsor.

(5) The program sponsor must reply, in writing, to the request for reconsideration within thirty calendar days from the date the program sponsor receives the request. The program sponsor must send a copy of the written reply to the apprentice within the thirty calendar days.

(6) Appeal to apprenticeship section: If the apprentice disagrees with the program sponsor's decision, the apprentice may file an appeal with the apprenticeship section within

thirty days from the date the program sponsor provides the decision to the apprentice.

(a) If the apprentice does not file an appeal within thirty days, the decision of the program sponsor is final.

(b) Appeals must describe the subject matter of the appeal in detail and include a copy of the decision of the program sponsor being appealed along with any documents or correspondence relevant to the complaint. The apprentice must send a copy of the complaint to the interested local committee or other organization. The apprenticeship section will complete an investigation within thirty days from the date the appeal is received and attempt to resolve the appeal. If the controversy is not settled during the investigation, the supervisor must issue a written decision resolving the controversy when the investigation is concluded.

(7) Request for review to WSATC: Following an appeal to the apprenticeship section, either party may file a request for review to the WSATC. Requests for review to the WSATC must be in writing. Requests for review must be filed within thirty days from the date the decision is mailed to the parties. The WSATC will conduct an informal hearing to consider the request for review. The WSATC will issue a written decision resolving the request for review, which is the final decision of the WSATC. All parties will receive a copy of the WSATC's written decision. The WSATC conducts hearings as described in WAC 296-05-008.

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

WAC 296-05-107 ((Additional duties for the supervisor administrator of WSATC-)) Decisions against training agents for violating ratio, supervision and/or approved work process requirements. ((1) In addition to being the council secretary, the apprenticeship supervisor (supervisor) is the WSATC administrator. As WSATC administrator, the supervisor must:

(a) Perform the duties listed in RCW 49.04.030;

(b) Register all apprenticeship agreements that comply with the rules in this chapter;

(c) Review apprenticeship programs and recommend cancellation of any committee program, or plant program previously registered which is not operated in conformity with its apprenticeship standards; and

(d) Receive all documents concerning apprenticeship or training agreements (including revisions to) or any other matters affecting apprenticeship or training.

All written correspondence to the supervisor should be addressed to:

Supervisor of Apprenticeship and Training
Department of Labor and Industries
Apprenticeship Section
P.O. Box 44530
Olympia, Washington 98504-4530

(2) The supervisor and the supervisor's staff:

(a) May be consulted on any matters concerning apprenticeship and training and will provide on request, any information concerning apprenticeship and training available to them.

(b) Will conduct systematic reviews of the operation of all programs and investigate any discrepancies between the actual and required operations of any program. The supervisor will notify the noncompliant program sponsor of any violation.

(c) May recommend sanctions including cancellation of a program not in compliance with its approved program standards.

(d) Assists in the resolution of any complaints against committees or other organizations administering apprenticeship agreements, filed with the WSATC by apprentice(s) who have completed his/her initial probationary period.

(e) Must investigate any discrepancies of all complaints as specified in WAC 296-05-009.

(f) Conducts compliance reviews as specified in WAC 296-05-011.) The supervisor may investigate whether a training agent is in compliance with RCW 39.04.350 (1)(e) and/or 39.12.055(3).

(1) The supervisor shall notify the training agent and the program sponsor that an investigation has commenced.

(2) When the investigation is complete, the supervisor shall prepare a report identifying the results. If the results indicate that the training agent has violated RCW 39.04.350 (1)(e) and 39.12.055(3), the supervisor will notify the training agent and program sponsor in writing, and provide a copy of the report to the WSATC.

(a) Following an investigation, the supervisor may require a training agent to submit and implement a voluntary corrective action plan to the department.

(b) If the training agent does not follow the voluntary corrective action plan or if a second investigation within one year of the initial inspection reveals the training agent is not operating as required by the program standards, the supervisor shall refer the matter to the WSATC for a hearing.

(3) The WSATC will conduct a hearing and issue a determination whether the training agent has violated RCW 39.04.350 (1)(e) and 39.12.055(3).

(4) A determination by the WSATC that a training agent has violated RCW 39.04.350 (1)(e) and 39.12.055(3) shall be stated in writing, along with the reasons supporting it, and shall be served upon the training agent, program sponsor, and supervisor as provided by RCW 34.05.010(19). Judicial review of the WSATC's written decision under this section shall be as provided in chapter 34.05 RCW.

(5) The supervisor shall place WSATC determinations under this section on file for public review. The supervisor shall maintain a list of all training agents who, as a result of a determination, are out of compliance pursuant to RCW 39.04.350 (1)(e) and 39.12.055(3) and are ineligible to bid on a public works contract, or to have a bid accepted. The supervisor shall make the list available to the public upon request.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-109 ((Merit awards-)) Apprenticeship program compliance reviews and sanctions. ((The WSATC may issue awards when appropriate-)) (1) The apprenticeship section conducts reviews as required by RCW 49.04.030 to determine a program's compliance with chapter

49.04 RCW, 29 C.F.R. Parts 29 and 30, and these rules. Compliance reviews consist of a comprehensive analysis and evaluation, including an on-site visit and performance review. Compliance reviews may be required for all existing programs on a regular and comprehensive basis.

(2) Compliance reviews may be conducted when:

(a) The WSATC receives a complaint about a program that has not been referred to a private review body;

(b) A sponsor seeks to register a new program or reregister an existing program;

(c) A review is necessary, within the discretion of the apprenticeship section or the WSATC.

(3) When a compliance review finds a program is not in compliance with its approved program standards or these rules, the supervisor of apprenticeship must:

(a) Notify the program sponsor of the results of the compliance review in writing and identify steps the program sponsor can make to be in compliance;

(b) Provide a reasonable opportunity for the program sponsor to correct any deficiencies identified in the compliance review;

(c) Provide notice of potential sanctions, if any, for non-compliance.

(4) Sanctions: When a program sponsor has not taken corrective action to address material deficiencies identified by the apprenticeship section in a compliance review, and the apprenticeship supervisor determines the program sponsor refuses to correct deficiencies, the WSATC must, at the request of the supervisor:

(a) Begin proceedings to cancel the program's registration IAW WAC 296-05-200;

(b) Refer the matter to the equal employment opportunity commission;

(c) Refer the matter to the attorney general with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended; or any other court action as authorized by law.

(5) When a program is provisionally approved, and the supervisor identifies deficiencies in a performance review, the WSATC may continue provisional program approval through the first full training term, or rescind program approval.

~~((PART B—WSATC MEETINGS—TYPES, PROCEDURES, AND CONDUCT))~~

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-200 ((Regular meetings-)) Apprenticeship programs—Cancellation. ~~(((1) Each year, regular meetings of the WSATC shall be convened on the third Thursday of January, April, July, and October. These regular quarterly meetings shall be held at locations within the state of Washington. All meetings are open to the general public.~~

~~(2) Notice of each regular quarterly meeting shall be given to all WSATC members, ex officio members, and approved program sponsors.~~

~~In addition, notices of meetings may be sent to all persons, organizations, agencies, or interested parties whose~~

~~presence is desired and to any newspaper, news service, television, radio station, or other interested parties who have requested notices of WSATC meetings. The supervisor must distribute the notice of the regular meeting at least thirty calendar days prior to the meeting date.)) (1) When the supervisor determines that a program is operating in violation of its program standards, these rules, or applicable laws, the supervisor may recommend a program's registration be canceled. Cancellation of a program also serves to cancel any apprenticeship agreements.~~

(2) The supervisor must:

(a) Provide notice of deficiencies to the program and sixty calendar days to correct the identified deficiencies;

(b) Provide notice that the program's registration may be canceled if the deficiencies are not corrected within sixty calendar days of receipt of the notice, and a notice of correction is sent to the supervisor within sixty calendar days of receipt of the notice;

(3) If the program does not correct identified deficiencies in a timely manner, the supervisor may begin the following procedures to cancel the program's registration. The supervisor must:

(a) Make a written recommendation to the WSATC that the program be canceled;

(b) Provide a record to the WSATC detailing the notice given to the program to correct identified deficiencies;

(c) Provide notice of the recommendation to the program sponsor and the apprenticeship committee responsible for administering the program;

(d) Provide the required notice thirty calendar days before the next regularly scheduled quarterly meeting for the WSATC to act on the supervisor's recommendation to cancel a program's registration. Absent an emergency, if notice is given fewer than thirty calendar days, the supervisor's recommendation to cancel a program's registration is heard at the subsequent regularly scheduled quarterly meeting.

(4) When the recommended program cancellation is heard before the WSATC, the supervisor or any interested party may present evidence or testimony to the WSATC regarding the recommended cancellation. The WSATC must vote on the supervisor's recommendation to cancel a program's registration. If a majority of the members approve the supervisor's recommendation, the WSATC provides written notice to all interested parties that the program's registration has been canceled. The program sponsor has thirty days from the date the WSATC mails its notice to the program sponsor to file an appeal with the director.

(5) When the supervisor recommends a program be canceled because the program violates federal law, and the WSATC cancels the program's registration as required by federal law, the program may also file an appeal with the U.S. Department of Labor, pursuant to 29 C.F.R. Parts 29 and 30.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-203 ((Special meetings-)) Equal opportunity in employment fundamentals. ~~(((1) Special meetings of the WSATC may be called at the request of the chair or by a majority of the WSATC members. To call a special meet-~~

ing, a written notice of the meeting must be personally delivered or mailed to:

- (a) Each member of the WSATC;
- (b) All approved program sponsors; and
- (c) Each general circulation newspaper, television or radio station which has on file with the WSATC or the supervisor a written request to be notified of special meetings.

In addition, notices of meetings may be sent electronically to all persons, organizations, agencies, and interested parties whose presence is desired.

(2) To be valid, the written notice must list the date, time and location of the meeting and specify the business to be transacted by the WSATC. The WSATC cannot take final action on any matter that is not specified in the written notice. Special meetings must be open to the general public and adhere to the same open meeting requirements that apply to the regular quarterly WSATC meetings.

(3) Notices of special meetings must be delivered personally or by mail at least seven calendar days before the specified time of the meeting.

(4) The exception is when a special meeting is called to consider rule changes according to chapter 34.05 RCW. In this case, the notice of the special meeting must be delivered at least twenty calendar days before the time specified in the notice.

(5) If the notice requirements in this section are not followed, any action taken by the WSATC at the special meeting will be null and void. However, the notice requirements can be waived if each regular WSATC member signs a written waiver of notice, at or prior to the meeting, and files it with the supervisor. With this filing, the notice shall be considered waived by any WSATC member present when the meeting convenes. Rule changes may not be made at special meetings where the notice requirements have been waived unless the requirements of chapter 34.05 RCW have been satisfied.) (1) The apprenticeship section is a state apprenticeship agency for federal purposes, as required by 29 C.F.R. Part 30.

(2) Registered apprenticeship programs are required to adopt written rules containing equal opportunity in employment standards required by 29 C.F.R. Part 30. Programs shall:

- (a) Not discriminate on the basis of any category prohibited by federal law;
- (b) Engage in affirmative recruiting action;
- (c) Incorporate an equal opportunity pledge into its apprenticeship program standards;
- (d) Adopt an affirmative action recruiting program;
- (e) Adopt a defined selection procedure for apprentices.

(3) The standards required by 29 C.F.R. Part 30 do not apply to programs with fewer than five apprentices.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-205 ((Petitions, requests, and correspondence submitted to the WSATC:)) Reinstatement of program registration. (((1) For the WSATC to act upon petitions or requests at a regular quarterly meeting, the petitions or requests must be submitted in writing to the supervi-

sor at least forty-five calendar days prior to the date of the regular quarterly meeting. Any petitions or requests not submitted forty-five calendar days prior to a quarterly meeting must be deferred to the next regular quarterly meeting. If a petition or request is deferred, the supervisor must notify the petitioner.

(2) Generally, correspondence not related to apprenticeship and training agreements and meetings, petitions and requests, must be submitted in writing to the supervisor of apprenticeship at least fifteen business days before the quarterly meeting at which the WSATC's consideration is requested. However, if the WSATC determines that the correspondence is crucial to any deliberations regarding approval or disapproval of an apprenticeship agreement, the supervisor may waive this fifteen business day requirement.

(3) Nonerucial correspondence submitted less than fifteen business days before the quarterly meeting must be considered by the WSATC at the next quarterly meeting.

(4) When an apprenticeship committee petitions the council or the supervisor, only the signature of the elected chair and secretary of the committee shall be accepted as a valid signature unless the petitioning committee has asked the council to recognize and accept the signature of another person. A petition requesting the recognition of a signature other than that of the elected chair and secretary must be signed by a quorum of the members from the petitioning committee.) Any apprenticeship program deregistered as authorized by these rules may be reinstated upon presentation of adequate evidence to the WSATC that the apprenticeship program is operating in compliance with these rules.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-207 ((Other regulations that apply to council meeting conduct:)) Certification of apprentice labor standard on renewable energy projects. (((1) All council meetings must be open to the general public. Members of the public cannot be required to register his/her name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, the Open Public Meetings Act and chapter 34.05 RCW, the Administrative Procedure Act. The following WSATC activities must take place in open public meetings:

- (a) All transactions of official business;
- (b) All commitments or promises;
- (c) All collective discussions;
- (d) All collective decisions; and
- (e) All council actions.

(2) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting under WAC 296-05-203.) (1) The WSATC establishes minimum levels of apprentice labor hours to be met through apprenticeship programs so that utilities can qualify for renewable energy credits as defined in RCW 19.85.040.

(2) The WSATC certifies a renewable energy project meets the required minimum when an applicant can show:

(a) A minimum of fifteen percent of the total labor hours used to construct the project are apprentice hours;

(b) Labor hours meet the definition in RCW 39.04.310 (3). Hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wages must be reported and included in the total labor hours if the foreman, superintendent, or worker is counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards;

(c) The applicant requests certification within forty-five days of the start of the on-site construction for the project.

(3) Requests for certification are filed with the department and heard by the council at the council's next regular quarterly meeting. Requests for certification must include:

(a) The name, occupational title, and registration number for each registered apprentice;

(b) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(c) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(d) Copies of weekly or monthly reporting forms and certified payroll records used to capture the required information;

(e) A statement affirming the hours reported meet the definition of "labor hours" as defined by subsection (2)(b) of this section.

(4) The department reviews requests for certification and recommends to the WSATC whether the request should be granted.

(5) The WSATC decides whether requests for certification are granted within thirty days from the date the matter is heard at the quarterly meeting. The WSATC can:

(a) Grant the request for certification;

(b) Deny the request for certification;

(c) Defer the request for certification and ask for additional information.

(6) If the request is granted, the WSATC certifies the apprentice labor hours on the project.

(7) If the request is denied, the aggrieved party may file an appeal pursuant to chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-400 Equal employment opportunity plan—Purpose, scope and authority. The WSATC's equal employment opportunity plan is based on the statutory authority granted in chapter 49.04 RCW and according to the provisions of 29 C.F.R. Part 30. The purpose of the equal employment opportunity plan is to promote equality of opportunity in apprenticeship by:

- Prohibiting discrimination in apprenticeship programs based on race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, disability, genetic information, or as otherwise specified by law;

- Requiring equal employment opportunities in apprenticeship programs; and

- Coordinating the WSATC's equal employment opportunity programs with other affirmative action policies and procedures and equal opportunity programs.

The following sections contain the policies and procedures to promote equality of opportunity and equity of treatment of apprentices in apprenticeship programs approved by the WSATC. These policies and procedures are to be used to:

- Recruit and select apprentices;
- Review and revise apprenticeship programs;
- Process equal employment opportunity complaints;
- Take corrective action when appropriate; and

~~((Deregister noncomplying apprenticeship programs; and))~~

- Continue recognition or withdraw recognition of apprenticeship programs.

An equal employment opportunity program must not be used to discriminate against any qualified applicant or apprentice on the basis of race, sex, color, religion, national origin, age, disability or as otherwise specified by law.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-409 Affirmative action information required by WSATC. In addition to the program standards required by WAC ~~((296-05-316))~~ 296-05-015, program sponsors seeking new program registration and approval by the WSATC must submit the following:

(1) The proposed affirmative action plan;

(2) The proposed selection procedures; and

(3) Any other information about the sponsor's equal employment opportunity plan required by the WSATC.

The affirmative action plan and additional information is considered in conjunction with the program standards in the WSATC's decision whether to approve or disapprove an apprenticeship program. If the WSATC disapproves the apprenticeship program, it shall direct the department to inform the sponsor in writing the reason for disapproval.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-411 Affirmative action plan. An approved affirmative action plan must:

(1) Be in writing.

(2) Be more than passive nondiscrimination.

(3) Include procedures, methods and programs to:

(a) Clearly identify present and potential minority and female apprentices.

(b) Establish affirmative action goals and timetables.

(c) Equalize opportunity in apprenticeship to allow full utilization of the work potential of minorities and women.

(d) Assure equal opportunity in apprenticeship for all individuals participating in or seeking entrance into Washington's labor force.

(4) Include provisions for outreach and positive recruitment to increase the participation of minorities and women in apprenticeship programs by expanding and promoting apprenticeship opportunities to minorities and women. (See WAC 296-05-413.)

Nothing in a sponsor's approved affirmative action plan may be used to discriminate against any qualified applicant or apprentice on the basis of race, sex (including pregnancy and gender identity), sexual orientation, color, religion,

national origin, age, disability, genetic information, or as otherwise specified by law.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-413 Outreach and recruitment requirements—Specific. To gain approval, an equal employment opportunity plan must include the following specific provisions for outreach and recruitment criteria:

(1) To increase minority and female participation in apprenticeship, program sponsors are expected to strengthen program outreach and recruitment efforts. The equal employment opportunity plan must specify the activities they will use to achieve this result.

(2) The program sponsor is not necessarily required to include all of the listed activities in its equal employment opportunity program. The WSATC, when approving the sponsor's equal employment opportunity plan, will determine the number of specific activities a sponsor must implement to satisfy this outreach and recruitment requirement. The WSATC will consider all circumstances including the size and type of the program and its resources. When special circumstances exist, the WSATC may provide financial or other assistance it deems necessary to implement the requirements of this section from any funds made available to it for such purpose.

(3) Examples of positive outreach and recruitment activities are:

(a) Distributing information about the nature of apprenticeship programs, program admission requirements, current apprenticeship opportunities, sources of apprenticeship applications, and the equal opportunity policy of the sponsor.

For programs only accepting applications at specific intervals, such information shall be disseminated at least thirty calendar days in advance of each application date. For programs that accept applications throughout the year, this information must be distributed at least semiannually.

To be effective, the information described in this section must be given to the WSATC, local schools, employment service offices, women's centers, outreach programs and community organizations which effectively reach minorities and women. Also it must be published in newspapers which are circulated in the minority community and among women as well as the general areas in which the program sponsor operates.

(b) Participating in workshops conducted by employment service agencies, school districts, and community based organizations to increase apprenticeship program awareness of apprenticeship opportunities.

(c) Cooperating with local school districts, vocational education systems, and school employees to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.

(d) Increasing awareness of a sponsor's equal opportunity policy within the sponsor's organization. The goal of this increased awareness within the sponsor's organization is to foster understanding, acceptance, and support among the sponsor's various officers, supervisors, employees, employers, and members. This is to encourage the necessary active

assistance in achieving the program's obligations required by these rules.

(e) Participating in existing outreach programs whose focus is the recruitment and preparation of minority and female apprenticeship applicants. Whenever possible, these should provide applicants with pretesting experience and training.

(f) Developing outreach programs whose focus is the recruitment and preparation of minority and female apprenticeship applicants. If apprenticeship outreach programs do not exist, the sponsor should attempt to develop them. This effort may require working with other sponsors and appropriate community organizations. It may require obtaining financial assistance from the WSATC. Also, the sponsor shall initiate programs that prepare and encourage women to enter traditionally male dominated apprenticeship programs and occupations.

(g) Encouraging the development and use of programs for apprenticeship preparation education or other work related experiences that prepare candidates for apprenticeship.

(h) Granting to all applicants, without prejudice, advance standing or credit for previously acquired experience, training, skills, or aptitude.

(i) Engaging in other activities to ensure that the recruitment, selection, employment, and training of apprentices without discrimination based upon race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, age, disability, genetic information, or as otherwise specified by law. Some examples of these activities include:

(i) General publication of advertisements, industry reports, articles on apprenticeship opportunities and advantages.

(ii) Use minority and female apprentices and journey-level workers as recruiters.

(iii) Provide career counseling to prospective applicants.

(iv) Periodically audit equal employment opportunity programs to see if goals are being met.

(v) Develop monitoring procedures to ensure that employers are granting equal employment opportunities to apprentices (these procedures may include reporting systems, on-site reviews, or briefing sessions).

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-441 Noncompliance with federal and state equal opportunity requirements. When a compliance review concludes that a sponsor is not operating according to the federal or state laws or regulations requiring equal opportunity, the apprenticeship supervisor must take action. Such action must include:

(1) Notifying the sponsor in writing of the review results;

(2) Making a reasonable effort to secure voluntary compliance from the program sponsor; and

(3) Giving the sponsor a reasonable amount of time to comply with the review recommendations before undertaking sanctions under WAC (~~(296-05-013)~~) 296-05-109.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-443 Complaint filing. (1) Any apprentice or applicant for apprenticeship who believes they have been discriminated against may file a complaint. The basis of the complaint may be:

(a) Discrimination on the basis of race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, disability, genetic information, or as otherwise specified by law by a sponsor or a sponsor's program;

(b) The equal opportunity standards have not been followed; or

(c) The sponsor's equal employment opportunity plan does not comply with the requirements of this chapter.

(2) A complaint may be filed in person or through an authorized representative. The complainant may choose to file a complaint with the WSATC or with a private review panel as established in WAC 296-05-445.

(3) A complaint must be in writing and shall be signed by the complainant. The complaint must include the name, address, and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances leading to the complaint.

(4) The complaint must be filed not later than one hundred eighty calendar days from the date of the alleged discrimination or violation of the sponsor's equal employment opportunity plan or the rules of this chapter. If a complaint is initially filed with the private review panel and the complainant later wishes to refer the complaint to the WSATC, the referral must occur within one hundred eighty calendar days of the circumstances leading to the complaint or within thirty calendar days of the private review panel's final decision, whichever is later. If good cause is shown, the WSATC may extend these time periods.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-05-209 Voting.
- WAC 296-05-211 Rules of order.
- WAC 296-05-213 Retroactivity.
- WAC 296-05-215 Limitations.
- WAC 296-05-300 Apprenticeship and training programs—Approval.
- WAC 296-05-302 Apprenticeship committee/program approval process.
- WAC 296-05-303 Apprenticeship committees—Duties and responsibilities.
- WAC 296-05-305 Apprenticeable occupations.
- WAC 296-05-307 Types of apprenticeship agreements recognized by the WSATC.
- WAC 296-05-309 Apprenticeship programs approved by the WSATC.

- WAC 296-05-311 On-the-job training programs.
- WAC 296-05-313 Apprenticeship committees—Composition.
- WAC 296-05-314 Nonjoint and waiver committees—Additional requirements.
- WAC 296-05-315 Term of apprenticeship—Standards requirement.
- WAC 296-05-316 Apprenticeship agreements—Standards requirements.
- WAC 296-05-317 Related/supplemental instruction.
- WAC 296-05-318 Records required by the WSATC.
- WAC 296-05-319 Apprenticeship agreement—Individual registration.
- WAC 296-05-321 Apprenticeship agreement—Cancellation.
- WAC 296-05-323 Certificate of completion.
- WAC 296-05-325 Union waiver.
- WAC 296-05-327 Reciprocity.
- WAC 296-05-329 Certification of apprentice labor standard on renewable energy projects.
- WAC 296-05-449 Program registration cancellation procedures.
- WAC 296-05-451 Reinstatement of program registration.
- WAC 296-05-453 Adoption of consistent state plans.

WSR 18-17-153

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-207—Filed August 21, 2018, 10:25 a.m., effective September 21, 2018]

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

Purpose: The proposal will reclassify the Columbian sharp-tailed grouse from the state's threatened subcategory (WAC 220-200-100) to state endangered (WAC 220-610-010).

In addition, the proposal will reclassify the sea otter from the state endangered (WAC 220-610-010) to the state's threatened subcategory (WAC 220-200-100).

Citation of Rules Affected by this Order: Amending WAC 220-200-100 and 220-610-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047.

Adopted under notice filed as WSR 18-10-109 on May 2, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: August 17, 2018.

Brad Smith, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-20-030, filed 9/27/17, effective 10/28/17)

WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished. Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
<u>sea otter</u>	<u><i>Enhydra lutris</i></u>
ferruginous hawk	<i>Buteo regalis</i>
green sea turtle	<i>Chelonia mydas</i>
greater sage grouse	<i>Centrocercus urophasianus</i>
((sharp-tailed grouse	<i>Tympanuchus phasianellus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
American white pelican	<i>Pelecanus erythrorhynchos</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	<i>Eschrichtius robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
Humboldt's flying squirrel	<i>Glaucomys oregonensis</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

AMENDATORY SECTION (Amending WSR 17-20-030, filed 9/27/17, effective 10/28/17)

WAC 220-610-010 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>

Common Name	Scientific Name
((sea otter	<i>Enhydra lutris</i>)
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
North Pacific right whale	<i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
<u>Columbian sharp-tailed grouse</u>	<u><i>Tympanuchus phasianellus columbianus</i></u>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>Charadrius nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>

WSR 18-17-156**PERMANENT RULES****DEPARTMENT OF****LABOR AND INDUSTRIES**

[Filed August 21, 2018, 11:49 a.m., effective December 12, 2018]

Effective Date of Rule: December 12, 2018.

Purpose: The department added chapter 296-850 WAC, Beryllium, as a new chapter to Title 296 WAC of the department of labor and industries. This responds to Occupational Safety and Health Administration's (OSHA) final rule on beryllium in General Industry C.F.R. 1910.1024, Construction C.F.R. 1926.1124 and Maritime C.F.R. 1915.1024. The department will have one beryllium rule to include all indus-

tries listed, instead of separate rules for each industry as OSHA has done. This rule will limit worker exposure to beryllium and beryllium compounds (as Be), which can cause the debilitating lung disease known as chronic beryllium disease (CBD) and lung cancer. This rule mirrors OSHA's final rule, with minor differences in the definitions, medical removal, and medical surveillance sections that allow for implementation of the rule to be consistent with existing requirements in Title 51 RCW. The permission exposure limit (PEL) tables in WAC 296-307-62625 and 296-841-20025 were updated to reflect OSHA's reduced beryllium PELs.

The effective date of this rule is December 12, 2018, and the compliance dates are as follows: All obligations of this standard commence and become enforceable on December 12, 2018, except:

- Change rooms and showers required by WAC 296-850-145 must be provided by March 11, 2019; and
- Engineering controls required by WAC 296-850-130 Methods of compliance, must be implemented by March 10, 2020.

Amended Sections:**WAC 296-841-20025 Permissible exposure limits (PELs).**

- Updated PEL table to reflect OSHA's new PEL requirements for beryllium.

WAC 296-307-62625 Permissible exposure limits of air contaminants.

- Updated PEL table to reflect OSHA's new PEL requirements for beryllium.

New Sections:**WAC 296-850-090 Definitions.**

- Added definitions for the following: Action level, airborne exposure and airborne exposure to beryllium, beryllium lymphocyte proliferation test (BeLPT), beryllium work area, CBD diagnostic center, CBD, competent person, confirmed positive, construction work, emergency, high-efficiency particulate air (HEPA) filter, objective data, physician or other licensed health care professional (PLHCP), regulated area, ship breaking, ship building, ship repairing.

WAC 296-850-100 Scope and application.

- Added this section to clarify what is and what is not covered by this rule.

WAC 296-850-110 Permissible exposure limits.

- Added the requirements for employee exposure limits to beryllium using time-weighted average (TWA), PEL and short-term exposure limit (STEL).

WAC 296-850-115 Exposure assessment.

- Added the requirement that the employer must assess the airborne exposure of each employee who is or may reasonably be expected to be exposed to airborne beryllium by using either the *performance* option or the *scheduled monitoring* option.
- Added the requirements for the performance option.

- Added the requirements for the scheduled monitoring option.
- Added reassessment of exposure requirements.
- Added methods of sample analysis.
- Added employee notification of assessment results.
- Added observation of monitoring.

WAC 296-850-120 Beryllium work areas and regulated areas.

- Added that the employer must establish and maintain a beryllium work area when required and a regulated area as required by proposed rule.
- Added requirements for identifying each beryllium work area through signs and other methods.
- Added requirements to limit access to regulated areas.
- Added requirements that employees entering regulated areas use respiratory protection and personal protective clothing and equipment.

WAC 296-850-125 Competent person.

- Added that employer must designate a competent person to regularly inspect construction and maintenance job sites where employees can be expected to be exposed to airborne beryllium above the TWA, PEL or STEL to ensure compliance with this rule.

WAC 296-850-130 Methods of compliance.

- Added requirements for the following:
 - Written exposure control plan.
 - Engineering and work practice controls.
 - Prohibition of rotation.

WAC 296-850-135 Respiratory protection.

- Added requirements that the employer must provide respiratory protection at no cost to the employee and ensure it is used as required by this proposed rule.
- Added requirements that the employer must implement a respiratory protection program as required by this proposed rule.

WAC 296-850-140 Personal protective clothing and equipment.

- Added requirements for the following:
 - Provision and use of personal protective clothing [clothing] and equipment.
 - Removal and storage of beryllium-contaminated personal protective clothing and equipment.
 - Cleaning and replacement of personal protective clothing and equipment.

WAC 296-850-145 Hygiene areas and practices.

- Added requirements to provide readily accessible washing facilities as required by applicable rules.
- Added requirements for change rooms and showers.
- Added requirements for eating and drinking areas that are as free as practicable of beryllium.
- Added prohibited activities such as not allowing employees to eat or drink in regulated areas where the exposure could be above the TWA, PEL or STEL.

WAC 296-850-150 Housekeeping.

- Added requirements that the employer must maintain all surfaces in beryllium work areas as free as practicable of beryllium, ensuring all spills are cleaned up promptly.
- Added requirement for appropriate cleaning methods in beryllium work areas.
- Added requirements for disposal of materials contaminated with beryllium.

WAC 296-850-155 Medical surveillance.

- Added requirements for medical surveillance that must be provided at no cost to the employee when there is a possibility of beryllium exposure as identified in the proposed rule.
- Added requirements for the frequency of medical examinations and the contents of the examination.
- Added requirements for information that must be provided to PLHCP.
- Added requirements that the employee receives the licensed physician's written medical report for the employee.
- Added requirements for the licensed physician's written medical opinion for the employer.
- Added requirements for a CBD diagnostic center.

WAC 296-850-160 Medical removal.

- Added requirements for when an employee is eligible for medical removal and what the employer must provide if the employee is eligible for medical removal.

WAC 296-850-165 Communication of hazards

- Added that employers, chemical manufacturers, importers, and distributors must comply with the globally harmonized system for hazard communication for beryllium.
- Added requirements for warning signs, posting, sign specification, and warning labels.
- Added requirement that the employer must provide employees information and training as required in chapter 296-901 WAC, Globally harmonized system for hazard communication.

WAC 296-850-170 Recordkeeping.

- Added requirements for employer to capture air monitoring data, objective data, medical surveillance, and training records.
- Added requirements for access to records and transfer of records.

WAC 296-850-175 Dates.

- Added requirement for the dates this proposed rule becomes effective.

WAC 296-850-180 Appendix A—Control strategies to minimize beryllium exposure of this standard is nonmandatory.

- Added a nonmandatory Appendix A, Control strategies to minimize beryllium exposure of the standard.
- Added a table of exposure control recommendations.

WAC 296-850-190 Appendix B—Considerations when using the blood beryllium lymphocyte proliferation test in the screening and evaluation of beryllium sensitization—Nonmandatory.

- Added a nonmandatory Appendix B, considerations when using the blood beryllium lymphocyte proliferation test in the screening and evaluation of beryllium sensitization.

Citation of Rules Affected by this Order: WAC 296-850-090, 296-850-100, 296-850-110, 296-850-115, 296-850-120, 296-850-125, 296-850-130, 296-850-135, 296-850-140, 296-850-145, 296-850-150, 296-850-155, 296-850-160, 296-850-165, 296-850-170, 296-850-175, 296-850-180 and 296-850-190; and amending WAC 296-841-20025 and 296-307-62625.

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

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 18-10-080 on May 1, 2018.

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-850-090 Definitions.

- Amended definition for beryllium work area to be equivalent to OSHA in response to their direct final rule (DFR) updates effective July 6, 2018. Added language to specify that a work area includes a process or operation that can release beryllium and involves material that contains at least 0.1 percent beryllium by weight.
- Added a definition for "contaminated with beryllium and beryllium-contaminated" to be equivalent to OSHA in response to their DFR update effective July 6, 2018.
- Added a definition for "dermal contact with beryllium" to be equivalent to OSHA in response to their DFR update effective July 6, 2018.
- Amended definition for emergency to be equivalent to OSHA in response to their DFR updates effective July 6, 2018.
- Added language that gave examples of what could cause an uncontrolled release of airborne beryllium and would create a significant hazard.

WAC 296-850-130 Methods of compliance.

- Added a requirement [of] what an exposure control plan must contain, specific to construction work, to be at-least-as-effective-as OSHA.
- Added a requirement for when the exposure control plan must be updated in order to be at-least-as-effective-as OSHA.
- Added additional language to clarify subsection (2) titled "Engineering and work practice controls" to be equivalent to OSHA in response to their DFR update effective July 6, 2018. A new (a) was added to subsection (2) for this clarification replacing (c) and (d) which were deleted.

WAC 296-850-140 Personal protective clothing and equipment.

- Added clarification to subsection (3) titled "Cleaning and replacement" to be equivalent to OSHA in response

to their DFR update effective July 6, 2018. Specifically clarifying that "beryllium-contaminated" personal protective clothing and equipment cannot be shaken or other means used to remove beryllium that disperses beryllium into the air.

WAC 296-850-145 Hygiene areas and practices.

- Modified language that clarifies employees who will need to implement hygiene practices to be at-least-as-effective-as OSHA.
- Added that the employer must also follow the written control exposure plan in construction, ship breaking, ship building or ship repairing to be at-least-as-effective-as OSHA.
- Reorganized requirement for showers in subsection (3)(a)(ii) for clarity to be equivalent to OSHA in response to their DFR update effective July 6, 2018.
- Reorganized requirement for showers in subsection (3)(b)(ii) for clarity to be equivalent to OSHA in response to their DFR updated effective July 6, 2018.
- Added "beryllium-contaminated" to subsection (4)(a) and (b) to clarify that surfaces, clothing, etc., that was beryllium-contaminated must be [as] free as possible of beryllium in eating and drinking areas to be equivalent to OSHA in response to their DFR updated effective July 6, 2018.

WAC 296-850-150 Housekeeping.

- Added "regulated areas" to be covered in the general housekeeping requirements in subsection (1)(a) to be equivalent to OSHA in response to their DFR updated effective July 6, 2018.
- Added "regulated areas" to be included in the cleaning methods in subsection (2)(a) and (b) to be equivalent to OSHA in response to their DFR updated effective July 6, 2018.
- Modified the requirements in subsection (3) to include recycling as well as disposal, adding specificity to the amount of beryllium that would be contained in the materials for appropriate disposal and recycling to be equivalent to OSHA in response to their DFR updated effective July 6, 2018.

WAC 206-850-175 Dates.

- The effective date of the rule was changed from October 1, 2018, to December 12, 2018.

A final cost-benefit analysis is available by contacting Gail Hughes, department of labor and industries, phone 360-902-6772, fax 360-902-5519, email gail.hughes@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 18, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.
 Date Adopted: August 21, 2018.

Joel Sacks
 Director

AMENDATORY SECTION (Amending WSR 18-07-098, filed 3/20/18, effective 4/23/18)

WAC 296-307-62625 Permissible exposure limits of air contaminants.

IMPORTANT:

The following information applies to Table 3, Permissible Exposure Limits for Air Contaminants.

- Exposure needs to be determined from personal air samples taken in the breathing zone or from monitoring representative of the employee's breathing zone.
- Ppm refers to parts of vapor or gas per million parts of air by volume, at 25 degrees C and 760 mm Hg pressure.
- Mg/m³ refers to milligrams of substance per cubic meter of air.
- For a metal that is measured as the metal itself, only the CAS number for the metal is given. The CAS numbers for individual compounds of the metal are not provided. For more information about CAS registry numbers see the web site: <http://www.cas.org>.
- Time weighted averages (TWA₈) represent the maximum allowed average exposure for any 8-hour time period. For work periods longer than 8 hours the TWA₈ needs to be

determined using the 8 continuous hours with the highest average concentration.

- Short-term exposure limits (STEL) represent maximum allowed average exposure for any fifteen-minute period, unless another time period is noted in Table 3.
- The ceiling represents the maximum allowed exposure for the shortest time period that can feasibly be measured.
- An "X" in the "skin" column indicates the substance can be absorbed through the skin, either by airborne or direct contact.
- Requirements for the use of gloves, coveralls, goggles, and other personal protective equipment can be found in WAC 296-307-100.
- The respirable fraction of particulate is measured by sampling with a size-selector having the following characteristics:

Mean aerodynamic diameter in micrometers	Percent passing the selector
1	97
2	91
3	74
4	50
5	30
6	17
7	9
8	5
10	1

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Abate (Temephos)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Acetaldehyde	75-07-0	100 ppm	150 ppm	—	—
Acetic acid	64-19-7	10 ppm	20 ppm	—	—
Acetic anhydride	108-24-7	—	—	5 ppm	—
Acetone	67-64-1	750 ppm	1,000 ppm	—	—
Acetonitrile	75-05-8	40 ppm	60 ppm	—	—
2-Acetylaminofluorene	53-96-3	—	—	—	—
Acetylene	74-86-2	Simple asphyxiant	—	—	—
Acetylene dichloride (1,2-Dichloroethylene)	540-59-0	200 ppm	250 ppm	—	—
Acetylene tetrabromide	79-27-6	1 ppm	3 ppm	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	5 mg/m ³	10 mg/m ³	—	—
Acrolein	107-02-8	0.1 ppm	0.3 ppm	—	—
Acrylamide	79-06-1	0.03 mg/m ³	0.09 mg/m ³	—	X
Acrylic acid	79-10-7	10 ppm	20 ppm	—	X
Acrylonitrile (Vinyl cyanide)	107-13-1	2 ppm	10 ppm	—	—
Aldrin	309-00-2	0.25 mg/m ³	0.75 mg/m ³	—	X
Allyl alcohol	107-18-6	2 ppm	4 ppm	—	X
Allyl chloride	107-05-1	1 ppm	2 ppm	—	—
Allyl glycidyl ether (AGE)	106-92-3	5 ppm	10 ppm	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Allyl propyl disulfide	2179-59-1	2 ppm	3 ppm	—	—
alpha-Alumina (Aluminum oxide)	1344-28-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Aluminum (as Al)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pyro powders	—	5 mg/m ³	10 mg/m ³	—	—
Welding fumes	—	5 mg/m ³	10 mg/m ³	—	—
Soluble salts	—	2 mg/m ³	4 mg/m ³	—	—
Alkyls (NOC)	—	2 mg/m ³	4 mg/m ³	—	—
Aluminum oxide (Alundum, Corundum)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
4-Aminodiphenyl	92-67-1	—	—	—	—
2-Aminoethanol (Ethanolamine)	141-43-5	3 ppm	6 ppm	—	—
2-Aminopyridine	504-29-0	0.5 ppm	1.5 ppm	—	—
Amitrole	61-82-5	0.2 mg/m ³	0.6 mg/m ³	—	—
Ammonia	7664-41-7	25 ppm	35 ppm	—	—
Ammonium chloride, fume	12125-02-9	10 mg/m ³	20 mg/m ³	—	—
Ammonium sulfamate (Ammate)	7773-06-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5.0 mg/m ³	10 mg/m ³	—	—
n-Amyl acetate	628-63-7	100 ppm	150 ppm	—	—
sec-Amyl acetate	626-38-0	125 ppm	156 ppm	—	—
Aniline and homologues	62-53-3	2 ppm	4 ppm	—	X
Anisidine (o, p-isomers)	29191-52-4	0.1 ppm	0.3 ppm	—	X
Antimony and compounds (as Sb)	7440-36-0	0.5 mg/m ³	1.5 mg/m ³	—	—
ANTU (alpha Naphthyl thiourea)	86-88-4	0.3 mg/m ³	0.9 mg/m ³	—	—
Argon	7440-37-1	Simple asphyxiant	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Arsenic, inorganic compounds (as As) (when use is covered by WAC 296-62-07347)	7440-38-2	0.01 mg/m ³	—	—	—
Arsenic, inorganic compounds (as As) (when use is not covered by WAC 296-62-07347)	7440-38-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Arsine	7784-42-1	0.05 ppm	0.15 ppm	—	—
Asbestos	—	—	—	—	—
Asphalt (Petroleum fumes)	8052-42-4	5 mg/m ³	10 mg/m ³	—	—
Atrazine	1912-24-9	5 mg/m ³	10 mg/m ³	—	—
Azinphos methyl (Guthion)	86-50-0	0.2 mg/m ³	0.6 mg/m ³	—	X
Azodrin (Monocrotophos)	6923-22-4	0.25 mg/m ³	0.75 mg/m ³	—	—
Barium, soluble compounds (as Ba)	7440-39-3	0.5 mg/m ³	1.5 mg/m ³	—	—
Barium sulfate	7727-43-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Baygon (Propoxur)	114-26-1	0.5 mg/m ³	1.5 mg/m ³	—	—
Benomyl	17804-35-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Benzene	71-43-2	1 ppm	5 ppm	—	—
Benzidine	92-87-5	—	—	—	—
p-Benzoquinone (Quinone)	106-51-4	0.1 ppm	0.3 ppm	—	—
Benzo(a) pyrene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Benzoyl peroxide	94-36-0	5 mg/m ³	10 mg/m ³	—	—
Benzyl chloride	100-44-7	1 ppm	3 ppm	—	—
Beryllium and beryllium compounds (as Be) (see chapter 296-850 WAC)	7440-41-7	0.0002 mg/m ³	0.002 mg/m ³ ((0.005)) ((30 min.))	0.025 mg/m ³ ((0.025 mg/m ³))	—
Biphenyl (Diphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Bismuth telluride, undoped	1304-82-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Bismuth telluride, Se-doped	—	5 mg/m ³	10 mg/m ³	—	—
Borates, tetra, sodium salts	—	—	—	—	—
Anhydrous	1330-43-4	1 mg/m ³	3 mg/m ³	—	—
Decahydrate	1303-96-4	5 mg/m ³	10 mg/m ³	—	—
Pentahydrate	12179-04-3	1 mg/m ³	3 mg/m ³	—	—
Boron oxide	1303-86-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Boron tribromide	10294-33-4	—	—	1 ppm	—
Boron trifluoride	6737-07-2	—	—	1 ppm	—
Bromacil	314-40-9	1 ppm	3 ppm	—	—
Bromine	7726-95-6	0.1 ppm	0.3 ppm	—	—
Bromine pentafluoride	7789-30-2	0.1 ppm	0.3 ppm	—	—
Bromochloromethane (Chlorobromomethane)	74-97-5	200 ppm	250 ppm	—	—
Bromoform	15-25-2	0.5 ppm	1.5 ppm	—	X
Butadiene (1,3-butadiene)	106-99-0	1 ppm	5 ppm	—	—
Butane	106-97-8	800 ppm	1,000 ppm	—	—
Butanethiol (Butyl mercaptan)	109-79-5	0.5 ppm	1.5 ppm	—	—
2-Butanone (Methyl ethyl ketone)	78-93-3	200 ppm	300 ppm	—	—
2-Butoxy ethanol (Butyl cellosolve)	111-76-2	25 ppm	38 ppm	—	X
n-Butyl acetate	123-86-4	150 ppm	200 ppm	—	—
sec-Butyl acetate	105-46-4	200 ppm	250 ppm	—	—
tert-Butyl acetate	540-88-5	200 ppm	250 ppm	—	—
Butyl acrylate	141-32-2	10 ppm	20 ppm	—	—
n-Butyl alcohol	71-36-3	—	—	50 ppm	X
sec-Butyl alcohol	78-92-2	100 ppm	150 ppm	—	—
tert-Butyl alcohol	75-65-0	100 ppm	150 ppm	—	—
Butylamine	109-73-9	—	—	5 ppm	X
Butyl cellosolve (2-Butoxy ethanol)	111-76-2	25 ppm	38 ppm	—	—
tert-Butyl chromate (as CrOs)	1189-85-1	—	—	0.1 mg/m ³	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25 ppm	38 ppm	—	—
n-Butyl lactate	138-22-7	5 ppm	10 ppm	—	—
Butyl mercaptan	109-79-5	0.5 ppm	1.5 ppm	—	—
o-sec-Butylphenol	89-72-5	5 ppm	10 ppm	—	X
p-tert-Butyl-toluene	98-51-1	10 ppm	20 ppm	—	—
Cadmium oxide fume (as Cd)	1306-19-0	0.005 mg/m ³	—	—	—
Cadmium dust and salts (as Cd)	7440-43-9	0.005 mg/m ³	—	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Calcium arsenate	—	0.01 mg/m ³	—	—	—
Calcium carbonate	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Calcium cyanamide	156-62-7	0.5 mg/m ³	1.5 mg/m ³	—	—
Calcium hydroxide	1305-62-0	5 mg/m ³	10 mg/m ³	—	—
Calcium oxide	1305-78-8	2 mg/m ³	4 mg/m ³	—	—
Calcium silicate	1344-95-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Calcium sulfate	7778-18-9	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Camphor (synthetic)	76-22-2	2 mg/m ³	4 mg/m ³	—	—
Caprolactam	105-60-2	—	—	—	—
Dust	—	1 mg/m ³	3 mg/m ³	—	—
Vapor	—	5 ppm	10 ppm	—	—
Captafol (Difolatan)	2425-06-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Captan	133-06-2	5 mg/m ³	10 mg/m ³	—	—
Carbaryl (Sevin)	63-25-2	5 mg/m ³	10 mg/m ³	—	—
Carbofuran (Furadon)	1563-66-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Carbon black	1333-86-4	3.5 mg/m ³	7 mg/m ³	—	—
Carbon dioxide	124-38-9	5,000 ppm	30,000 ppm	—	—
Carbon disulfide	75-15-0	4 ppm	12 ppm	—	X
Carbon monoxide	630-08-0	35 ppm	200 ppm (5 min.)	1,500 ppm	—
Carbon tetrabromide	558-13-4	0.1 ppm	0.3 ppm	—	—
Carbon tetrachloride (Tetrachloromethane)	56-23-5	2 ppm	4 ppm	—	X
Carbonyl chloride (Phosgene)	7803-51-2	0.1 ppm	0.3 ppm	—	—
Carbonyl fluoride	353-50-4	2 ppm	5 ppm	—	—
Catechol (Pyrocatechol)	120-80-9	5 ppm	10 ppm	—	X
Cellosolve acetate (2-Ethoxyethylacetate)	111-15-9	5 ppm	10 ppm	—	X
Cellulose (paper fiber)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Cesium hydroxide	21351-79-1	2 mg/m ³	4 mg/m ³	—	—
Chlordane	57-74-9	0.5 mg/m ³	1.5 mg/m ³	—	X
Chlorinated camphene (Toxaphen)	8001-35-2	0.5 mg/m ³	1 mg/m ³	—	X
Chlorinated diphenyl oxide	55720-99-5	0.5 mg/m ³	1.5 mg/m ³	—	—
Chlorine	7782-50-5	0.5 ppm	—	1 ppm	—
Chlorine dioxide	10049-04-4	0.1 ppm	0.3 ppm	—	—
Chlorine trifluoride	7790-91-2	—	—	0.1 ppm	—
Chloroacetaldehyde	107-20-0	—	—	1 ppm	—
a-Chloroacetophenone (Phenacyl chloride)	532-21-4	0.05 ppm	0.15 ppm	—	—
Chloroacetyl chloride	79-04-9	0.05 ppm	0.15 ppm	—	—
Chlorobenzene (Monochlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
o-Chlorobenzylidene malonitrile (OCBM)	2698-41-1	—	—	0.05 ppm	X
Chlorobromomethane	74-97-5	200 ppm	250 ppm	—	—
2-Chloro-1, 3-butadiene (beta-Chloroprene)	126-99-8	10 ppm	20 ppm	—	X
Chlorodifluoromethane	75-45-6	1,000 ppm	1,250 ppm	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Chlorodiphenyl (42% Chlorine) (PCB) (Polychlorobiphenyls)	53469-21-9	1 mg/m ³	3 mg/m ³	—	X
Chlorodiphenyl (54% Chlorine) (Polychlorobiphenyls (PCB))	11097-69-1	0.5 mg/m ³	1.5 mg/m ³	—	X
1-Chloro-2, 3-epoxypropane (Epichlorhydrin)	106-89-8	2 ppm	4 ppm	—	X
2-Chloroethanol (Ethylene chlorohydrin)	107-07-3	—	—	1 ppm	X
Chloroethylene (vinyl chloride)	75-01-4	1 ppm	5 ppm	—	—
Chloroform (Trichloromethane)	67-66-3	2 ppm	4 ppm	—	—
1-Chloro-1-nitropropane	600-25-9	2 ppm	4 ppm	—	—
bis-Chloromethyl ether	542-88-1	—	—	—	—
Chloromethyl methyl ether (Methyl chloromethyl ether)	107-30-2	—	—	—	—
Chloropentafluoroethane	76-15-3	1,000 ppm	1,250 ppm	—	—
Chloropicrin (Nitrotrichloromethane)	76-06-2	0.1 ppm	0.3 ppm	—	—
beta-Chloroprene (2-Chloro-1, 3-butadiene)	126-99-8	10 ppm	20 ppm	—	X
o-Chlorostyrene	2039-87-4	50 ppm	75 ppm	—	—
o-Chlorotoluene	95-49-8	50 ppm	75 ppm	—	—
2-Chloro-6-trichloromethyl pyridine (Nitrapyrin)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Chlorpyrifos	2921-88-2	0.2 mg/m ³	0.6 mg/m ³	—	X
Chromic acid and chromates (as CrO ₃)	Varies with compound	0.1 mg/m ³	0.3 mg/m ³	—	—
Chromium, soluble, chromic and chromous salts (as Cr)	7440-47-3	0.5 mg/m ³	1.5 mg/m ³	—	—
Chromium (VI) compounds (as Cr)	—	0.05 mg/m ³	0.15 mg/m ³	—	—
Chromium metal and insoluble salts	7440-47-3	0.5 mg/m ³	1.5 mg/m ³	—	—
Chromyl chloride	14977-61-8	0.025 ppm	0.075 ppm	—	—
Chrysene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Clopidol	2971-90-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Coal dust (less than 5% SiO ₂)	—	—	—	—	—
Respirable fraction	—	2 mg/m ³	4 mg/m ³	—	—
Coal dust (greater than or equal to 5% SiO ₂)	—	—	—	—	—
Respirable fraction	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Coal tar pitch volatiles (benzene soluble fraction) (Particulate polycyclic aromatic hydrocarbons)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Cobalt, metal fume & dust (as Co)	7440-48-4	0.05 mg/m ³	0.15 mg/m ³	—	—
Cobalt carbonyl (as Co)	10210-68-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	0.1 mg/m ³	0.3 mg/m ³	—	—
Coke oven emissions	—	0.15 mg/m ³	—	—	—
Copper (as Cu)	7440-50-8	—	—	—	—
Fume	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Dusts and mists	—	1 mg/m ³	3 mg/m ³	—	—
Cotton dust (raw) (waste sorting, blending, clean- ing, willowing and garetting)	—	1 mg/m ³	—	—	—
Corundum (Aluminum oxide)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Crag herbicide (Sesone, Sodium-2, 4-dichloro-phenoxyethyl sulfate)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Cresol (all isomers)	1319-77-3	5 ppm	10 ppm	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2 ppm	4 ppm	—	—
Cruformate	299-86-5	5 mg/m ³	10 mg/m ³	—	—
Cumene	98-82-8	50 ppm	75 ppm	—	X
Cyanamide	420-04-2	2 mg/m ³	4 mg/m ³	—	—
Cyanide (as CN)	Varies with compound	5 mg/m ³	10 mg/m ³	—	X
Cyanogen	460-19-5	10 ppm	20 ppm	—	—
Cyanogen chloride	506-77-4	—	—	0.3 ppm	—
Cyclohexane	110-82-7	300 ppm	375 ppm	—	—
Cyclohexanol	108-93-0	50 ppm	75 ppm	—	X
Cyclohexanone	108-94-1	25 ppm	38 ppm	—	X
Cyclohexene	110-83-8	300 ppm	375 ppm	—	—
Cyclohexylamine	108-91-8	10 ppm	20 ppm	—	—
Cyclonite (RDX)	121-82-4	1.5 mg/m ³	3.0 mg/m ³	—	X
Cyclopentadiene	542-92-7	75 ppm	113 ppm	—	—
Cyclopentane	287-92-3	600 ppm	750 ppm	—	—
Cyhexatin (Tricyclohexyltin hydroxide)	13121-70-5	5 mg/m ³	10 mg/m ³	—	—
2,4-D (Dichlorophenoxy-acetic acid)	94-75-7	10 mg/m ³	20 mg/m ³	—	—
DBCP (1,2-Dibromo-3-chloropropane)	96-12-8	0.001 ppm	—	0.005 ppm	—
DDT (Dichlorodiphenyltri-chloroethane)	50-29-3	1 mg/m ³	3 mg/m ³	—	X
DDVP, (Dichlorvos)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dasanit (Fensulfothion)	115-90-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Decaborane	17702-41-9	0.05 ppm	0.15 ppm	—	X
Demeton	8065-48-3	0.01 ppm	0.03 ppm	—	X
Diacetone alcohol (4-hydroxy-4-methyl-2-pentanone)	123-42-2	50 ppm	75 ppm	—	—
1, 2-Diaminoethane (Ethylenediamine)	107-15-3	10 ppm	20 ppm	—	—
Diazinon	333-41-5	0.1 mg/m ³	0.3 mg/m ³	—	X
Diazomethane	334-88-3	0.2 ppm	0.6 ppm	—	—
Diborane	19287-45-7	0.1 ppm	0.3 ppm	—	—
Dibrom (see Naled)	300-76-5	3 mg/m ³	6 mg/m ³	—	X
1, 2-Dibromo-3-chloropropane (DBCP)	96-12-8	0.001 ppm	—	0.005 ppm	—
2-N-Dibutylamino ethanol	102-81-8	2 ppm	4 ppm	—	X
Dibutyl phosphate	107-66-4	1 ppm	2 ppm	—	—
Dibutyl phthalate	84-74-2	5 mg/m ³	10 mg/m ³	—	—
Dichloroacetylene	7572-29-4	—	—	0.1 ppm	—
o-Dichlorobenzene	95-50-1	—	—	50 ppm	—
p-Dichlorobenzene	106-46-7	75 ppm	110 ppm	—	—
3, 3'-Dichlorobenzidine	91-94-1	—	—	—	—
Dichlorodiphenyltri-chloroethane (DDT)	50-29-3	1 mg/m ³	3 mg/m ³	—	X
Dichlorodifluoromethane	75-71-8	1,000 ppm	1,250 ppm	—	—
1, 3-Dichloro-5, 5-dimethyl hydantoin	118-52-5	0.2 mg/m ³	0.4 mg/m ³	—	—
1, 1-Dichloroethane (Ethylidene chloride)	75-34-3	100 ppm	150 ppm	—	—
1, 2-Dichloroethane (Ethylene dichloride)	107-06-2	1 ppm	2 ppm	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
1, 1-Dichloroethylene (Vinylidene chloride)	75-35-4	1 ppm	3 ppm	—	—
1, 2-Dichloroethylene (Acetylene dichloride)	540-59-0	200 ppm	250 ppm	—	—
Dichloroethyl ether	111-44-4	5 ppm	10 ppm	—	X
Dichlorofluoromethane	75-43-4	10 ppm	20 ppm	—	—
Dichloromethane (Methylene chloride)	75-09-2	25 ppm	125 ppm	—	—
1, 1-Dichloro-1-nitroethane	594-72-9	2 ppm	10 ppm	—	—
Dichlorophenoxyacetic acid (2, 4-D)	94-75-7	10 mg/m ³	20 mg/m ³	—	—
1, 2-Dichloropropane (Propylene dichloride)	78-87-5	75 ppm	110 ppm	—	—
Dichloropropene	542-75-6	1 ppm	3 ppm	—	X
2, 2-Dichloropropionic acid	75-99-0	1 ppm	3 ppm	—	—
Dichlorotetrafluoroethane	76-14-2	1,000 ppm	1,250 ppm	—	—
Dichlorvos (DDVP)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dicrotophos	141-66-2	0.25 mg/m ³	0.75 mg/m ³	—	X
Dicyclopentadiene	77-73-6	5 ppm	10 ppm	—	—
Dicyclopentadienyl iron	102-54-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Dieldrin	60-57-1	0.25 mg/m ³	0.75 mg/m ³	—	X
Diethanolamine	111-42-2	3 ppm	6 ppm	—	—
Diethylamine	109-89-7	10 ppm	25 ppm	—	—
2-Diethylaminoethanol	100-37-8	10 ppm	20 ppm	—	X
Diethylene triamine	111-40-0	1 ppm	3 ppm	—	X
Diethyl ether (Ethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Diethyl ketone	96-22-0	200 ppm	250 ppm	—	—
Diethyl phthalate	84-66-2	5 mg/m ³	10 mg/m ³	—	—
Difluorodibromomethane	75-61-6	100 ppm	150 ppm	—	—
Difolatan (Captafol)	2425-06-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Diglycidyl ether (DGE)	2238-07-5	0.1 ppm	0.3 ppm	—	—
Dihydroxybenzene (Hydroquinone)	123-31-9	2 mg/m ³	4 mg/m ³	—	—
Diisobutyl ketone (2, 6-Dimethylheptanone)	108-83-8	25 ppm	38 ppm	—	—
Diisopropylamine	108-18-9	5 ppm	10 ppm	—	X
Dimethoxymethane (Methylal)	109-87-5	1,000 ppm	1,250 ppm	—	—
Dimethyl acetamide	127-19-5	10 ppm	20 ppm	—	X
Dimethylamine	124-40-3	10 ppm	20 ppm	—	—
4-Dimethylaminoazo benzene	60-11-7	—	—	—	—
Dimethylaminobenzene (Xylidene)	1300-73-8	2 ppm	4 ppm	—	X
Dimethylaniline (N, N-Dimethylaniline)	121-69-7	5 ppm	10 ppm	—	X
Dimethylbenzene (Xylene)	1300-73-8	100 ppm	150 ppm	—	—
Dimethyl-1, 2-dibromo-2, 2-dichloroethyl phosphate (Naled)	300-76-5	3 mg/m ³	6 mg/m ³	—	X
Dimethylformamide	68-12-2	10 ppm	20 ppm	—	X
2, 6-Dimethylheptanone (Diisobutyl ketone)	108-83-8	25 ppm	38 ppm	—	—
1, 1-Dimethylhydrazine	57-14-7	0.5 ppm	1.5 ppm	—	X
Dimethyl phthalate	131-11-3	5 mg/m ³	10 mg/m ³	—	—
Dimethyl sulfate	77-78-1	0.1 ppm	0.3 ppm	—	X
Dinitolmide (3, 5-Dinitro-o-toluamide)	148-01-6	5 mg/m ³	10 mg/m ³	—	—
Dinitrobenzene (all isomers - alpha, meta and para)	528-29-0; 99-65-0; 100-25-4	0.15 ppm	0.45 ppm	—	X
Dinitro-o-cresol	534-52-1	0.2 mg/m ³	0.6 mg/m ³	—	X

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
3, 5-Dinitro-o-toluamide (Dinitolmide)	148-01-6	5 mg/m ³	10 mg/m ³	—	—
Dinitrotoluene	25321-14-6	1.5 mg/m ³	3 mg/m ³	—	X
Dioxane (Diethylene dioxide)	123-91-1	25 ppm	38 ppm	—	X
Dioxathion	78-34-2	0.2 mg/m ³	0.6 mg/m ³	—	X
Diphenyl (Biphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Diphenylamine	122-39-4	10 mg/m ³	20 mg/m ³	—	—
Diphenylmethane diisocyanate (Methylene bisphenyl isocyanate (MDI))	101-68-8	—	—	0.02 ppm	—
Dipropylene glycol methyl ether	34590-94-8	100 ppm	150 ppm	—	X
Dipropyl ketone	123-19-3	50 ppm	75 ppm	—	—
Diquat	85-00-7	0.5 mg/m ³	1.5 mg/m ³	—	—
Di-sec, Octyl phthalate (Di-2-ethylhexylphthalate)	117-81-7	5 mg/m ³	10 mg/m ³	—	—
Disulfram	97-77-8	2 mg/m ³	4 mg/m ³	—	—
Disulfoton	298-04-4	0.1 mg/m ³	0.3 mg/m ³	—	X
2, 6-Di-tert-butyl-p-cresol	128-37-0	10 mg/m ³	20 mg/m ³	—	—
Diuron	330-54-1	10 mg/m ³	20 mg/m ³	—	—
Divinyl benzene	1321-74-0	10 ppm	20 ppm	—	—
Emery	12415-34-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Endosulfan (Thiodan)	115-29-7	0.1 mg/m ³	0.3 mg/m ³	—	X
Endrin	72-20-8	0.1 mg/m ³	0.3 mg/m ³	—	X
Epichlorhydrin (1-Chloro-2, 3-epoxypropane)	106-89-8	2 ppm	4 ppm	—	X
EPN	2104-64-5	0.5 mg/m ³	1.5 mg/m ³	—	X
1, 2-Epoxypropane (Propylene oxide)	75-56-9	20 ppm	30 ppm	—	—
2, 3-Epoxy-1-propanol (Glycidol)	556-52-5	25 ppm	38 ppm	—	—
Ethane	—	Simple asphyxiant	—	—	—
Ethanethiol (Ethyl mercaptan)	75-08-1	0.5 ppm	1.5 ppm	—	—
Ethanol (Ethyl alcohol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethanolamine (2-Aminoethanol)	141-43-5	3 ppm	6 ppm	—	—
Ethion	563-12-2	0.4 mg/m ³	1.2 mg/m ³	—	X
2-Ethoxyethanol (Glycol monoethyl ether)	110-80-5	5 ppm	10 ppm	—	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	5 ppm	10 ppm	—	X
Ethyl acetate	141-78-6	400 ppm	500 ppm	—	—
Ethyl acrylate	140-88-5	5 ppm	25 ppm	—	X
Ethyl alcohol (ethanol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethylamine	75-04-07	10 ppm	20 ppm	—	—
Ethyl amyl ketone (5-Methyl-3-hepatone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl benzene	100-41-4	100 ppm	125 ppm	—	—
Ethyl bromide	74-96-4	200 ppm	250 ppm	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50 ppm	75 ppm	—	—
Ethyl chloride	75-00-3	1,000 ppm	1,250 ppm	—	—
Ethylene	74-85-1	Simple asphyxiant	—	—	—
Ethylene chlorohydrin (2-Chloroethanol)	107-07-3	—	—	1 ppm	X
Ethylenediamine (1,2-Diaminoethane)	107-15-3	10 ppm	20 ppm	—	X
Ethylene dibromide	106-93-4	0.1 ppm	0.5 ppm	—	—
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylene glycol	107-21-1	—	—	50 ppm	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Ethylene glycol dinitrate	628-96-6	—	0.1 mg/m ³	—	X
Ethylene glycol monomethyl ether acetate (Methyl cellosolve acetate)	—	5 ppm	10 ppm	—	X
Ethyleneimine	151-56-4	—	—	—	X
Ethylene oxide	75-21-8	1 ppm	5 ppm	—	—
Ethyl ether (Diethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Ethyl formate	109-94-4	100 ppm	125 ppm	—	—
Ethylidene chloride (1, 1-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylidene norbornene	16219-75-3	—	—	5.0 ppm	—
Ethyl mercaptan (Ethanethiol)	75-08-1	0.5 ppm	1.5 ppm	—	—
n-Ethylmorpholine	100-74-3	5 ppm	10 ppm	—	X
Ethyl sec-amyl ketone (5-methyl-3-heptanone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl silicate	78-10-4	10 ppm	20 ppm	—	—
Fenamiphos	22224-92-6	0.1 mg/m ³	0.3 mg/m ³	—	X
Fensulfothion (Dasanit)	115-90-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Fenthion	55-38-9	0.2 mg/m ³	0.6 mg/m ³	—	X
Ferbam	—	—	—	—	—
Total particulate	14484-64-1	10 mg/m ³	20 mg/m ³	—	—
Ferrovandium dust	12604-58-9	1 mg/m ³	3 mg/m ³	—	—
Fluorides (as F)	Varies with compound	2.5 mg/m ³	5 mg/m ³	—	—
Fluorine	7782-41-4	0.1 ppm	0.3 ppm	—	—
Fluorotrichloromethane (see Trichlorofluoro methane)	75-69-4	—	—	1,000 ppm	—
Fonofos	944-22-9	0.1 mg/m ³	0.3 mg/m ³	—	X
Formaldehyde	50-00-0	0.75 ppm	2 ppm	—	—
Formamide	75-12-7	20 ppm	30 ppm	—	—
Formic acid	64-18-6	5 ppm	10 ppm	—	—
Furadon (carbofuran)	1563-66-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Furfural	98-01-1	2 ppm	4 ppm	—	X
Furfuryl alcohol	98-00-0	10 ppm	15 ppm	—	X
Gasoline	8006-61-9	300 ppm	500 ppm	—	—
Germanium tetrahydride	7782-65-2	0.2 ppm	0.6 ppm	—	—
Glass, fibrous or dust	—	10 mg/m ³	20 mg/m ³	—	—
Gluteraldehyde	111-30-8	—	—	0.2 ppm	—
Glycerin mist	56-81-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Glycidol (2, 3-Epoxy-1-propanol)	556-52-5	25 ppm	38 ppm	—	—
Glycol monoethyl ether (2-Ethoxyethanol)	110-80-5	5 ppm	10 ppm	—	X
Grain dust (oat, wheat, barley)	—	10 mg/m ³	20 mg/m ³	—	—
Graphite, natural	7782-42-5	—	—	—	—
Respirable particulate	—	2.5 mg/m ³	5 mg/m ³	—	—
Graphite, synthetic	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Guthion (Azinphosmethyl)	86-50-0	0.2 mg/m ³	0.6 mg/m ³	—	X
Gypsum	13397-24-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Hafnium	7440-58-6	0.5 mg/m ³	1.5 mg/m ³	—	—
Helium	—	Simple asphyxiant	—	—	—
Heptachlor	76-44-8	0.5 mg/m ³	1.5 mg/m ³	—	X
Heptane (n-heptane)	142-82-5	400 ppm	500 ppm	—	—
2-Heptanone (Methyl n-amyl ketone)	110-43-0	50 ppm	75 ppm	—	—
3-Heptanone (Ethyl butyl ketone)	106-35-4	50 ppm	75 ppm	—	—
Hexachlorobutadiene	87-68-3	0.02 ppm	0.06 ppm	—	X
Hexachlorocyclopentadiene	77-47-4	0.01 ppm	0.03 ppm	—	—
Hexachloroethane	67-72-1	1 ppm	3 ppm	—	X
Hexachloronaphthalene	1335-87-1	0.2 mg/m ³	0.6 mg/m ³	—	X
Hexafluoroacetone	684-16-2	0.1 ppm	0.3 ppm	—	X
Hexane	—	—	—	—	—
n-hexane	110-54-3	50 ppm	75 ppm	—	—
other isomers	Varies with compound	500 ppm	1,000 ppm	—	—
2-Hexanone (Methyl-n-butyl ketone)	591-78-6	5 ppm	10 ppm	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	50 ppm	75 ppm	—	—
sec-Hexyl acetate	108-84-9	50 ppm	75 ppm	—	—
Hexylene glycol	107-41-5	—	—	25 ppm	—
Hydrazine	302-01-2	0.1 ppm	0.3 ppm	—	X
Hydrogen	—	Simple asphyxiant	—	—	—
Hydrogenated terphenyls	61788-32-7	0.5 ppm	1.5 ppm	—	—
Hydrogen bromide	10035-10-6	—	—	3.0 ppm	—
Hydrogen chloride	7647-01-0	—	—	5.0 ppm	—
Hydrogen cyanide	74-90-8	—	4.7 ppm	—	X
Hydrogen fluoride	7664-39-3	—	—	3 ppm	—
Hydrogen peroxide	7722-84-1	1 ppm	3 ppm	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05 ppm	0.15 ppm	—	—
Hydrogen sulfide	7783-06-4	10 ppm	15 ppm	—	—
Hydroquinone (Dihydroxybenzene)	123-31-9	2 mg/m ³	4 mg/m ³	—	—
4-Hydroxy-4-methyl-2-pentanone (Diacetone alcohol)	123-42-2	50 ppm	75 ppm	—	—
2-Hydroxypropyl acrylate	99-61-1	0.5 ppm	1.5 ppm	—	X
Indene	95-13-6	10 ppm	20 ppm	—	—
Indium and compounds (as In)	7440-74-6	0.1 mg/m ³	0.3 mg/m ³	—	—
Iodine	7553-56-2	—	—	0.1 ppm	—
Iodoform	75-47-8	0.6 ppm	1.8 ppm	—	—
Iron oxide dust and fume (as Fe)	1309-37-1	—	—	—	—
Total particulate	—	5 mg/m ³	10 mg/m ³	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	0.1 ppm	0.2 ppm	—	—
Iron salts, soluble (as Fe)	Varies with compound	1 mg/m ³	3 mg/m ³	—	—
Isoamyl acetate	123-92-2	100 ppm	150 ppm	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100 ppm	125 ppm	—	—
Isobutyl acetate	110-19-0	150 ppm	188 ppm	—	—
Isobutyl alcohol	78-83-1	50 ppm	75 ppm	—	—
Isooctyl alcohol	26952-21-6	50 ppm	75 ppm	—	X
Isophorone	78-59-1	4 ppm	—	5 ppm	—
Isophorone diisocyanate	4098-71-9	0.005 ppm	0.02 ppm	—	X
Isopropoxyethanol	109-59-1	25 ppm	38 ppm	—	—
Isopropyl acetate	108-21-4	250 ppm	310 ppm	—	—
Isopropyl alcohol	67-63-0	400 ppm	500 ppm	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Isopropylamine	75-31-0	5 ppm	10 ppm	—	—
N-Isopropylaniline	768-52-5	2 ppm	4 ppm	—	X
Isopropyl ether	108-20-3	250 ppm	313 ppm	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50 ppm	75 ppm	—	—
Kaolin	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Ketene	463-51-4	0.5 mg/m ³	1.5 mg/m ³	—	—
Lannate (Methomyl)	16752-77-5	2.5 mg/m ³	5 mg/m ³	—	—
Lead, inorganic (as Pb)	7439-92-1	0.05 mg/m ³	—	—	—
Lead arsenate (as Pb)	3687-31-8	0.05 mg/m ³	—	—	—
Lead chromate (as Pb)	7758-97-6	0.05 mg/m ³	—	—	—
Limestone	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Lindane	58-89-9	0.5 mg/m ³	1.5 mg/m ³	—	X
Lithium hydride	7580-67-8	0.025 mg/m ³	0.075 mg/m ³	—	—
L.P.G. (liquified petroleum gas)	68476-85-7	1,000 ppm	1,250 ppm	—	—
Magnesite	546-93-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Magnesium oxide fume	1309-48-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Malathion	121-75-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	X
Maleic anhydride	108-31-6	0.25 ppm	0.75 ppm	—	—
Manganese and compounds (as Mn)	7439-96-5	—	—	5 mg/m ³	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Manganese tetroxide and fume (as Mn)	7439-96-5	1 mg/m ³	3 mg/m ³	—	—
Marble	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
MBOCA (4, 4'-Methylene bis (2-chloro-aniline))	101-14-4	—	—	—	X
MDA (4, 4'-Methylene dianiline)	101-77-9	0.01 ppm	0.1 ppm	—	X
MDI (Methylene bisphenyl isocyanate) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
MEK (Methyl ethyl ketone) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
MEKP (Methyl ethyl ketone peroxide)	1338-23-4	—	—	0.2 ppm	—
Mercury (as Hg)	7439-97-6	—	—	—	—
Aryl and inorganic	—	0.1 mg/m ³	0.3 mg/m ³	—	X
Organo-alkyl compounds	—	0.01 mg/m ³	0.03 mg/m ³	—	X
Vapor	—	0.05 mg/m ³	0.15 mg/m ³	—	X
Mesityl oxide	141-79-7	15 ppm	25 ppm	—	—
Methacrylic acid	79-41-4	20 ppm	30 ppm	—	X
Methane	—	Simple asphyxiant	—	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Methanethiol (Methyl mercaptan)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methanol (Methyl alcohol)	67-56-1	200 ppm	250 ppm	—	X
Methomyl (lannate)	16752-77-5	2.5 mg/m ³	5 mg/m ³	—	—
Methoxychlor	72-43-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
2-Methoxyethanol (Methyl cellosolve)	109-86-4	5 ppm	10 ppm	—	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110-49-6	5 ppm	10 ppm	—	X
4-Methoxyphenol	150-76-5	5 mg/m ³	10 mg/m ³	—	—
Methyl acetate	79-20-9	200 ppm	250 ppm	—	—
Methyl acetylene (propyne)	74-99-7	1,000 ppm	1,250 ppm	—	—
Methyl acetylene-propadiene mixture (MAPP)	—	1,000 ppm	1,250 ppm	—	—
Methyl acrylate	96-33-3	10 ppm	20 ppm	—	X
Methylacrylonitrile	126-98-7	1 ppm	3 ppm	—	X
Methylal (Dimethoxy-methane)	109-87-5	1,000 ppm	1,250 ppm	—	—
Methyl alcohol (methanol)	67-56-1	200 ppm	250 ppm	—	X
Methylamine	74-89-5	10 ppm	20 ppm	—	—
Methyl amyl alcohol (Methyl isobutyl carbinol)	108-11-2	25 ppm	40 ppm	—	X
Methyl n-amyl ketone (2-Heptanone)	110-43-0	50 ppm	75 ppm	—	—
N-Methyl aniline (Monomethyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Methyl bromide	74-83-9	5 ppm	10 ppm	—	X
Methyl-n-butyl ketone (2-Hexanone)	591-78-6	5 ppm	10 ppm	—	—
Methyl cellosolve (2-Methoxyethanol)	109-86-4	5 ppm	10 ppm	—	X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	5 ppm	10 ppm	—	X
Methyl chloride	74-87-3	50 ppm	100 ppm	—	—
Methyl chloroform (1, 1, 1-trichlorethane)	71-55-6	350 ppm	450 ppm	—	—
Methyl chloromethyl ether (chloromethyl methyl ether)	107-30-2	—	—	—	—
Methyl 2-cyanoacrylate	137-05-3	2 ppm	4 ppm	—	—
Methylcyclohexane	108-87-2	400 ppm	500 ppm	—	—
Methylcyclohexanol	25639-42-3	50 ppm	75 ppm	—	—
Methylcyclohexanone	583-60-8	50 ppm	75 ppm	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	0.2 mg/m ³	0.6 mg/m ³	—	X
Methyl demeton	8022-00-2	0.5 mg/m ³	1.5 mg/m ³	—	X
Methylene bisphenyl isocyanate (MDI) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
4, 4'-Methylene bis (2-chloro-aniline) (MBOCA)	101-14-4	—	—	—	X
Methylene bis (4-cyclohexylisocyanate)	5124-30-1	—	—	0.01 ppm	—
Methylene chloride (Dichloromethane)	75-09-2	25 ppm	125 ppm	—	—
4, 4-Methylene dianiline (MDA)	101-77-9	0.01 ppm	0.1 ppm	—	X
Methyl ethyl ketone (MEK) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	0.2 ppm	—
Methyl formate	107-31-3	100 ppm	150 ppm	—	—
5-Methyl-3-heptanone (Ethyl amyl ketone)	541-85-5	25 ppm	38 ppm	—	—
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	—	—	0.2 ppm	X
Methyl iodide	74-88-4	2 ppm	4 ppm	—	X
Methyl isoamyl ketone	110-12-3	50 ppm	75 ppm	—	—
Methyl isobutyl carbinol (Methyl amyl alcohol)	108-11-2	25 ppm	40 ppm	—	X
Methyl isobutyl ketone (Hexone)	108-10-1	50 ppm	75 ppm	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Methyl isocyanate	624-83-9	0.02 ppm	0.06 ppm	—	X
Methyl isopropyl ketone	563-80-4	200 ppm	250 ppm	—	—
Methyl mercaptan (Methanethiol)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methyl methacrylate	80-62-6	100 ppm	150 ppm	—	—
Methyl parathion	298-00-0	0.2 mg/m ³	0.6 mg/m ³	—	X
Methyl propyl ketone (2-Pentanone)	107-87-9	200 ppm	250 ppm	—	—
Methyl silicate	684-84-5	1 ppm	3 ppm	—	—
alpha-Methyl styrene	98-83-9	50 ppm	100 ppm	—	—
Mevinphos (Phosdrin)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Metribuzin	21087-64-9	5 mg/m ³	10 mg/m ³	—	—
Mica (Silicates) Respirable fraction	12001-26-2	3 mg/m ³	6 mg/m ³	—	—
Molybdenum (as Mo)	7439-98-7	—	—	—	—
Soluble compounds	—	5 mg/m ³	10 mg/m ³	—	—
Insoluble compounds	—	10 mg/m ³	20 mg/m ³	—	—
Monochlorobenzene (Chlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
Monocrotophos (Azodrin)	6923-22-4	0.25 mg/m ³	0.75 mg/m ³	—	—
Monomethyl aniline (N-Methyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Monomethyl hydrazine	—	—	—	0.2 ppm	—
Morpholine	110-91-8	20 ppm	30 ppm	—	X
Naled (Dibrom)	300-76-5	3 mg/m ³	6 mg/m ³	—	X
Naphtha	8030-30-6	100 ppm	150 ppm	—	X
Naphthalene	91-20-3	10 ppm	15 ppm	—	—
alpha-Naphthylamine	134-32-7	—	—	—	—
beta-Naphthylamine	91-59-8	—	—	—	—
Neon	7440-01-9	Simple asphyxiant	—	—	—
Nickel carbonyl (as Ni)	13463-39-3	0.001 ppm	0.003 ppm	—	—
Nickel (as Ni)	7440-02-0	—	—	—	—
Metal and insoluble compounds	—	1 mg/m ³	3 mg/m ³	—	—
Soluble compounds	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Nicotine	54-11-5	0.5 mg/m ³	1.5 mg/m ³	—	X
Nitrapyrin (2-Chloro-6 trichloromethyl pyridine)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Nitric acid	7697-37-2	2 ppm	4 ppm	—	—
Nitric oxide	10102-43-9	25 ppm	38 ppm	—	—
p-Nitroaniline	100-01-6	3 mg/m ³	6 mg/m ³	—	X
Nitrobenzene	98-95-3	1 ppm	3 ppm	—	X
4-Nitrobiphenyl	92-93-3	—	—	—	—
p-Nitrochlorobenzene	100-00-5	0.5 mg/m ³	1.5 mg/m ³	—	X
4-Nitrodiphenyl	—	—	—	—	—
Nitroethane	79-24-3	100 ppm	150 ppm	—	—
Nitrogen	7727-37-9	Simple asphyxiant	—	—	—
Nitrogen dioxide	10102-44-0	—	1 ppm	—	—
Nitrogen oxide (Nitrous oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nitrogen trifluoride	7783-54-2	10 ppm	20 ppm	—	—
Nitroglycerin	55-63-0	—	0.1 mg/m ³	—	X
Nitromethane	75-52-5	100 ppm	150 ppm	—	—
1-Nitropropane	108-03-2	25 ppm	38 ppm	—	—
2-Nitropropane	79-46-9	10 ppm	20 ppm	—	—
N-Nitrosodimethylamine	62-75-9	—	—	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Nitrotoluene	—	—	—	—	—
o-isomer	88-72-2	2 ppm	4 ppm	—	X
m-isomer	98-08-2	2 ppm	4 ppm	—	X
p-isomer	99-99-0	2 ppm	4 ppm	—	X
Nitrotrichloromethane (Chloropicrin)	76-06-2	0.1 ppm	0.3 ppm	—	—
Nitrous oxide (Nitrogen oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nonane	111-84-2	200 ppm	250 ppm	—	—
Octachloronaphthalene	2234-13-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Octane	111-65-9	300 ppm	375 ppm	—	—
Oil mist mineral (particulate)	8012-95-1	5 mg/m ³	10 mg/m ³	—	—
Osmium tetroxide (as Os)	20816-12-0	0.0002 ppm	0.0006 ppm	—	—
Oxalic acid	144-62-7	1 mg/m ³	2 mg/m ³	—	—
Oxygen difluoride	7783-41-7	—	—	0.05 ppm	—
Ozone	10028-15-6	0.1 ppm	0.3 ppm	—	—
Paper fiber (Cellulose)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Paraffin wax fume	8002-74-2	2 mg/m ³	4 mg/m ³	—	—
Paraquat	—	—	—	—	—
Respirable fraction	4685-14-7	0.1 mg/m ³	0.3 mg/m ³	—	X
	1910-42-5				
	2074-50-2				
Parathion	56-38-2	0.1 mg/m ³	0.3 mg/m ³	—	X
Particulate polycyclic aromatic hydrocarbons (benzene soluble fraction) (coal tar pitch volatiles)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Particulates not otherwise regulated	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pentaborane	19624-22-7	0.005 ppm	0.015 ppm	—	—
Pentachloronaphthalene	1321-64-8	0.5 mg/m ³	1.5 mg/m ³	—	X
Pentachlorophenol	87-86-5	0.5 mg/m ³	1.5 mg/m ³	—	X
Pentaerythritol	115-77-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pentane	109-66-0	600 ppm	750 ppm	—	—
2-Pentanone (methyl propyl ketone)	107-87-9	200 ppm	250 ppm	—	—
Perchloroethylene (tetrachloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Perchloromethyl mercaptan	594-42-3	0.1 ppm	0.3 ppm	—	—
Perchloryl fluoride	7616-94-6	3 ppm	6 ppm	—	—
Perlite	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Petroleum distillates (Naptha, rubber solvent)	—	100 ppm	150 ppm	—	—
Phenacyl chloride (a-Chloroacetophenone)	532-21-4	0.05 ppm	0.15 ppm	—	—
Phenol	108-95-2	5 ppm	10 ppm	—	X
Phenothiazine	92-84-2	5 mg/m ³	10 mg/m ³	—	X
p-Phenylene diamine	106-50-3	0.1 mg/m ³	0.3 mg/m ³	—	X
Phenyl ether (vapor)	101-84-8	1 ppm	3 ppm	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Phenyl ether-diphenyl mixture (vapor)	—	1 ppm	3 ppm	—	—
Phenylethylene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Phenyl glycidyl ether (PGE)	122-60-1	1 ppm	3 ppm	—	—
Phenylhydrazine	100-63-0	5 ppm	10 ppm	—	X
Phenyl mercaptan	108-98-5	0.5 ppm	1.5 ppm	—	—
Phenylphosphine	638-21-1	—	—	0.05 ppm	—
Phorate	298-02-2	0.05 mg/m ³	0.2 mg/m ³	—	X
Phosdrin (Mevinphos)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Phosgene (carbonyl chloride)	75-44-5	0.1 ppm	0.3 ppm	—	—
Phosphine	7803-51-2	0.3 ppm	1 ppm	—	—
Phosphoric acid	7664-38-2	1 mg/m ³	3 mg/m ³	—	—
Phosphorus (yellow)	7723-14-0	0.1 mg/m ³	0.3 mg/m ³	—	—
Phosphorous oxychloride	10025-87-3	0.1 ppm	0.3 ppm	—	—
Phosphorus pentachloride	10026-13-8	0.1 ppm	0.3 ppm	—	—
Phosphorus pentasulfide	1314-80-3	1 mg/m ³	3 mg/m ³	—	—
Phosphorus trichloride	12-2-19	0.2 ppm	0.5 ppm	—	—
Phthalic anhydride	85-44-9	1 ppm	3 ppm	—	—
m-Phthalodinitrile	626-17-5	5 mg/m ³	10 mg/m ³	—	—
Picloram	1918-02-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Picric acid (2, 4, 6-Trinitrophenol)	88-89-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Pindone					
(2-Pivalyl-1, 3-indandione, Pival)	83-26-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Piperazine dihydrochloride	142-64-3	5 mg/m ³	10 mg/m ³	—	—
Pival (Pindone)	83-26-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Plaster of Paris	26499-65-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Platinum (as Pt)	7440-06-4	—	—	—	—
Metal	—	1 mg/m ³	3 mg/m ³	—	—
Soluble salts	—	0.002 mg/m ³	0.006 mg/m ³	—	—
Polychlorobiphenyls (Chlorodiphenyls)					
42% Chlorine (PCB)	53469-21-9	1 mg/m ³	3 mg/m ³	—	X
54% Chlorine (PCB)	11097-69-1	0.5 mg/m ³	1.5 mg/m ³	—	X
Portland cement	65997-15-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Potassium hydroxide	1310-58-3	—	—	2 mg/m ³	—
Propane	74-98-6	1,000 ppm	1,250 ppm	—	—
Propargyl alcohol	107-19-7	1 ppm	3 ppm	—	X
beta-Propiolactone	57-57-8	—	—	—	—
Propionic acid	79-09-4	10 ppm	20 ppm	—	—
Propoxur (Baygon)	114-26-1	0.5 mg/m ³	1.5 mg/m ³	—	—
n-Propyl acetate	109-60-4	200 ppm	250 ppm	—	—
n-Propyl alcohol	71-23-8	200 ppm	250 ppm	—	X
n-Propyl nitrate	627-13-4	25 ppm	40 ppm	—	—
Propylene	—	Simple asphyxiant	—	—	—
Propylene dichloride (1, 2-Dichloropropane)	78-87-5	75 ppm	110 ppm	—	—
Propylene glycol dinitrate	6423-43-4	0.05 ppm	0.15 ppm	—	X

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Propylene glycol monomethyl ether	107-98-2	100 ppm	150 ppm	—	—
Propylene imine	75-55-8	2 ppm	4 ppm	—	X
Propylene oxide (1,2-Epoxypropane)	75-56-9	20 ppm	30 ppm	—	—
Propyne (Methyl acetylene)	74-99-7	1,000 ppm	1,250 ppm	—	—
Pyrethrum	8003-34-7	5 mg/m ³	10 mg/m ³	—	—
Pyridine	110-86-1	5 ppm	10 ppm	—	—
Pyrocatechol (Catechol)	120-80-9	5 ppm	10 ppm	—	X
Quinone (p-Benzoquinone)	106-51-4	0.1 ppm	0.3 ppm	—	—
RDX (Cyclonite)	—	1.5 mg/m ³	3 mg/m ³	—	X
Resorcinol	108-46-3	10 ppm	20 ppm	—	—
Rhodium (as Rh)	7440-16-6	—	—	—	—
Insoluble compounds, metal fumes and dusts	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Soluble compounds, salts	—	0.001 mg/m ³	0.003 mg/m ³	—	—
Ronnel	299-84-3	10 mg/m ³	20 mg/m ³	—	—
Rosin core solder, pyrolysis products (as formaldehyde)	8050-09-7	0.1 mg/m ³	0.3 mg/m ³	—	—
Rotenone	83-79-4	5 mg/m ³	10 mg/m ³	—	—
Rouge	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Rubber solvent (naphtha)	8030-30-6	100 ppm	150 ppm	—	—
Selenium compounds (as Se)	7782-49-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05 ppm	0.15 ppm	—	—
Sesone (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sevin (Carbaryl)	63-25-2	5 mg/m ³	10 mg/m ³	—	—
Silane (see Silicon tetrahydride)	7803-62-5	5 ppm	10 ppm	—	—
Silica, amorphous, precipitated and gel	112926-00-8	6 mg/m ³	12 mg/m ³	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Silica, crystalline cristobalite	—	—	—	—	—
Respirable fraction	14464-46-1	0.05 mg/m ³	0.15 mg/m ³	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, crystalline quartz	—	—	—	—	—
Respirable fraction	14808-60-7	0.1 mg/m ³	0.3 mg/m ³	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, crystalline tripoli (as quartz)	—	—	—	—	—
Respirable fraction	1317-95-9	0.1 mg/m ³	0.3 mg/m ³	—	—
Silica, crystalline tridymite	—	—	—	—	—
Respirable fraction	15468-32-3	0.05 mg/m ³	0.15 mg/m ³	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, fused	—	—	—	—	—
Respirable fraction	60676-86-0	0.1 mg/m ³	0.3 mg/m ³	—	—
Silicates (less than 1% crystalline silica)	—	—	—	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Mica	—	—	—	—	—
Respirable fraction	12001-26-2	3 mg/m ³	6 mg/m ³	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Talc (containing asbestos)	—	—	—	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m ³	4 mg/m ³	—	—
Tremolite	—	—	—	—	—
Silicon	7440-21-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Silicon carbide	409-21-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Silicon tetrahydride (Silane)	7803-62-5	5 ppm	10 ppm	—	—
Silver, metal dust and soluble compounds (as Ag)	7440-22-4	0.01 mg/m ³	0.03 mg/m ³	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Sodium azide (as HN ₃ or NaN ₃)	26628-22-8	—	—	0.1 ppm	X
Sodium bisulfite	7631-90-5	5 mg/m ³	10 mg/m ³	—	—
Sodium-2,4-dichloro-phenoxyethyl sulfate (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sodium fluoroacetate	62-74-8	0.05 mg/m ³	0.15 mg/m ³	—	X
Sodium hydroxide	1310-73-2	—	—	2 mg/m ³	—
Sodium metabisulfite	7681-57-4	5 mg/m ³	10 mg/m ³	—	—
Starch	9005-25-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Stibine	7803-52-3	0.1 ppm	0.3 ppm	—	—
Stoddard solvent	8052-41-3	100 ppm	150 ppm	—	—
Strychnine	57-24-9	0.15 mg/m ³	0.45 mg/m ³	—	—
Styrene (Phenylethylene, Vinyl benzene)	100-42-5	50 ppm	100 ppm	—	—
Subtilisins	9014-01-1	—	0.00006 mg/m ³ (60 min.)	—	—
Sucrose	57-50-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sulfotep (TEDP)	3689-24-5	0.2 mg/m ³	0.6 mg/m ³	—	X
Sulfur dioxide	7446-09-5	2 ppm	5 ppm	—	—
Sulfur hexafluoride	2551-62-4	1,000 ppm	1,250 ppm	—	—
Sulfuric acid	7664-93-9	1 mg/m ³	3 mg/m ³	—	—
Sulfur monochloride	10025-67-9	—	—	1 ppm	—
Sulfur pentafluoride	5714-22-1	—	—	0.01 ppm	—
Sulfur tetrafluoride	7783-60-0	—	—	0.1 ppm	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Sulfuryl fluoride	2699-79-8	5 ppm	10 ppm	—	—
Sulprofos	35400-43-2	1 mg/m ³	3 mg/m ³	—	—
Systox (Demeton)	8065-48-3	0.01 ppm	0.03 ppm	—	X
2, 4, 5-T	93-76-5	10 mg/m ³	20 mg/m ³	—	—
Talc (containing asbestos)	—	—	—	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m ³	4 mg/m ³	—	—
Tantalum	—	—	—	—	—
Metal and oxide dusts	7440-25-7	5 mg/m ³	10 mg/m ³	—	—
TDI (Toluene-2, 4-diisocyanate)	584-84-9	0.005 ppm	0.02 ppm	—	—
TEDP (Sulfotep)	3689-24-5	0.2 mg/m ³	0.6 mg/m ³	—	X
Tellurium and compounds (as Te)	13494-80-9	0.1 mg/m ³	0.3 mg/m ³	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02 ppm	0.06 ppm	—	—
Temephos (Abate)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
TEPP	107-49-3	0.004 ppm	0.012 ppm	—	X
Terphenyls	26140-60-3	—	—	0.5 ppm	—
1, 1, 1, 2-Tetrachloro-2, 2-difluoroethane	76-11-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloro-1, 2-difluoroethane	76-12-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloroethane	79-34-5	1 ppm	3 ppm	—	X
Tetrachloroethylene (Perchloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Tetrachloromethane (Carbon tetrachloride)	56-23-5	2 ppm	4 ppm	—	X
Tetrachloronaphthalene	1335-88-2	2 mg/m ³	4 mg/m ³	—	X
Tetraethyl lead (as Pb)	78-00-2	0.075 mg/m ³	0.225 mg/m ³	—	X
Tetrahydrofuran	109-99-9	200 ppm	250 ppm	—	—
Tetramethyl lead (as Pb)	75-74-1	0.075 mg/m ³	0.225 mg/m ³	—	X
Tetramethyl succinonitrile	3333-52-6	0.5 ppm	1.5 ppm	—	X
Tetranitromethane	509-14-8	1 ppm	3 ppm	—	—
Tetrasodium pyrophosphate	7722-88-5	5 mg/m ³	10 mg/m ³	—	—
Tetryl (2, 4, 6-trinitrophenyl-methylnitramine)	479-45-8	1.5 mg/m ³	3 mg/m ³	—	X
Thallium (soluble compounds) (as Tl)	7440-28-0	0.1 mg/m ³	0.3 mg/m ³	—	X
4, 4-Thiobis (6-tert-butyl-m-cresol)	96-69-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Thiodan (Endosulfan)	115-29-7	0.1 mg/m ³	0.3 mg/m ³	—	X
Thioglycolic acid	68-11-1	1 ppm	3 ppm	—	X
Thionyl chloride	7719-09-7	—	—	1 ppm	—
Thiram	137-26-8	5 mg/m ³	10 mg/m ³	—	—
Tin (as Sn)	—	—	—	—	—
Inorganic compounds	7440-31-5	2 mg/m ³	4 mg/m ³	—	—
Organic compounds	7440-31-5	0.1 mg/m ³	0.3 mg/m ³	—	X
Tin oxide (as Sn)	21651-19-4	2 mg/m ³	4 mg/m ³	—	—
Titanium dioxide	13463-67-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
TNT (2, 4, 6-Trinitrotoluene)	118-96-7	0.5 mg/m ³	1.5 mg/m ³	—	X
Toluene	108-88-3	100 ppm	150 ppm	—	—

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Toluene-2, 4-diisocyanate (TDI)	584-84-9	0.005 ppm	0.02 ppm	—	—
m-Toluidine	108-44-1	2 ppm	4 ppm	—	X
o-Toluidine	95-53-4	2 ppm	4 ppm	—	X
p-Toluidine	106-49-0	2.0 ppm	4 ppm	—	X
Toxaphene (Chlorinated camphene)	8001-35-2	0.5 mg/m ³	1 mg/m ³	—	X
Tremolite	—	—	—	—	—
Tributyl phosphate	126-73-8	0.2 ppm	0.6 ppm	—	—
Trichloroacetic acid	76-03-9	1 ppm	3 ppm	—	—
1, 2, 4-Trichlorobenzene	120-82-1	—	—	5 ppm	—
1, 1, 1-Trichloroethane (Methyl chloroform)	71-55-6	350 ppm	450 ppm	—	—
1, 1, 2-Trichloroethane	79-00-5	10 ppm	20 ppm	—	—
Trichloroethylene	79-01-6	50 ppm	200 ppm	—	—
Trichlorofluoromethane (Fluorotrichloromethane)	75-69-4	—	—	1,000 ppm	—
Trichloromethane (Chloroform)	67-66-3	2 ppm	4 ppm	—	—
Trichloronaphthalene	1321-65-9	5 mg/m ³	10 mg/m ³	—	X
1, 2, 3-Trichloropropane	96-18-4	10 ppm	20 ppm	—	X
1, 1, 2-Trichloro-1, 2, 2-trifluoroethane	76-13-1	1,000 ppm	1,250 ppm	—	—
Tricyclohexyltin hydroxide (Cyhexatin)	13121-70-5	5 mg/m ³	10 mg/m ³	—	—
Triethylamine	121-44-8	10 ppm	15 ppm	—	—
Trifluorobromomethane	75-63-8	1,000 ppm	1,250 ppm	—	—
Trimellitic anhydride	552-30-7	0.005 ppm	0.015 ppm	—	—
Trimethylamine	75-50-3	10 ppm	15 ppm	—	—
Trimethyl benzene	25551-13-7	25 ppm	38 ppm	—	—
Trimethyl phosphite	121-45-9	2 ppm	4 ppm	—	—
2, 4, 6-Trinitrophenol (Picric acid)	88-89-1	0.1 mg/m ³	0.3 mg/m ³	—	X
2, 4, 6-Trinitrophenyl-methylnitramine (Tetryl)	479-45-8	1.5 mg/m ³	3 mg/m ³	—	X
2, 4, 6-Trinitrotoluene (TNT)	118-96-7	0.5 mg/m ³	1.5 mg/m ³	—	X
Triorthocresyl phosphate	78-30-8	0.1 mg/m ³	0.3 mg/m ³	—	X
Triphenyl amine	603-34-9	5 mg/m ³	10 mg/m ³	—	—
Triphenyl phosphate	115-86-6	3 mg/m ³	6 mg/m ³	—	—
Tungsten (as W)	7440-33-7	—	—	—	—
Soluble compounds	—	1 mg/m ³	3 mg/m ³	—	—
Insoluble compounds	—	5 mg/m ³	10 mg/m ³	—	—
Turpentine	8006-64-2	100 ppm	150 ppm	—	—
Uranium (as U)	7440-61-1	—	—	—	—
Soluble compounds	—	0.05 mg/m ³	0.15 mg/m ³	—	—
Insoluble compounds	—	0.2 mg/m ³	0.6 mg/m ³	—	—
n-Valeraldehyde	110-62-3	50 ppm	75 ppm	—	—
Vanadium (as V2O5)	—	—	—	—	—
Respirable fraction	1314-62-1	0.05 mg/m ³	0.15 mg/m ³	—	—
Vegetable oil mist	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Vinyl acetate	108-05-1	10 ppm	20 ppm	—	—
Vinyl benzene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Vinyl bromide	593-60-2	5 ppm	10 ppm	—	—
Vinyl chloride (Chloroethylene)	75-01-4	1 ppm	5 ppm	—	—
Vinyl cyanide (Acrylonitrile)	107-13-1	2 ppm	10 ppm	—	—
Vinyl cyclohexene dioxide	106-87-6	10 ppm	20 ppm	—	X

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Vinyl toluene	25013-15-4	50 ppm	75 ppm	—	—
Vinylidene chloride (1, 1-Dichloroethylene)	75-35-4	1 ppm	3 ppm	—	—
VM & P Naphtha	8032-32-4	300 ppm	400 ppm	—	—
Warfarin	81-81-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Welding fumes (total particulate)	—	5 mg/m ³	10 mg/m ³	—	—
Wood dust	—	—	—	—	—
Nonallergenic; (All woods except allergenics)	—	5 mg/m ³	10 mg/m ³	—	—
Allergenics (e.g. cedar, mahogany and teak)	—	2.5 mg/m ³	5 mg/m ³	—	—
Xylenes (ortho, meta, and para isomers) (Dimethylbenzene)	1330-20-7	100 ppm	150 ppm	—	—
m-Xylene alpha, alpha-diamine	1477-55-0	—	—	0.1 mg/m ³	X
Xylidine (Dimethylaminobenzene)	1300-73-8	2 ppm	4 ppm	—	X
Yttrium	7440-65-5	1 mg/m ³	3 mg/m ³	—	—
Zinc chloride fume	7646-85-7	1 mg/m ³	2 mg/m ³	—	—
Zinc chromate (as CrO ₃)	Varies with compound	0.05 mg/m ³	—	0.1 mg/m ³	—
Zinc oxide	1314-13-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Zinc oxide fume	1314-13-2	5 mg/m ³	10 mg/m ³	—	—
Zinc stearate	557-05-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Zirconium compounds (as Zr)	7440-67-2	5 mg/m ³	10 mg/m ³	—	—

AMENDATORY SECTION (Amending WSR 18-07-098, filed 3/20/18, effective 4/23/18)

WAC 296-841-20025 Permissible exposure limits (PELs).

IMPORTANT:

The following information applies to Table 3, Permissible Exposure Limits (PELs) for Airborne Contaminants.

(1) Ppm refers to parts of vapor or gas per million parts of air by volume, at 25 degrees C and 760 mm Hg pressure.

(2) Mg/m³ refers to milligrams of an airborne contaminant per cubic meter of air.

(3) F/cc refers to fibers per cubic centimeter of air.

(4) For a metal that is measured as the metal itself, only the CAS number for the metal is given. The CAS numbers for individual compounds of the metal are not provided. For more information about CAS registry numbers see the web site: <http://www.cas.org>.

(5) Short-term exposure limits (STEL) pertain to fifteen-minute exposure periods, unless another time period is noted in Table 3.

(6) An "X" in the "skin" column indicates the contaminant can be absorbed through the skin, either by airborne or direct contact.

(a) Personal protective equipment (PPE) to prevent skin contact may be needed to minimize the risk for adverse health effects when employees are exposed to these chemicals.

(b) Requirements for the use of gloves, coveralls, goggles, and other personal protective equipment can be found in WAC 296-800-160, Personal protective equipment (PPE).

(7) Nuisance dusts (also known as inert dusts) are included in the Table 3 listing, particulates not otherwise regulated (PNOR).

The PNOR listing in Table 3 also applies to other particulate airborne contaminants for which a specific PEL is NOT listed **unless** the airborne contaminant is found to require a lower limit.

(8) The respirable fraction of a particulate airborne contaminant is measured by sampling with a size-selector having the following characteristics:

Mean aerodynamic diameter in micrometers	Percent passing the selector
1	97
2	91
3	74
4	50
5	30
6	17
7	9
8	5
10	1

Table 3 "Permissible Exposure Limits (PELs) for Airborne Contaminants"

Airborne contaminant	CAS	TWA _g	STEL	Ceiling	Skin
Abate (Temephos)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Acetaldehyde	75-07-0	100 ppm	150 ppm	—	—
Acetic acid	64-19-7	10 ppm	20 ppm	—	—
Acetic anhydride	108-24-7	—	—	5 ppm	—
Actinolite (asbestiform) (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Acetone	67-64-1	750 ppm	1,000 ppm	—	—
Acetonitrile	75-05-8	40 ppm	60 ppm	—	—
2-Acetylaminofluorene (see WAC 296-62-073)	53-96-3	—	—	—	—
Acetylene	74-86-2	Simple asphyxiant	—	—	—
Acetylene dichloride (1,2-Dichloroethylene)	540-59-0	200 ppm	250 ppm	—	—
Acetylene tetrabromide	79-27-6	1 ppm	3 ppm	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	5 mg/m ³	10 mg/m ³	—	—
Acrolein	107-02-8	0.1 ppm	0.3 ppm	—	—
Acrylamide	79-06-1	0.03 mg/m ³	0.09 mg/m ³	—	X
Acrylic acid	79-10-7	10 ppm	20 ppm	—	X
Acrylonitrile (Vinyl cyanide) (see WAC 296-62-07336)	107-13-1	2 ppm	10 ppm	—	—
Aldrin	309-00-2	0.25 mg/m ³	0.75 mg/m ³	—	X
Allyl alcohol	107-18-6	2 ppm	4 ppm	—	X
Allyl chloride	107-05-1	1 ppm	2 ppm	—	—
Allyl glycidyl ether (AGE)	106-92-3	5 ppm	10 ppm	—	—
Allyl propyl disulfide	2179-59-1	2 ppm	3 ppm	—	—
alpha-Alumina (Aluminum oxide)	1344-28-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Aluminum (as Al)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pyro powders	—	5 mg/m ³	10 mg/m ³	—	—
Welding fumes	—	5 mg/m ³	10 mg/m ³	—	—
Soluble salts	—	2 mg/m ³	4 mg/m ³	—	—
Alkyls (NOC)	—	2 mg/m ³	4 mg/m ³	—	—
Aluminum oxide (Alundum, Corundum)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
4-Aminodiphenyl (see WAC 296-62-073)	92-67-1	—	—	—	—
2-Aminoethanol (Ethanolamine)	141-43-5	3 ppm	6 ppm	—	—
2-Aminopyridine	504-29-0	0.5 ppm	1.5 ppm	—	—
Amitrole	61-82-5	0.2 mg/m ³	0.6 mg/m ³	—	—
Ammonia	7664-41-7	25 ppm	35 ppm	—	—
Ammonium chloride, fume	12125-02-9	10 mg/m ³	20 mg/m ³	—	—
Ammonium sulfamate (Ammate)	7773-06-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5.0 mg/m ³	10 mg/m ³	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Amosite (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
n-Amyl acetate	628-63-7	100 ppm	150 ppm	—	—
sec-Amyl acetate	626-38-0	125 ppm	156 ppm	—	—
Aniline and homologues	62-53-3	2 ppm	4 ppm	—	X
Anisidine (o, p-isomers)	29191-52-4	0.1 ppm	0.3 ppm	—	X
Anthophyllite (asbestiform) (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Antimony and compounds (as Sb)	7440-36-0	0.5 mg/m ³	1.5 mg/m ³	—	—
ANTU (alpha Naphthyl thiourea)	86-88-4	0.3 mg/m ³	0.9 mg/m ³	—	—
Argon	7440-37-1	Simple asphyxiant	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Arsenic, inorganic compounds (as As) (when use is covered by chapter 296-848 WAC)	7440-38-2	0.01 mg/m ³	—	—	—
Arsenic, inorganic compounds (as As) (when use is not covered by chapter 296-848 WAC)	7440-38-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Arsine	7784-42-1	0.05 ppm	0.15 ppm	—	—
Asbestos (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Asphalt (Petroleum fumes)	8052-42-4	5 mg/m ³	10 mg/m ³	—	—
Atrazine	1912-24-9	5 mg/m ³	10 mg/m ³	—	—
Azinphos methyl (Guthion)	86-50-0	0.2 mg/m ³	0.6 mg/m ³	—	X
Azodrin (Monocrotophos)	6923-22-4	0.25 mg/m ³	0.75 mg/m ³	—	—
Barium, soluble compounds (as Ba)	7440-39-3	0.5 mg/m ³	1.5 mg/m ³	—	—
Barium sulfate	7727-43-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Baygon (Propoxur)	114-26-1	0.5 mg/m ³	1.5 mg/m ³	—	—
Benomyl	17804-35-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Benzene (see chapter 296-849 WAC)	71-43-2	1 ppm	5 ppm	—	—
Benzidine (see WAC 296-62-073)	92-87-5	—	—	—	—
p-Benzoquinone (Quinone)	106-51-4	0.1 ppm	0.3 ppm	—	—
Benzo(a) pyrene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Benzoyl peroxide	94-36-0	5 mg/m ³	10 mg/m ³	—	—
Benzyl chloride	100-44-7	1 ppm	3 ppm	—	—
Beryllium and beryllium compounds (as Be) (see chapter 296-850 WAC)	7440-41-7	((0.002)) 0.0002 mg/m ³	((0.005)) 0.002 mg/m ³ ((30 min.))	((0.025 mg/m ³)) =	—
Biphenyl (Diphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Bismuth telluride, undoped	1304-82-1	—	—	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Bismuth telluride, Se-doped	—	5 mg/m ³	10 mg/m ³	—	—
Borates, tetra, sodium salts	—	—	—	—	—
Anhydrous	1330-43-4	1 mg/m ³	3 mg/m ³	—	—
Decahydrate	1303-96-4	5 mg/m ³	10 mg/m ³	—	—
Pentahydrate	12179-04-3	1 mg/m ³	3 mg/m ³	—	—
Boron oxide	1303-86-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Boron tribromide	10294-33-4	—	—	1 ppm	—
Boron trifluoride	6737-07-2	—	—	1 ppm	—
Bromacil	314-40-9	1 ppm	3 ppm	—	—
Bromine	7726-95-6	0.1 ppm	0.3 ppm	—	—
Bromine pentafluoride	7789-30-2	0.1 ppm	0.3 ppm	—	—
Bromochloromethane (Chlorobromomethane)	74-97-5	200 ppm	250 ppm	—	—
Bromoform	15-25-2	0.5 ppm	1.5 ppm	—	X
Butadiene (1,3-butadiene) (see WAC 296-62-07460)	106-99-0	1 ppm	5 ppm	—	—
Butane	106-97-8	800 ppm	1,000 ppm	—	—
Butanethiol (Butyl mercaptan)	109-79-5	0.5 ppm	1.5 ppm	—	—
2-Butanone (Methyl ethyl ketone)	78-93-3	200 ppm	300 ppm	—	—
2-Butoxy ethanol (Butyl cellosolve)	111-76-2	25 ppm	38 ppm	—	X
n-Butyl acetate	123-86-4	150 ppm	200 ppm	—	—
sec-Butyl acetate	105-46-4	200 ppm	250 ppm	—	—
tert-Butyl acetate	540-88-5	200 ppm	250 ppm	—	—
Butyl acrylate	141-32-2	10 ppm	20 ppm	—	—
n-Butyl alcohol	71-36-3	—	—	50 ppm	X
sec-Butyl alcohol	78-92-2	100 ppm	150 ppm	—	—
tert-Butyl alcohol	75-65-0	100 ppm	150 ppm	—	—
Butylamine	109-73-9	—	—	5 ppm	X
Butyl cellosolve (2-Butoxy ethanol)	111-76-2	25 ppm	38 ppm	—	—
tert-Butyl chromate (as Cr) (see WAC 296-62-08003)	1189-85-1	0.005 mg/m ³	—	0.1 mg/m ³	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25 ppm	38 ppm	—	—
n-Butyl lactate	138-22-7	5 ppm	10 ppm	—	—
Butyl mercaptan	109-79-5	0.5 ppm	1.5 ppm	—	—
o-sec-Butylphenol	89-72-5	5 ppm	10 ppm	—	X
p-tert-Butyl-toluene	98-51-1	10 ppm	20 ppm	—	—
Cadmium oxide fume (as Cd) (see WAC 296-62-074 and 296-155-174)	1306-19-0	0.005 mg/m ³	—	—	—
Cadmium dust and salts (as Cd) (see WAC 296-62-074 and 296-155-174)	7440-43-9	0.005 mg/m ³	—	—	—
Calcium arsenate (see chapter 296-848 WAC)	—	0.01 mg/m ³	—	—	—
Calcium carbonate	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Calcium cyanamide	156-62-7	0.5 mg/m ³	1.5 mg/m ³	—	—
Calcium hydroxide	1305-62-0	5 mg/m ³	10 mg/m ³	—	—
Calcium oxide	1305-78-8	2 mg/m ³	4 mg/m ³	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Calcium silicate	1344-95-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Calcium sulfate	7778-18-9	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Camphor (synthetic)	76-22-2	2 mg/m ³	4 mg/m ³	—	—
Caprolactam	105-60-2	—	—	—	—
Dust	—	1 mg/m ³	3 mg/m ³	—	—
Vapor	—	5 ppm	10 ppm	—	—
Captafol (Difolatan)	2425-06-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Captan	133-06-2	5 mg/m ³	10 mg/m ³	—	—
Carbaryl (Sevin)	63-25-2	5 mg/m ³	10 mg/m ³	—	—
Carbofuran (Furadon)	1563-66-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Carbon black	1333-86-4	3.5 mg/m ³	7 mg/m ³	—	—
Carbon dioxide	124-38-9	5,000 ppm	30,000 ppm	—	—
Carbon disulfide	75-15-0	4 ppm	12 ppm	—	X
Carbon monoxide	630-08-0	35 ppm	200 ppm (5 min.)	1,500 ppm	—
Carbon tetrabromide	558-13-4	0.1 ppm	0.3 ppm	—	—
Carbon tetrachloride (Tetrachloromethane)	56-23-5	2 ppm	4 ppm	—	X
Carbonyl chloride (Phosgene)	7803-51-2	0.1 ppm	0.3 ppm	—	—
Carbonyl fluoride	353-50-4	2 ppm	5 ppm	—	—
Catechol (Pyrocatechol)	120-80-9	5 ppm	10 ppm	—	X
Cellosolve acetate (2-Ethoxyethylacetate)	111-15-9	5 ppm	10 ppm	—	X
Cellulose (paper fiber)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Cesium hydroxide	21351-79-1	2 mg/m ³	4 mg/m ³	—	—
Chlordane	57-74-9	0.5 mg/m ³	1.5 mg/m ³	—	X
Chlorinated camphene (Toxaphen)	8001-35-2	0.5 mg/m ³	1 mg/m ³	—	X
Chlorinated diphenyl oxide	55720-99-5	0.5 mg/m ³	1.5 mg/m ³	—	—
Chlorine	7782-50-5	0.5 ppm	—	1 ppm	—
Chlorine dioxide	10049-04-4	0.1 ppm	0.3 ppm	—	—
Chlorine trifluoride	7790-91-2	—	—	0.1 ppm	—
Chloroacetaldehyde	107-20-0	—	—	1 ppm	—
a-Chloroacetophenone (Phenacyl chloride)	532-21-4	0.05 ppm	0.15 ppm	—	—
Chloroacetyl chloride	79-04-9	0.05 ppm	0.15 ppm	—	—
Chlorobenzene (Monochlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
o-Chlorobenzylidene malononitrile (OCBM)	2698-41-1	—	—	0.05 ppm	X
Chlorobromomethane	74-97-5	200 ppm	250 ppm	—	—
2-Chloro-1, 3-butadiene (beta-Chloroprene)	126-99-8	10 ppm	20 ppm	—	X
Chlorodifluoromethane	75-45-6	1,000 ppm	1,250 ppm	—	—
Chlorodiphenyl (42% Chlorine) (PCB) (Polychlorobiphenyls)	53469-21-9	1 mg/m ³	3 mg/m ³	—	X
Chlorodiphenyl (54% Chlorine) (Polychlorobiphenyls (PCB))	11097-69-1	0.5 mg/m ³	1.5 mg/m ³	—	X
1-Chloro-2, 3-epoxypropane (Epichlorhydrin)	106-89-8	2 ppm	4 ppm	—	X
2-Chloroethanol (Ethylene chlorohydrin)	107-07-3	—	—	1 ppm	X

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Chloroethylene (vinyl chloride) (see WAC 296-62-07329)	75-01-4	1 ppm	5 ppm	—	—
Chloroform (Trichloromethane)	67-66-3	2 ppm	4 ppm	—	—
1-Chloro-1-nitropropane	600-25-9	2 ppm	4 ppm	—	—
bis-Chloromethyl ether (see WAC 296-62-073)	542-88-1	—	—	—	—
Chloromethyl methyl ether (Methyl chloromethyl ether) (see WAC 296-62-073)	107-30-2	—	—	—	—
Chloropentafluoroethane	76-15-3	1,000 ppm	1,250 ppm	—	—
Chloropicrin (Nitrotrichloromethane)	76-06-2	0.1 ppm	0.3 ppm	—	—
beta-Chloroprene (2-Chloro-1,3-butadiene)	126-99-8	10 ppm	20 ppm	—	X
o-Chlorostyrene	2039-87-4	50 ppm	75 ppm	—	—
o-Chlorotoluene	95-49-8	50 ppm	75 ppm	—	—
2-Chloro-6-trichloromethyl pyridine (Nitrapyrin)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Chlorpyrifos	2921-88-2	0.2 mg/m ³	0.6 mg/m ³	—	X
Chromic acid and chromates (as Cr) (when the compound is not covered by WAC 296-62-08003)	Varies with compound	—	—	0.1 mg/m ³	—
Chromium	—	—	—	—	—
Chromium (VI) compounds (as Cr) (when the compound is covered by WAC 296-62-08003)	—	0.005 mg/m ³	—	—	—
Chromium metal or Chromium (II) compounds Or Chromium (III) compounds	7440-47-3	0.5 mg/m ³	—	—	—
Chromyl chloride (as Cr) (see WAC 296-62-08003)	14977-61-8	0.005 mg/m ³	—	—	—
Chrysene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Chrysotile (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Clopidol	2971-90-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Coal dust (less than 5% SiO ₂)	—	—	—	—	—
Respirable fraction	—	2 mg/m ³	4 mg/m ³	—	—
Coal dust (greater than or equal to 5% SiO ₂)	—	—	—	—	—
Respirable fraction	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Coal tar pitch volatiles (benzene soluble fraction)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Acridine					
Anthracene					
Benzo (a) pyrene					
Chrysene					
Phenanthrene					
Pyrene					
Cobalt, metal fume & dust (as Co)	7440-48-4	0.05 mg/m ³	0.15 mg/m ³	—	—
Cobalt carbonyl (as Co)	10210-68-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	0.1 mg/m ³	0.3 mg/m ³	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Coke oven emissions (see WAC 296-62-200)	—	0.15 mg/m ³	—	—	—
Copper (as Cu)	7440-50-8	—	—	—	—
Fume	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Dusts and mists	—	1 mg/m ³	3 mg/m ³	—	—
Cotton dust (raw) (waste sorting, blending, cleaning, willowing and garetting) (see WAC 296-62-14533)	—	1 mg/m ³	—	—	—
Corundum (Aluminum oxide)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Crag herbicide (Sesone, Sodium-2, 4-dichloro-phenoxyethyl sulfate)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Cresol (all isomers)	1319-77-3	5 ppm	10 ppm	—	X
Crocidolite (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Crotonaldehyde	123-73-9; 4170-30-3	2 ppm	4 ppm	—	—
Crufomate	299-86-5	5 mg/m ³	10 mg/m ³	—	—
Cumene	98-82-8	50 ppm	75 ppm	—	X
Cyanamide	420-04-2	2 mg/m ³	4 mg/m ³	—	—
Cyanide (as CN)	Varies with compound	5 mg/m ³	10 mg/m ³	—	X
Cyanogen	460-19-5	10 ppm	20 ppm	—	—
Cyanogen chloride	506-77-4	—	—	0.3 ppm	—
Cyclohexane	110-82-7	300 ppm	375 ppm	—	—
Cyclohexanol	108-93-0	50 ppm	75 ppm	—	X
Cyclohexanone	108-94-1	25 ppm	38 ppm	—	X
Cyclohexene	110-83-8	300 ppm	375 ppm	—	—
Cyclohexylamine	108-91-8	10 ppm	20 ppm	—	—
Cyclonite (RDX)	121-82-4	1.5 mg/m ³	3.0 mg/m ³	—	X
Cyclopentadiene	542-92-7	75 ppm	113 ppm	—	—
Cyclopentane	287-92-3	600 ppm	750 ppm	—	—
Cyhexatin (Tricyclohexyltin hydroxide)	13121-70-5	5 mg/m ³	10 mg/m ³	—	—
2,4-D (Dichlorophenoxy-acetic acid)	94-75-7	10 mg/m ³	20 mg/m ³	—	—
DBCP (1,2-Dibromo-3-chloropropane) (see WAC 296-62-07342)	96-12-8	0.001 ppm	—	0.005 ppm	—
DDT (Dichlorodiphenyltri-chloroethane)	50-29-3	1 mg/m ³	3 mg/m ³	—	X
DDVP, (Dichlorvos)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dasanit (Fensulfothion)	115-90-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Decaborane	17702-41-9	0.05 ppm	0.15 ppm	—	X
Demeton	8065-48-3	0.01 ppm	0.03 ppm	—	X
Diacetone alcohol (4-hydroxy-4-methyl-2-pentanone)	123-42-2	50 ppm	75 ppm	—	—
1, 2-Diaminoethane (Ethylenediamine)	107-15-3	10 ppm	20 ppm	—	—
Diazinon	333-41-5	0.1 mg/m ³	0.3 mg/m ³	—	X
Diazomethane	334-88-3	0.2 ppm	0.6 ppm	—	—
Diborane	19287-45-7	0.1 ppm	0.3 ppm	—	—
Dibrom (see Naled)	300-76-5	3 mg/m ³	6 mg/m ³	—	X

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
1, 2-Dibromo-3-chloropropane (DBCP) (see WAC 296-62-07342)	96-12-8	0.001 ppm	—	0.005 ppm	—
2-N-Dibutylamino ethanol	102-81-8	2 ppm	4 ppm	—	X
Dibutyl phosphate	107-66-4	1 ppm	2 ppm	—	—
Dibutyl phthalate	84-74-2	5 mg/m ³	10 mg/m ³	—	—
Dichloroacetylene	7572-29-4	—	—	0.1 ppm	—
o-Dichlorobenzene	95-50-1	—	—	50 ppm	—
p-Dichlorobenzene	106-46-7	75 ppm	110 ppm	—	—
3, 3'-Dichlorobenzidine (see WAC 296-62-073)	91-94-1	—	—	—	—
Dichlorodiphenyltri-chloroethane (DDT)	50-29-3	1 mg/m ³	3 mg/m ³	—	X
Dichlorodifluoromethane	75-71-8	1,000 ppm	1,250 ppm	—	—
1, 3-Dichloro-5, 5-dimethyl hydantoin	118-52-5	0.2 mg/m ³	0.4 mg/m ³	—	—
1, 1-Dichloroethane (Ethylidene chloride)	75-34-3	100 ppm	150 ppm	—	—
1, 2-Dichloroethane (Ethylene dichloride)	107-06-2	1 ppm	2 ppm	—	—
1, 1-Dichloroethylene (Vinylidene chloride)	75-35-4	1 ppm	3 ppm	—	—
1, 2-Dichloroethylene (Acetylene dichloride)	540-59-0	200 ppm	250 ppm	—	—
Dichloroethyl ether	111-44-4	5 ppm	10 ppm	—	X
Dichlorofluoromethane	75-43-4	10 ppm	20 ppm	—	—
Dichloromethane (Methylene chloride) (see chapter 296-859 WAC)	75-09-2	25 ppm	125 ppm	—	—
1, 1-Dichloro-1-nitroethane	594-72-9	2 ppm	10 ppm	—	—
Dichlorophenoxyacetic acid (2, 4-D)	94-75-7	10 mg/m ³	20 mg/m ³	—	—
1, 2-Dichloropropane (Propylene dichloride)	78-87-5	75 ppm	110 ppm	—	—
Dichloropropene	542-75-6	1 ppm	3 ppm	—	X
2, 2-Dichloropropionic acid	75-99-0	1 ppm	3 ppm	—	—
Dichlorotetrafluoroethane	76-14-2	1,000 ppm	1,250 ppm	—	—
Dichlorvos (DDVP)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dicrotophos	141-66-2	0.25 mg/m ³	0.75 mg/m ³	—	X
Dicyclopentadiene	77-73-6	5 ppm	10 ppm	—	—
Dicyclopentadienyl iron	102-54-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Dieldrin	60-57-1	0.25 mg/m ³	0.75 mg/m ³	—	X
Diethanolamine	111-42-2	3 ppm	6 ppm	—	—
Diethylamine	109-89-7	10 ppm	25 ppm	—	—
2-Diethylaminoethanol	100-37-8	10 ppm	20 ppm	—	X
Diethylene triamine	111-40-0	1 ppm	3 ppm	—	X
Diethyl ether (Ethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Diethyl ketone	96-22-0	200 ppm	250 ppm	—	—
Diethyl phthalate	84-66-2	5 mg/m ³	10 mg/m ³	—	—
Difluorodibromomethane	75-61-6	100 ppm	150 ppm	—	—
Difolatan (Captafol)	2425-06-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Diglycidyl ether (DGE)	2238-07-5	0.1 ppm	0.3 ppm	—	—
Dihydroxybenzene (Hydroquinone)	123-31-9	2 mg/m ³	4 mg/m ³	—	—
Diisobutyl ketone (2, 6-Dimethylheptanone)	108-83-8	25 ppm	38 ppm	—	—
Diisopropylamine	108-18-9	5 ppm	10 ppm	—	X
Dimethoxymethane (Methylal)	109-87-5	1,000 ppm	1,250 ppm	—	—
Dimethyl acetamide	127-19-5	10 ppm	20 ppm	—	X
Dimethylamine	124-40-3	10 ppm	20 ppm	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
4-Dimethylaminoazo benzene (see WAC 296-62-073)	60-11-7	—	—	—	—
Dimethylaminobenzene (Xylidene)	1300-73-8	2 ppm	4 ppm	—	X
Dimethylaniline (N, N-Dimethylaniline)	121-69-7	5 ppm	10 ppm	—	X
Dimethylbenzene (Xylene)	1300-73-8	100 ppm	150 ppm	—	—
Dimethyl-1, 2-dibromo-2,2-dichloroethyl phosphate (Naled)	300-76-5	3 mg/m ³	6 mg/m ³	—	X
Dimethylformamide	68-12-2	10 ppm	20 ppm	—	X
2, 6-Dimethylheptanone (Diisobutyl ketone)	108-83-8	25 ppm	38 ppm	—	—
1, 1-Dimethylhydrazine	57-14-7	0.5 ppm	1.5 ppm	—	X
Dimethyl phthalate	131-11-3	5 mg/m ³	10 mg/m ³	—	—
Dimethyl sulfate	77-78-1	0.1 ppm	0.3 ppm	—	X
Dinitolmide (3, 5-Dinitro-o-toluamide)	148-01-6	5 mg/m ³	10 mg/m ³	—	—
Dinitrobenzene (all isomers - alpha, meta and para)	528-29-0; 99-65-0; 100-25-4	0.15 ppm	0.45 ppm	—	X
Dinitro-o-cresol	534-52-1	0.2 mg/m ³	0.6 mg/m ³	—	X
3, 5-Dinitro-o-toluamide (Dinitolmide)	148-01-6	5 mg/m ³	10 mg/m ³	—	—
Dinitrotoluene	25321-14-6	1.5 mg/m ³	3 mg/m ³	—	X
Dioxane (Diethylene dioxide)	123-91-1	25 ppm	38 ppm	—	X
Dioxathion	78-34-2	0.2 mg/m ³	0.6 mg/m ³	—	X
Diphenyl (Biphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Diphenylamine	122-39-4	10 mg/m ³	20 mg/m ³	—	—
Diphenylmethane diisocyanate (Methylene bisphenyl isocyanate (MDI))	101-68-8	—	—	0.02 ppm	—
Dipropylene glycol methyl ether	34590-94-8	100 ppm	150 ppm	—	X
Dipropyl ketone	123-19-3	50 ppm	75 ppm	—	—
Diquat	85-00-7	0.5 mg/m ³	1.5 mg/m ³	—	—
Di-sec, Octyl phthalate (Di-2-ethylhexylphthalate)	117-81-7	5 mg/m ³	10 mg/m ³	—	—
Disulfram	97-77-8	2 mg/m ³	4 mg/m ³	—	—
Disulfoton	298-04-4	0.1 mg/m ³	0.3 mg/m ³	—	X
2, 6-Di-tert-butyl-p-cresol	128-37-0	10 mg/m ³	20 mg/m ³	—	—
Diuron	330-54-1	10 mg/m ³	20 mg/m ³	—	—
Divinyl benzene	1321-74-0	10 ppm	20 ppm	—	—
Emery	12415-34-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Endosulfan (Thiodan)	115-29-7	0.1 mg/m ³	0.3 mg/m ³	—	X
Endrin	72-20-8	0.1 mg/m ³	0.3 mg/m ³	—	X
Epichlorhydrin (1-Chloro-2,3-epoxypropane)	106-89-8	2 ppm	4 ppm	—	X
EPN	2104-64-5	0.5 mg/m ³	1.5 mg/m ³	—	X
1, 2-Epoxypropane (Propylene oxide)	75-56-9	20 ppm	30 ppm	—	—
2, 3-Epoxy-1-propanol (Glycidol)	556-52-5	25 ppm	38 ppm	—	—
Ethane	—	Simple asphyxiant	—	—	—
Ethanethiol (Ethyl mercaptan)	75-08-1	0.5 ppm	1.5 ppm	—	—
Ethanol (Ethyl alcohol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethanolamine (2-Aminoethanol)	141-43-5	3 ppm	6 ppm	—	—
Ethion	563-12-2	0.4 mg/m ³	1.2 mg/m ³	—	X
2-Ethoxyethanol (Glycol monoethyl ether)	110-80-5	5 ppm	10 ppm	—	X

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	5 ppm	10 ppm	—	X
Ethyl acetate	141-78-6	400 ppm	500 ppm	—	—
Ethyl acrylate	140-88-5	5 ppm	25 ppm	—	X
Ethyl alcohol (ethanol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethylamine	75-04-07	10 ppm	20 ppm	—	—
Ethyl amyl ketone (5-Methyl-3-hepatone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl benzene	100-41-4	100 ppm	125 ppm	—	—
Ethyl bromide	74-96-4	200 ppm	250 ppm	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50 ppm	75 ppm	—	—
Ethyl chloride	75-00-3	1,000 ppm	1,250 ppm	—	—
Ethylene	74-85-1	Simple asphyxiant	—	—	—
Ethylene chlorohydrin (2-Chloroethanol)	107-07-3	—	—	1 ppm	X
Ethylenediamine (1,2-Diaminoethane)	107-15-3	10 ppm	20 ppm	—	X
Ethylene dibromide	106-93-4	0.1 ppm	0.5 ppm	—	—
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylene glycol	107-21-1	—	—	50 ppm	—
Ethylene glycol dinitrate	628-96-6	—	0.1 mg/m ³	—	X
Ethylene glycol monomethyl ether acetate (Methyl cellosolve acetate)	—	5 ppm	10 ppm	—	X
Ethyleneimine (see WAC 296-62-073)	151-56-4	—	—	—	X
Ethylene oxide (see chapter 296-855 WAC)	75-21-8	1 ppm	5 ppm	—	—
Ethyl ether (Diethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Ethyl formate	109-94-4	100 ppm	125 ppm	—	—
Ethylidene chloride (1, 1-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylidene norbornene	16219-75-3	—	—	5.0 ppm	—
Ethyl mercaptan (Ethanethiol)	75-08-1	0.5 ppm	1.5 ppm	—	—
n-Ethylmorpholine	100-74-3	5 ppm	10 ppm	—	X
Ethyl sec-amyl ketone (5-methyl-3-heptanone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl silicate	78-10-4	10 ppm	20 ppm	—	—
Fenamiphos	22224-92-6	0.1 mg/m ³	0.3 mg/m ³	—	X
Fensulfothion (Dasanit)	115-90-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Fenthion	55-38-9	0.2 mg/m ³	0.6 mg/m ³	—	X
Ferbam	—	—	—	—	—
Total particulate	14484-64-1	10 mg/m ³	20 mg/m ³	—	—
Ferrovandium dust	12604-58-9	1 mg/m ³	3 mg/m ³	—	—
Fluorides (as F)	Varies with compound	2.5 mg/m ³	5 mg/m ³	—	—
Fluorine	7782-41-4	0.1 ppm	0.3 ppm	—	—
Fluorotrichloromethane (see Trichlorofluoro methane)	75-69-4	—	—	1,000 ppm	—
Fonofos	944-22-9	0.1 mg/m ³	0.3 mg/m ³	—	X
Formaldehyde (see chapter 296-856 WAC)	50-00-0	0.75 ppm	2 ppm	—	—
Formamide	75-12-7	20 ppm	30 ppm	—	—
Formic acid	64-18-6	5 ppm	10 ppm	—	—
Furadon (carbofuran)	1563-66-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Furfural	98-01-1	2 ppm	4 ppm	—	X
Furfuryl alcohol	98-00-0	10 ppm	15 ppm	—	X
Gasoline	8006-61-9	300 ppm	500 ppm	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Germanium tetrahydride	7782-65-2	0.2 ppm	0.6 ppm	—	—
Glass, fibrous or dust	—	10 mg/m ³	20 mg/m ³	—	—
Glutaraldehyde	111-30-8	—	—	0.2 ppm	—
Glycerin mist	56-81-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Glycidol (2, 3-Epoxy-1-propanol)	556-52-5	25 ppm	38 ppm	—	—
Glycol monoethyl ether (2-Ethoxyethanol)	110-80-5	5 ppm	10 ppm	—	X
Grain dust (oat, wheat, barley)	—	10 mg/m ³	20 mg/m ³	—	—
Graphite, natural	7782-42-5	—	—	—	—
Respirable particulate	—	2.5 mg/m ³	5 mg/m ³	—	—
Graphite, synthetic	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Guthion (Azinphosmethyl)	86-50-0	0.2 mg/m ³	0.6 mg/m ³	—	X
Gypsum	13397-24-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Hafnium	7440-58-6	0.5 mg/m ³	1.5 mg/m ³	—	—
Helium	—	Simple asphyxiant	—	—	—
Heptachlor	76-44-8	0.5 mg/m ³	1.5 mg/m ³	—	X
Heptane (n-heptane)	142-82-5	400 ppm	500 ppm	—	—
2-Heptanone (Methyl n-amyl ketone)	110-43-0	50 ppm	75 ppm	—	—
3-Heptanone (Ethyl butyl ketone)	106-35-4	50 ppm	75 ppm	—	—
Hexachlorobutadiene	87-68-3	0.02 ppm	0.06 ppm	—	X
Hexachlorocyclopentadiene	77-47-4	0.01 ppm	0.03 ppm	—	—
Hexachloroethane	67-72-1	1 ppm	3 ppm	—	X
Hexachloronaphthalene	1335-87-1	0.2 mg/m ³	0.6 mg/m ³	—	X
Hexafluoroacetone	684-16-2	0.1 ppm	0.3 ppm	—	X
Hexane	—	—	—	—	—
n-hexane	110-54-3	50 ppm	75 ppm	—	—
other isomers	Varies with compound	500 ppm	1,000 ppm	—	—
2-Hexanone (Methyl-n-butyl ketone)	591-78-6	5 ppm	10 ppm	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	50 ppm	75 ppm	—	—
sec-Hexyl acetate	108-84-9	50 ppm	75 ppm	—	—
Hexylene glycol	107-41-5	—	—	25 ppm	—
Hydrazine	302-01-2	0.1 ppm	0.3 ppm	—	X
Hydrogen	—	Simple asphyxiant	—	—	—
Hydrogenated terphenyls	61788-32-7	0.5 ppm	1.5 ppm	—	—
Hydrogen bromide	10035-10-6	—	—	3.0 ppm	—
Hydrogen chloride	7647-01-0	—	—	5.0 ppm	—
Hydrogen cyanide	74-90-8	—	4.7 ppm	—	X
Hydrogen fluoride	7664-39-3	—	—	3 ppm	—
Hydrogen peroxide	7722-84-1	1 ppm	3 ppm	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05 ppm	0.15 ppm	—	—
Hydrogen sulfide	7783-06-4	10 ppm	15 ppm	—	—
Hydroquinone (Dihydroxybenzene)	123-31-9	2 mg/m ³	4 mg/m ³	—	—
4-Hydroxy-4-methyl-2-pentanone (Diacetone alcohol)	123-42-2	50 ppm	75 ppm	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
2-Hydroxypropyl acrylate	99-61-1	0.5 ppm	1.5 ppm	—	X
Indene	95-13-6	10 ppm	20 ppm	—	—
Indium and compounds (as In)	7440-74-6	0.1 mg/m ³	0.3 mg/m ³	—	—
Iodine	7553-56-2	—	—	0.1 ppm	—
Iodoform	75-47-8	0.6 ppm	1.8 ppm	—	—
Iron oxide dust and fume (as Fe)	1309-37-1	—	—	—	—
Total particulate	—	5 mg/m ³	10 mg/m ³	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	0.1 ppm	0.2 ppm	—	—
Iron salts, soluble (as Fe)	Varies with compound	1 mg/m ³	3 mg/m ³	—	—
Isoamyl acetate	123-92-2	100 ppm	150 ppm	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100 ppm	125 ppm	—	—
Isobutyl acetate	110-19-0	150 ppm	188 ppm	—	—
Isobutyl alcohol	78-83-1	50 ppm	75 ppm	—	—
Isooctyl alcohol	26952-21-6	50 ppm	75 ppm	—	X
Isophorone	78-59-1	4 ppm	—	5 ppm	—
Isophorone diisocyanate	4098-71-9	0.005 ppm	0.02 ppm	—	X
Isopropoxyethanol	109-59-1	25 ppm	38 ppm	—	—
Isopropyl acetate	108-21-4	250 ppm	310 ppm	—	—
Isopropyl alcohol	67-63-0	400 ppm	500 ppm	—	—
Isopropylamine	75-31-0	5 ppm	10 ppm	—	—
N-Isopropylaniline	768-52-5	2 ppm	4 ppm	—	X
Isopropyl ether	108-20-3	250 ppm	313 ppm	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50 ppm	75 ppm	—	—
Kaolin	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Ketene	463-51-4	0.5 mg/m ³	1.5 mg/m ³	—	—
Lannate (Methomyl)	16752-77-5	2.5 mg/m ³	5 mg/m ³	—	—
Lead, inorganic (as Pb) (see WAC 296-62-07521 and 296-155-176)	7439-92-1	0.05 mg/m ³	—	—	—
Lead arsenate (as Pb) (see WAC 296-62-07521, 296-155-176, and chapter 296-848 WAC)	3687-31-8	0.05 mg/m ³	—	—	—
Lead chromate (as Pb) (see WAC 296-62-08003, 296-62-07521, and 296-155-176)	7758-97-6	0.05 mg/m ³	—	—	—
Limestone	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Lindane	58-89-9	0.5 mg/m ³	1.5 mg/m ³	—	X
Lithium hydride	7580-67-8	0.025 mg/m ³	0.075 mg/m ³	—	—
L.P.G. (liquified petroleum gas)	68476-85-7	1,000 ppm	1,250 ppm	—	—
Magnesite	546-93-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Magnesium oxide fume	1309-48-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Malathion	121-75-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	X
Maleic anhydride	108-31-6	0.25 ppm	0.75 ppm	—	—
Manganese and compounds (as Mn)	7439-96-5	—	—	5 mg/m ³	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Manganese tetroxide and fume (as Mn)	7439-96-5	1 mg/m ³	3 mg/m ³	—	—
Marble	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
MBOCA (4, 4'-Methylene bis (2-chloro-aniline)) (see WAC 296-62-073)	101-14-4	—	—	—	X
MDA (4, 4-Methylene dianiline) (see WAC 296-62-076 and 296-155-173)	101-77-9	0.01 ppm	0.1 ppm	—	X
MDI (Methylene bisphenyl isocyanate) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
MEK (Methyl ethyl ketone) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
MEKP (Methyl ethyl ketone peroxide)	1338-23-4	—	—	0.2 ppm	—
Mercury (as Hg)	7439-97-6	—	—	—	—
Aryl and inorganic	—	0.1 mg/m ³	0.3 mg/m ³	—	X
Organo-alkyl compounds	—	0.01 mg/m ³	0.03 mg/m ³	—	X
Vapor	—	0.05 mg/m ³	0.15 mg/m ³	—	X
Mesityl oxide	141-79-7	15 ppm	25 ppm	—	—
Methacrylic acid	79-41-4	20 ppm	30 ppm	—	X
Methane	—	Simple asphyxiant	—	—	—
Methanethiol (Methyl mercaptan)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methanol (Methyl alcohol)	67-56-1	200 ppm	250 ppm	—	X
Methomyl (lannate)	16752-77-5	2.5 mg/m ³	5 mg/m ³	—	—
Methoxychlor	72-43-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
2-Methoxyethanol (Methyl cellosolve)	109-86-4	5 ppm	10 ppm	—	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110-49-6	5 ppm	10 ppm	—	X
4-Methoxyphenol	150-76-5	5 mg/m ³	10 mg/m ³	—	—
Methyl acetate	79-20-9	200 ppm	250 ppm	—	—
Methyl acetylene (propyne)	74-99-7	1,000 ppm	1,250 ppm	—	—
Methyl acetylene-propadiene mixture (MAPP)	—	1,000 ppm	1,250 ppm	—	—
Methyl acrylate	96-33-3	10 ppm	20 ppm	—	X
Methylacrylonitrile	126-98-7	1 ppm	3 ppm	—	X
Methylal (Dimethoxy-methane)	109-87-5	1,000 ppm	1,250 ppm	—	—
Methyl alcohol (methanol)	67-56-1	200 ppm	250 ppm	—	X
Methylamine	74-89-5	10 ppm	20 ppm	—	—
Methyl amyl alcohol (Methyl isobutyl carbinol)	108-11-2	25 ppm	40 ppm	—	X
Methyl n-amyl ketone (2-Heptanone)	110-43-0	50 ppm	75 ppm	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
N-Methyl aniline (Monomethyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Methyl bromide	74-83-9	5 ppm	10 ppm	—	X
Methyl-n-butyl ketone (2-Hexanone)	591-78-6	5 ppm	10 ppm	—	—
Methyl cellosolve (2-Methoxyethanol)	109-86-4	5 ppm	10 ppm	—	X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	5 ppm	10 ppm	—	X
Methyl chloride	74-87-3	50 ppm	100 ppm	—	—
Methyl chloroform (1, 1, 1-trichlorethane)	71-55-6	350 ppm	450 ppm	—	—
Methyl chloromethyl ether (chloromethyl methyl ether) (see WAC 296-62-073)	107-30-2	—	—	—	—
Methyl 2-cyanoacrylate	137-05-3	2 ppm	4 ppm	—	—
Methylcyclohexane	108-87-2	400 ppm	500 ppm	—	—
Methylcyclohexanol	25639-42-3	50 ppm	75 ppm	—	—
Methylcyclohexanone	583-60-8	50 ppm	75 ppm	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	0.2 mg/m ³	0.6 mg/m ³	—	X
Methyl demeton	8022-00-2	0.5 mg/m ³	1.5 mg/m ³	—	X
Methylene bisphenyl isocyanate (MDI) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
4, 4'-Methylene bis (2-chloro-aniline) (MBOCA) (see WAC 296-62-073)	101-14-4	—	—	—	X
Methylene bis (4-cyclohexylisocyanate)	5124-30-1	—	—	0.01 ppm	—
Methylene chloride (Dichloromethane) (see chapter 296-859 WAC)	75-09-2	25 ppm	125 ppm	—	—
4, 4-Methylene dianiline (MDA) (see WAC 296-62-076 and 296-155-173)	101-77-9	0.01 ppm	0.1 ppm	—	X
Methyl ethyl ketone (MEK) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	0.2 ppm	—
Methyl formate	107-31-3	100 ppm	150 ppm	—	—
5-Methyl-3-heptanone (Ethyl amyl ketone)	541-85-5	25 ppm	38 ppm	—	—
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	—	—	0.2 ppm	X
Methyl iodide	74-88-4	2 ppm	4 ppm	—	X
Methyl isoamyl ketone	110-12-3	50 ppm	75 ppm	—	—
Methyl isobutyl carbinol (Methyl amyl alcohol)	108-11-2	25 ppm	40 ppm	—	X
Methyl isobutyl ketone (Hexone)	108-10-1	50 ppm	75 ppm	—	—
Methyl isocyanate	624-83-9	0.02 ppm	0.06 ppm	—	X
Methyl isopropyl ketone	563-80-4	200 ppm	250 ppm	—	—
Methyl mercaptan (Methanethiol)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methyl methacrylate	80-62-6	100 ppm	150 ppm	—	—
Methyl parathion	298-00-0	0.2 mg/m ³	0.6 mg/m ³	—	X
Methyl propyl ketone (2-Pentanone)	107-87-9	200 ppm	250 ppm	—	—
Methyl silicate	684-84-5	1 ppm	3 ppm	—	—
alpha-Methyl styrene	98-83-9	50 ppm	100 ppm	—	—
Mevinphos (Phosdrin)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Metribuzin	21087-64-9	5 mg/m ³	10 mg/m ³	—	—
Mica (Silicates) Respirable fraction	12001-26-2	3 mg/m ³	6 mg/m ³	—	—
Molybdenum (as Mo)	7439-98-7	—	—	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Soluble compounds	—	5 mg/m ³	10 mg/m ³	—	—
Insoluble compounds	—	10 mg/m ³	20 mg/m ³	—	—
Monochlorobenzene (Chlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
Monocrotophos (Azodrin)	6923-22-4	0.25 mg/m ³	0.75 mg/m ³	—	—
Monomethyl aniline (N-Methyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Monomethyl hydrazine	—	—	—	0.2 ppm	—
Morpholine	110-91-8	20 ppm	30 ppm	—	X
Naled (Dibrom)	300-76-5	3 mg/m ³	6 mg/m ³	—	X
Naphtha	8030-30-6	100 ppm	150 ppm	—	X
Naphthalene	91-20-3	10 ppm	15 ppm	—	—
alpha-Naphthylamine (see WAC 296-62-073)	134-32-7	—	—	—	—
beta-Naphthylamine (see WAC 296-62-073)	91-59-8	—	—	—	—
Neon	7440-01-9	Simple asphyxiant	—	—	—
Nickel carbonyl (as Ni)	13463-39-3	0.001 ppm	0.003 ppm	—	—
Nickel (as Ni)	7440-02-0	—	—	—	—
Metal and insoluble compounds	—	1 mg/m ³	3 mg/m ³	—	—
Soluble compounds	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Nicotine	54-11-5	0.5 mg/m ³	1.5 mg/m ³	—	X
Nitrapyrin (2-Chloro-6 trichloromethyl pyridine)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Nitric acid	7697-37-2	2 ppm	4 ppm	—	—
Nitric oxide	10102-43-9	25 ppm	38 ppm	—	—
p-Nitroaniline	100-01-6	3 mg/m ³	6 mg/m ³	—	X
Nitrobenzene	98-95-3	1 ppm	3 ppm	—	X
4-Nitrobiphenyl (see WAC 296-62-073)	92-93-3	—	—	—	—
p-Nitrochlorobenzene	100-00-5	0.5 mg/m ³	1.5 mg/m ³	—	X
4-Nitrodiphenyl (see WAC 296-62-073)	—	—	—	—	—
Nitroethane	79-24-3	100 ppm	150 ppm	—	—
Nitrogen	7727-37-9	Simple asphyxiant	—	—	—
Nitrogen dioxide	10102-44-0	—	1 ppm	—	—
Nitrogen oxide (Nitrous oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nitrogen trifluoride	7783-54-2	10 ppm	20 ppm	—	—
Nitroglycerin	55-63-0	—	0.1 mg/m ³	—	X
Nitromethane	75-52-5	100 ppm	150 ppm	—	—
1-Nitropropane	108-03-2	25 ppm	38 ppm	—	—
2-Nitropropane	79-46-9	10 ppm	20 ppm	—	—
N-Nitrosodimethylamine (see WAC 296-62-073)	62-75-9	—	—	—	—
Nitrotoluene	—	—	—	—	—
o-isomer	88-72-2	2 ppm	4 ppm	—	X
m-isomer	98-08-2	2 ppm	4 ppm	—	X
p-isomer	99-99-0	2 ppm	4 ppm	—	X
Nitrotrichloromethane (Chloropicrin)	76-06-2	0.1 ppm	0.3 ppm	—	—
Nitrous oxide (Nitrogen oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nonane	111-84-2	200 ppm	250 ppm	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Nuisance dusts (see Particulates not otherwise regulated)	—	—	—	—	—
Octachloronaphthalene	2234-13-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Octane	111-65-9	300 ppm	375 ppm	—	—
Oil mist mineral (particulate)	8012-95-1	5 mg/m ³	10 mg/m ³	—	—
Osmium tetroxide (as Os)	20816-12-0	0.0002 ppm	0.0006 ppm	—	—
Oxalic acid	144-62-7	1 mg/m ³	2 mg/m ³	—	—
Oxygen	—	—	—	—	—
See requirements in other chapters such as: Chapter 296-809 WAC, Confined spaces; chapter 296-843 WAC, Hazardous waste operations; chapter 296-824 WAC, Emergency response; WAC 296-62-100, Oxygen deficient atmospheres					
Oxygen difluoride	7783-41-7	—	—	0.05 ppm	—
Ozone	10028-15-6	0.1 ppm	0.3 ppm	—	—
Paper fiber (Cellulose)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Paraffin wax fume	8002-74-2	2 mg/m ³	4 mg/m ³	—	—
Paraquat	—	—	—	—	—
Respirable fraction	4685-14-7 1910-42-5 2074-50-2	0.1 mg/m ³	0.3 mg/m ³	—	X
Parathion	56-38-2	0.1 mg/m ³	0.3 mg/m ³	—	X
Particulate polycyclic aromatic hydrocarbons (see coal tar pitch volatiles)					
Particulates not otherwise regulated	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pentaborane	19624-22-7	0.005 ppm	0.015 ppm	—	—
Pentachloronaphthalene	1321-64-8	0.5 mg/m ³	1.5 mg/m ³	—	X
Pentachlorophenol	87-86-5	0.5 mg/m ³	1.5 mg/m ³	—	X
Pentaerythritol	115-77-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pentane	109-66-0	600 ppm	750 ppm	—	—
2-Pentanone (methyl propyl ketone)	107-87-9	200 ppm	250 ppm	—	—
Perchloroethylene (tetrachloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Perchloromethyl mercaptan	594-42-3	0.1 ppm	0.3 ppm	—	—
Perchloryl fluoride	7616-94-6	3 ppm	6 ppm	—	—
Perlite	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Petroleum distillates (Naphtha, rubber solvent)	—	100 ppm	150 ppm	—	—
Phenacyl chloride (a-Chloroacetophenone)	532-21-4	0.05 ppm	0.15 ppm	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Phenol	108-95-2	5 ppm	10 ppm	—	X
Phenothiazine	92-84-2	5 mg/m ³	10 mg/m ³	—	X
p-Phenylene diamine	106-50-3	0.1 mg/m ³	0.3 mg/m ³	—	X
Phenyl ether (vapor)	101-84-8	1 ppm	3 ppm	—	—
Phenyl ether-diphenyl mixture (vapor)	—	1 ppm	3 ppm	—	—
Phenylethylene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Phenyl glycidyl ether (PGE)	122-60-1	1 ppm	3 ppm	—	—
Phenylhydrazine	100-63-0	5 ppm	10 ppm	—	X
Phenyl mercaptan	108-98-5	0.5 ppm	1.5 ppm	—	—
Phenylphosphine	638-21-1	—	—	0.05 ppm	—
Phorate	298-02-2	0.05 mg/m ³	0.2 mg/m ³	—	X
Phosdrin (Mevinphos)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Phosgene (carbonyl chloride)	75-44-5	0.1 ppm	0.3 ppm	—	—
Phosphine	7803-51-2	0.3 ppm	1 ppm	—	—
Phosphoric acid	7664-38-2	1 mg/m ³	3 mg/m ³	—	—
Phosphorus (yellow)	7723-14-0	0.1 mg/m ³	0.3 mg/m ³	—	—
Phosphorous oxychloride	10025-87-3	0.1 ppm	0.3 ppm	—	—
Phosphorus pentachloride	10026-13-8	0.1 ppm	0.3 ppm	—	—
Phosphorus pentasulfide	1314-80-3	1 mg/m ³	3 mg/m ³	—	—
Phosphorus trichloride	12-2-19	0.2 ppm	0.5 ppm	—	—
Phthalic anhydride	85-44-9	1 ppm	3 ppm	—	—
m-Phthalodinitrile	626-17-5	5 mg/m ³	10 mg/m ³	—	—
Picloram	1918-02-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Picric acid (2, 4, 6-Trinitrophenol)	88-89-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Pindone (2-Pivalyl-1, 3-indandione, Pival)	83-26-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Piperazine dihydrochloride	142-64-3	5 mg/m ³	10 mg/m ³	—	—
Pival (Pindone)	83-26-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Plaster of Paris	26499-65-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Platinum (as Pt)	7440-06-4	—	—	—	—
Metal	—	1 mg/m ³	3 mg/m ³	—	—
Soluble salts	—	0.002 mg/m ³	0.006 mg/m ³	—	—
Polychlorobiphenyls (Chlorodiphenyls)	—	—	—	—	—
42% Chlorine (PCB)	53469-21-9	1 mg/m ³	3 mg/m ³	—	X
54% Chlorine (PCB)	11097-69-1	0.5 mg/m ³	1.5 mg/m ³	—	X
Portland cement	65997-15-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Potassium hydroxide	1310-58-3	—	—	2 mg/m ³	—
Propane	74-98-6	1,000 ppm	1,250 ppm	—	—
Propargyl alcohol	107-19-7	1 ppm	3 ppm	—	X
beta-Propiolactone (see WAC 296-62-073)	57-57-8	—	—	—	—
Propionic acid	79-09-4	10 ppm	20 ppm	—	—
Propoxur (Baygon)	114-26-1	0.5 mg/m ³	1.5 mg/m ³	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
n-Propyl acetate	109-60-4	200 ppm	250 ppm	—	—
n-Propyl alcohol	71-23-8	200 ppm	250 ppm	—	X
n-Propyl nitrate	627-13-4	25 ppm	40 ppm	—	—
Propylene	—	Simple asphyxiant	—	—	—
Propylene dichloride (1, 2-Dichloropropane)	78-87-5	75 ppm	110 ppm	—	—
Propylene glycol dinitrate	6423-43-4	0.05 ppm	0.15 ppm	—	X
Propylene glycol monomethyl ether	107-98-2	100 ppm	150 ppm	—	—
Propylene imine	75-55-8	2 ppm	4 ppm	—	X
Propylene oxide (1,2-Epoxypropane)	75-56-9	20 ppm	30 ppm	—	—
Propyne (Methyl acetylene)	74-99-7	1,000 ppm	1,250 ppm	—	—
Pyrethrum	8003-34-7	5 mg/m ³	10 mg/m ³	—	—
Pyridine	110-86-1	5 ppm	10 ppm	—	—
Pyrocatechol (Catechol)	120-80-9	5 ppm	10 ppm	—	X
Quinone (p-Benzoquinone)	106-51-4	0.1 ppm	0.3 ppm	—	—
RDX (Cyclonite)	—	1.5 mg/m ³	3 mg/m ³	—	X
Resorcinol	108-46-3	10 ppm	20 ppm	—	—
Rhodium (as Rh)	7440-16-6	—	—	—	—
Insoluble compounds, metal fumes and dusts	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Soluble compounds, salts	—	0.001 mg/m ³	0.003 mg/m ³	—	—
Ronnel	299-84-3	10 mg/m ³	20 mg/m ³	—	—
Rosin core solder, pyrolysis products (as formaldehyde)	8050-09-7	0.1 mg/m ³	0.3 mg/m ³	—	—
Rotenone	83-79-4	5 mg/m ³	10 mg/m ³	—	—
Rouge	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Rubber solvent (naphtha)	8030-30-6	100 ppm	150 ppm	—	—
Selenium compounds (as Se)	7782-49-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05 ppm	0.15 ppm	—	—
Sesone (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sevin (Carbaryl)	63-25-2	5 mg/m ³	10 mg/m ³	—	—
Silane (see Silicon tetrahydride)	7803-62-5	5 ppm	10 ppm	—	—
Silica, amorphous, precipitated and gel	112926-00-8	6 mg/m ³	12 mg/m ³	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Silica, crystalline cristobalite	—	—	—	—	—
Respirable fraction	14464-46-1	0.05 mg/m ³	0.15 mg/m ³	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, crystalline quartz	—	—	—	—	—
Respirable fraction	14808-60-7	0.1 mg/m ³	0.3 mg/m ³	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, crystalline tripoli (as quartz)	—	—	—	—	—
Respirable fraction	1317-95-9	0.1 mg/m ³	0.3 mg/m ³	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Silica, crystalline tridymite	—	—	—	—	—
Respirable fraction	15468-32-3	0.05 mg/m ³	0.15 mg/m ³	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, fused	—	—	—	—	—
Respirable fraction	60676-86-0	0.1 mg/m ³	0.3 mg/m ³	—	—
Silicates (less than 1% crystalline silica)	—	—	—	—	—
Mica	—	—	—	—	—
Respirable fraction	12001-26-2	3 mg/m ³	6 mg/m ³	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Talc (containing asbestos) (as asbestos) (see WAC 296-62-07705 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Talc (containing no sbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m ³	4 mg/m ³	—	—
Tremolite (asbestiform) (as asbestos) (see WAC 296-62-07705 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Silicon	7440-21-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Silicon carbide	409-21-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Silicon tetrahydride (Silane)	7803-62-5	5 ppm	10 ppm	—	—
Silver, metal dust and soluble compounds (as Ag)	7440-22-4	0.01 mg/m ³	0.03 mg/m ³	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Sodium azide (as HN ₃ or NaN ₃)	26628-22-8	—	—	0.1 ppm	X
Sodium bisulfite	7631-90-5	5 mg/m ³	10 mg/m ³	—	—
Sodium-2, 4-dichloro-phenoxyethyl sulfate (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sodium fluoroacetate	62-74-8	0.05 mg/m ³	0.15 mg/m ³	—	X
Sodium hydroxide	1310-73-2	—	—	2 mg/m ³	—
Sodium metabisulfite	7681-57-4	5 mg/m ³	10 mg/m ³	—	—
Starch	9005-25-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Stibine	7803-52-3	0.1 ppm	0.3 ppm	—	—
Stoddard solvent	8052-41-3	100 ppm	150 ppm	—	—
Strychnine	57-24-9	0.15 mg/m ³	0.45 mg/m ³	—	—
Styrene (Phenylethylene, Vinyl benzene)	100-42-5	50 ppm	100 ppm	—	—
Subtilisins	9014-01-1	—	0.00006 mg/m ³	—	—

Airborne contaminant	CAS	TWA ₈	STEL (60 min.)	Ceiling	Skin
Sucrose	57-50-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sulfotep (TEDP)	3689-24-5	0.2 mg/m ³	0.6 mg/m ³	—	X
Sulfur dioxide	7446-09-5	2 ppm	5 ppm	—	—
Sulfur hexafluoride	2551-62-4	1,000 ppm	1,250 ppm	—	—
Sulfuric acid	7664-93-9	1 mg/m ³	3 mg/m ³	—	—
Sulfur monochloride	10025-67-9	—	—	1 ppm	—
Sulfur pentafluoride	5714-22-1	—	—	0.01 ppm	—
Sulfur tetrafluoride	7783-60-0	—	—	0.1 ppm	—
Sulfuryl fluoride	2699-79-8	5 ppm	10 ppm	—	—
Sulprofos	35400-43-2	1 mg/m ³	3 mg/m ³	—	—
Systox (Demeton)	8065-48-3	0.01 ppm	0.03 ppm	—	X
2, 4, 5-T (2, 4, 5- tri- chlorophenoxyacetic acid)	93-76-5	10 mg/m ³	20 mg/m ³	—	—
Talc (containing asbestos) (as asbestos) (see WAC 296-62-07705 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m ³	4 mg/m ³	—	—
Tantalum	—	—	—	—	—
Metal and oxide dusts	7440-25-7	5 mg/m ³	10 mg/m ³	—	—
TDI (Toluene-2, 4-diisocyanate)	584-84-9	0.005 ppm	0.02 ppm	—	—
TEDP (Sulfotep)	3689-24-5	0.2 mg/m ³	0.6 mg/m ³	—	X
Tellurium and compounds (as Te)	13494-80-9	0.1 mg/m ³	0.3 mg/m ³	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02 ppm	0.06 ppm	—	—
Temephos (Abate)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
TEPP	107-49-3	0.004 ppm	0.012 ppm	—	X
Terphenyls	26140-60-3	—	—	0.5 ppm	—
1, 1, 1, 2-Tetrachloro-2,2-difluoroethane	76-11-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloro-1,2-difluoroethane	76-12-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloroethane	79-34-5	1 ppm	3 ppm	—	X
Tetrachloroethylene (Perchloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Tetrachloromethane (Carbon tetrachloride)	56-23-5	2 ppm	4 ppm	—	X
Tetrachloronaphthalene	1335-88-2	2 mg/m ³	4 mg/m ³	—	X
Tetraethyl lead (as Pb)	78-00-2	0.075 mg/m ³	0.225 mg/m ³	—	X
Tetrahydrofuran	109-99-9	200 ppm	250 ppm	—	—
Tetramethyl lead (as Pb)	75-74-1	0.075 mg/m ³	0.225 mg/m ³	—	X
Tetramethyl succinonitrile	3333-52-6	0.5 ppm	1.5 ppm	—	X
Tetranitromethane	509-14-8	1 ppm	3 ppm	—	—
Tetrasodium pyrophosphate	7722-88-5	5 mg/m ³	10 mg/m ³	—	—
Tetryl (2, 4, 6-trinitrophenyl-methylnitramine)	479-45-8	1.5 mg/m ³	3 mg/m ³	—	X
Thallium (soluble compounds) (as Tl)	7440-28-0	0.1 mg/m ³	0.3 mg/m ³	—	X
4, 4-Thiobis (6-tert-butyl-m-cresol)	96-69-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Thiodan (Endosulfan)	115-29-7	0.1 mg/m ³	0.3 mg/m ³	—	X

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Thioglycolic acid	68-11-1	1 ppm	3 ppm	—	X
Thionyl chloride	7719-09-7	—	—	1 ppm	—
Thiram (see WAC 296-62-07519)	137-26-8	5 mg/m ³	10 mg/m ³	—	—
Tin (as Sn)	—	—	—	—	—
Inorganic compounds	7440-31-5	2 mg/m ³	4 mg/m ³	—	—
Tin (as Sn)	—	—	—	—	—
Organic compounds	7440-31-5	0.1 mg/m ³	0.3 mg/m ³	—	X
Tin oxide (as Sn)	21651-19-4	2 mg/m ³	4 mg/m ³	—	—
Titanium dioxide	13463-67-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
TNT (2, 4, 6-Trinitrotoluene)	118-96-7	0.5 mg/m ³	1.5 mg/m ³	—	X
Toluene	108-88-3	100 ppm	150 ppm	—	—
Toluene-2, 4-diisocyanate (TDI)	584-84-9	0.005 ppm	0.02 ppm	—	—
m-Toluidine	108-44-1	2 ppm	4 ppm	—	X
o-Toluidine	95-53-4	2 ppm	4 ppm	—	X
p-Toluidine	106-49-0	2.0 ppm	4 ppm	—	X
Toxaphene (Chlorinated camphene)	8001-35-2	0.5 mg/m ³	1 mg/m ³	—	X
Tremolite (asbestiform) (as asbestos) (see WAC 296-62-07705 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Tributyl phosphate	126-73-8	0.2 ppm	0.6 ppm	—	—
Trichloroacetic acid	76-03-9	1 ppm	3 ppm	—	—
1, 2, 4-Trichlorobenzene	120-82-1	—	—	5 ppm	—
1, 1, 1-Trichloroethane (Methyl chloroform)	71-55-6	350 ppm	450 ppm	—	—
1, 1, 2-Trichloroethane	79-00-5	10 ppm	20 ppm	—	—
Trichloroethylene	79-01-6	50 ppm	200 ppm	—	—
Trichlorofluoromethane (Fluorotrichloromethane)	75-69-4	—	—	1,000 ppm	—
Trichloromethane (Chloroform)	67-66-3	2 ppm	4 ppm	—	—
Trichloronaphthalene	1321-65-9	5 mg/m ³	10 mg/m ³	—	X
1, 2, 3-Trichloropropane	96-18-4	10 ppm	20 ppm	—	X
1, 1, 2-Trichloro-1, 2,2-trifluoroethane	76-13-1	1,000 ppm	1,250 ppm	—	—
Tricyclohexyltin hydroxide (Cyhexatin)	13121-70-5	5 mg/m ³	10 mg/m ³	—	—
Triethylamine	121-44-8	10 ppm	15 ppm	—	—
Trifluorobromomethane	75-63-8	1,000 ppm	1,250 ppm	—	—
Trimellitic anhydride	552-30-7	0.005 ppm	0.015 ppm	—	—
Trimethylamine	75-50-3	10 ppm	15 ppm	—	—
Trimethyl benzene	25551-13-7	25 ppm	38 ppm	—	—
Trimethyl phosphite	121-45-9	2 ppm	4 ppm	—	—
2, 4, 6-Trinitrophenol (Picric acid)	88-89-1	0.1 mg/m ³	0.3 mg/m ³	—	X
2, 4, 6-Trinitrophenyl-methylnitramine (Tetryl)	479-45-8	1.5 mg/m ³	3 mg/m ³	—	X
2, 4, 6-Trinitrotoluene (TNT)	118-96-7	0.5 mg/m ³	1.5 mg/m ³	—	X
Triorthocresyl phosphate	78-30-8	0.1 mg/m ³	0.3 mg/m ³	—	X
Triphenyl amine	603-34-9	5 mg/m ³	10 mg/m ³	—	—
Triphenyl phosphate	115-86-6	3 mg/m ³	6 mg/m ³	—	—
Tungsten (as W)	7440-33-7	—	—	—	—
Soluble compounds	—	1 mg/m ³	3 mg/m ³	—	—

Airborne contaminant	CAS	TWA ₈	STEL	Ceiling	Skin
Insoluble compounds	—	5 mg/m ³	10 mg/m ³	—	—
Turpentine	8006-64-2	100 ppm	150 ppm	—	—
Uranium (as U)	7440-61-1	—	—	—	—
Soluble compounds	—	0.05 mg/m ³	0.15 mg/m ³	—	—
Insoluble compounds	—	0.2 mg/m ³	0.6 mg/m ³	—	—
n-Valeraldehyde	110-62-3	50 ppm	75 ppm	—	—
Vanadium (as V ₂ O ₅)	—	—	—	—	—
Respirable fraction	1314-62-1	0.05 mg/m ³	0.15 mg/m ³	—	—
Vegetable oil mist	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Vinyl acetate	108-05-1	10 ppm	20 ppm	—	—
Vinyl benzene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Vinyl bromide	593-60-2	5 ppm	10 ppm	—	—
Vinyl chloride (Chloroethylene) (see WAC 296-62-07329)	75-01-4	1 ppm	5 ppm	—	—
Vinyl cyanide (Acrylonitrile) (see WAC 296-62-07336)	107-13-1	2 ppm	10 ppm	—	—
Vinyl cyclohexene dioxide	106-87-6	10 ppm	20 ppm	—	X
Vinyl toluene	25013-15-4	50 ppm	75 ppm	—	—
Vinylidene chloride (1, 1-Dichloroethylene)	75-35-4	1 ppm	3 ppm	—	—
VM & P Naphtha	8032-32-4	300 ppm	400 ppm	—	—
Warfarin	81-81-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Welding fumes (total particulate)	—	5 mg/m ³	10 mg/m ³	—	—
Wood dust	—	—	—	—	—
Nonallergenic; (All woods except allergenics)	—	5 mg/m ³	10 mg/m ³	—	—
Allergenics (e.g. cedar, mahogany and teak)	—	2.5 mg/m ³	5 mg/m ³	—	—
Xylenes (ortho, meta, and para isomers) (Dimethylbenzene)	1330-20-7	100 ppm	150 ppm	—	—
m-Xylene alpha, alpha-diamine	1477-55-0	—	—	0.1 mg/m ³	X
Xylidine (Dimethylaminobenzene)	1300-73-8	2 ppm	4 ppm	—	X
Yttrium	7440-65-5	1 mg/m ³	3 mg/m ³	—	—
Zinc chloride fume	7646-85-7	1 mg/m ³	2 mg/m ³	—	—
Zinc chromate (as Cr) (see WAC 296-62-08003)	Varies with compound	0.005 mg/m ³	—	0.1 mg/m ³	—
Zinc oxide	1314-13-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Zinc oxide fume	1314-13-2	5 mg/g ³	10 mg/m ³	—	—
Zinc stearate	557-05-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Zirconium compounds (as Zr)	7440-67-2	5 mg/m ³	10 mg/m ³	—	—

Chapter 296-850 WAC

BERYLLIUM

NEW SECTION

WAC 296-850-090 Definitions. For the purposes of this section the following definitions apply:

Action level - A concentration of airborne beryllium of 0.1 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$) calculated as an 8-hour time-weighted average (TWA).

Airborne exposure and airborne exposure to beryllium - The exposure to airborne beryllium that would occur if the employee were not using a respirator.

Beryllium lymphocyte proliferation test (BeLPT) - The measurement of blood lymphocyte proliferation in a laboratory test when lymphocytes are challenged with a soluble beryllium salt.

Beryllium work area - Any work area:

(a) Containing a process or operation that can release beryllium and involves material that contains at least 0.1 percent beryllium by weight; and

(b) Where employees are, or can reasonably be expected to be, exposed to airborne beryllium at any level or where there is the potential for dermal contact with beryllium.

CBD diagnostic center - A medical diagnostic center that has an on-site pulmonary specialist and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). This evaluation must include pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within twenty-four hours. The on-site pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

Chronic beryllium disease (CBD) - A chronic granulomatous (inflammatory) disease primarily of the lung, caused by exposure to beryllium, that meets the diagnostic criteria published in the department of labor and industries clinical guideline for the *Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*.

Competent person - An individual who is capable of identifying existing and foreseeable beryllium hazards in the workplace and who has authorization to take prompt corrective measures to eliminate or minimize them. The competent person must have the knowledge, ability, and authority necessary to fulfill the responsibilities set forth in WAC 296-850-125. This term is applicable in construction work conducted under contract with a building or facility owner or other building representative.

Confirmed positive - The person tested has beryllium sensitization, as indicated by two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, or any cases confirmed by the criteria published in the department of labor and industries clinical guideline for the *Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

Construction work - All or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling, of buildings and other structures and all operations in connection therewith; the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads and all operations pertaining thereto; the moving of buildings and other structures, and to the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related thereto.

Contaminated with beryllium and beryllium-contaminated - Contaminated with dust, fumes, mists, or solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight.

Dermal contact with beryllium - Skin exposure to:

(a) Soluble beryllium compounds containing beryllium in concentrations greater than or equal to 0.1 percent by weight;

(b) Solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight; or

(c) Dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight.

Emergency - Any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which may or does result in an uncontrolled and unintended release of airborne beryllium that presents a significant hazard.

High-efficiency particulate air (HEPA) filter - A filter that is at least 99.97 percent efficient in removing particles 0.3 micrometers in diameter.

Objective data - Information, such as air monitoring data from industry-wide surveys or calculations based on the composition of a substance, demonstrating airborne exposure to beryllium associated with a particular product or material or a specific process, task, or activity. The data must reflect workplace conditions closely resembling or with a higher airborne exposure potential than the processes, types of material, control methods, work practices, and environmental conditions in the employer's current operations.

Physician or other licensed health care professional (PLHCP) - An individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows the individual to independently provide or be delegated the responsibility to provide some or all of the health care services required by WAC 296-850-155.

Regulated area - An area, including temporary work areas where maintenance or nonroutine tasks are performed, where an employee's airborne exposure exceeds, or can reasonably be expected to exceed, either the time-weighted average (TWA) permissible exposure limit (PEL) or short term exposure limit (STEL).

Ship breaking - Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

Ship building - Construction of a vessel, including the installation of machinery and equipment.

Ship repairing - Repair of a vessel including, but not limited to, alterations, conversions, installations, cleaning, painting, and maintenance.

NEW SECTION

WAC 296-850-100 Scope and application. This standard applies to occupational exposure to beryllium in all forms, compounds, and mixtures, except:

(1) This standard does not apply to articles, as defined in chapter 296-901 WAC, Globally harmonized system for hazard communication, that contain beryllium and that the employer does not process.

(2) This standard does not apply to materials containing less than 0.1% beryllium by weight where the employer has objective data demonstrating that employee exposure to beryllium will remain below the action level as an 8-hour TWA under any foreseeable conditions.

NEW SECTION

WAC 296-850-110 Permissible exposure limits. (1) Time-weighted average (TWA) PEL. The employer must ensure that no employee is exposed to an airborne concentration of beryllium in excess of 0.2 µg/m³ calculated as an 8-hour TWA.

(2) **Short-term exposure limit (STEL).** The employer must ensure that no employee is exposed to an airborne concentration of beryllium in excess of 2.0 µg/m³ as determined over a sampling period of fifteen minutes.

NEW SECTION

WAC 296-850-115 Exposure assessment. (1) General. The employer must assess the airborne exposure of each employee who is or may reasonably be expected to be exposed to airborne beryllium in accordance with either the performance option in subsection (2) of this section or the scheduled monitoring option in subsection (3) of this section.

(2) **Performance option.** The employer must assess the 8-hour TWA exposure and the fifteen-minute short-term exposure for each employee on the basis of any combination of air monitoring data and objective data sufficient to accurately characterize airborne exposure to beryllium.

(3) **Scheduled monitoring option.**

(a) The employer must perform initial monitoring to assess the 8-hour TWA exposure for each employee on the basis of one or more personal breathing zone air samples that reflect the airborne exposure of employees on each shift, for each job classification, and in each work area.

(b) The employer must perform initial monitoring to assess the short-term exposure from fifteen-minute personal breathing zone air samples measured in operations that are likely to produce airborne exposure above the STEL for each work shift, for each job classification, and in each work area.

(c) Where several employees perform the same tasks on the same shift and in the same work area, the employer may sample a representative fraction of these employees in order to meet the requirements of this subsection. In representative sampling, the employer must sample the employee(s) expected to have the highest airborne exposure to beryllium.

(d) If initial monitoring indicates that airborne exposure is below the action level and at or below the STEL, the employer may discontinue monitoring for those employees whose airborne exposure is represented by such monitoring.

(e) Where the most recent exposure monitoring indicates that airborne exposure is at or above the action level but at or below the TWA PEL, the employer must repeat such monitoring within six months of the most recent monitoring.

(f) Where the most recent exposure monitoring indicates that airborne exposure is above the TWA PEL, the employer must repeat such monitoring within three months of the most recent 8-hour TWA exposure monitoring.

(g) Where the most recent (noninitial) exposure monitoring indicates that airborne exposure is below the action level, the employer must repeat such monitoring within six months of the most recent monitoring until two consecutive measurements, taken seven or more days apart, are below the action level, at which time the employer may discontinue 8-hour TWA exposure monitoring for those employees whose exposure is represented by such monitoring, except as otherwise provided in subsection (4) of this section, reassessment of exposure.

(h) Where the most recent exposure monitoring indicates that airborne exposure is above the STEL, the employer must repeat such monitoring within three months of the most recent short-term exposure monitoring until two consecutive measurements, taken seven or more days apart, are below the STEL, at which time the employer may discontinue short-term exposure monitoring for those employees whose exposure is represented by such monitoring, except as otherwise provided in subsection (4) of this section, reassessment of exposure.

(4) **Reassessment of exposure.** The employer must reassess airborne exposure whenever a change in the production, process, control equipment, personnel, or work practices may reasonably be expected to result in new or additional airborne exposure at or above the action level or STEL, or when the employer has any reason to believe that new or additional airborne exposure at or above the action level or STEL has occurred.

(5) **Methods of sample analysis.** The employer must ensure that all air monitoring samples used to satisfy the monitoring requirements of this subsection are evaluated by a laboratory that can measure beryllium to an accuracy of plus or minus twenty-five percent within a statistical confidence level of ninety-five percent for airborne concentrations at or above the action level.

(6) **Employee notification of assessment results.**

(a) Within fifteen working days after completing an exposure assessment in accordance with this subsection, the employer must notify each employee whose airborne exposure is represented by the assessment of the results of that assessment individually in writing or post the results in an appropriate location that is accessible to each of these employees.

(b) Whenever an exposure assessment indicates that airborne exposure is above the TWA PEL or STEL, the employer must describe in the written notification the corrective action being taken to reduce airborne exposure to or below the exposure limit(s) exceeded where feasible corrective action exists but had not been implemented when the monitoring was conducted.

(7) Observation of monitoring.

(a) The employer must provide an opportunity to observe any exposure monitoring required by this standard to each employee whose airborne exposure is measured or represented by the monitoring and each employee's representative(s).

(b) When observation of monitoring requires entry into an area where the use of personal protective clothing or equipment (which may include respirators) is required, the employer must provide each observer with appropriate personal protective clothing and equipment at no cost to the observer and must ensure that each observer uses such clothing and equipment.

(c) The employer must ensure that each observer follows all other applicable safety and health procedures.

NEW SECTION**WAC 296-850-120 Beryllium work areas and regulated areas. (1) Establishment.**

(a) The employer must establish and maintain a beryllium work area wherever the criteria for a "beryllium work area" set forth in WAC 296-850-090 Definitions, are met.

Exception: It is not required to establish a work area for construction work, ship breaking, ship building or ship repairing.

(b) The employer must establish and maintain a regulated area wherever employees are, or can reasonably be expected to be, exposed to airborne beryllium at levels above the TWA PEL or STEL.

Exception: It is not required to establish a regulated area for construction work.

(2) Demarcation.

(a) The employer must identify each beryllium work area through signs or any other methods that adequately establish and inform each employee of the boundaries of each beryllium work area.

(b) The employer must identify each regulated area in accordance with WAC 296-850-165(2) warning signs, of this rule.

(3) **Access.** The employer must limit access to regulated areas to:

(a) Persons the employer authorizes or requires to be in a regulated area to perform work duties;

(b) Persons entering a regulated area as designated representatives of employees for the purpose of exercising the right to observe exposure monitoring procedures under WAC 296-850-115(7) observation of monitoring; and

(c) Persons authorized by law to be in a regulated area.

(4) **Provision of personal protective clothing and equipment, including respirators.** The employer must provide and ensure that each employee entering a regulated area uses:

(a) Respiratory protection in accordance with WAC 296-850-135 Respiratory protection, of this rule; and

(b) Personal protective clothing and equipment in accordance with WAC 296-850-140 Personal protective clothing and equipment, of this rule.

NEW SECTION

WAC 296-850-125 Competent person. For construction and maintenance projects, wherever employees are, or can reasonably be expected to be, exposed to airborne beryllium at levels above the TWA PEL or STEL, the employer must designate a competent person to:

(1) Make frequent and regular inspections of job sites, materials, and equipment;

(2) Implement the written exposure control plan under WAC 296-850-130 Methods of compliance, of this rule;

(3) Ensure that all employees use respiratory protection in accordance with WAC 296-850-135 Respiratory protection, of this rule; and

(4) Ensure that all employees use personal protective clothing and equipment in accordance with WAC 296-850-140 Personal protective clothing and equipment, of this rule.

NEW SECTION**WAC 296-850-130 Methods of compliance. (1) Written exposure control plan.**

(a) The employer must establish, implement, and maintain a written exposure control plan, which must contain:

(i) A list of operations and job titles reasonably expected to involve airborne exposure to or dermal contact with beryllium;

(ii) A list of operations and job titles reasonably expected to involve airborne exposure at or above the action level;

(iii) A list of operations and job titles reasonably expected to involve airborne exposure above the TWA PEL or STEL;

(iv) Procedures for minimizing cross-contamination, including preventing the transfer of beryllium between surfaces, equipment, clothing, materials, and articles within beryllium work areas;

(v) Procedures for keeping surfaces as free as practicable of beryllium;

(vi) Procedures for minimizing the migration of beryllium from beryllium work areas to other locations within or outside the workplace;

(vii) A list of engineering controls, work practices, and respiratory protection required by subsection (2) of this section engineering and work practice controls, of this rule;

(viii) A list of personal protective clothing and equipment required by WAC 296-850-140 Personal protective clothing and equipment, of this rule;

(ix) Procedures for removing, laundering, storing, leaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators; and

(x) For construction work, procedures used to restrict access to work areas when airborne exposures are, or can reasonably be expected to be, above the TWA PEL or STEL, to minimize the number of employees exposed to airborne beryllium and their level of exposure, including exposures generated by other employers or sole proprietors.

(b) The employer must review and evaluate the effectiveness of each written exposure control plan at least annually and update it, as necessary, when:

(i) Any change in production processes, materials, equipment, personnel, work practices, or control methods results, or can reasonably be expected to result, in new or additional airborne exposure to beryllium;

(ii) The employer is notified that an employee is eligible for medical removal in accordance with WAC 296-850-160, referred for evaluation at a CBD diagnostic center, or shows signs or symptoms associated with airborne exposure to or dermal contact with beryllium; or

(iii) The employer has any reason to believe that new or additional airborne exposure is occurring or will occur.

(c) The employer must make a copy of the written exposure control plan accessible to each employee who is, or can reasonably be expected to be, exposed to airborne beryllium in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(2) Engineering and work practice controls.

(a) The employer must use engineering and work practice controls to reduce and maintain employee airborne exposure to beryllium to or below the PEL and STEL, unless the employer can demonstrate that such controls are not feasible. Wherever the employer demonstrates that it is not feasible to reduce airborne exposure to or below the PELs with engineering and work practice controls, the employer must implement and maintain engineering and work practice controls to reduce airborne exposure to the lowest levels feasible and supplement these controls using respiratory protection in accordance with WAC 296-850-135 Respiratory protection.

(b) Where exposures are, or can reasonably be expected to be, at or above the action level, the employer must ensure that at least one of the following is in place to reduce airborne exposure:

- (i) Material and/or process substitution;
- (ii) Isolation, such as ventilated partial or full enclosures;
- (iii) Local exhaust ventilation, such as at the points of operation, material handling, and transfer; or
- (iv) Process control, such as wet methods and automation.

(c) An employer is exempt from using these controls to the extent that:

- (i) The employer can establish that such controls are not feasible; or
- (ii) The employer can demonstrate that airborne exposure is below the action level, using no fewer than two representative personal breathing zone samples taken at least seven days apart, for each affected operation.

(3) **Prohibition of rotation.** The employer must not rotate employees to different jobs to achieve compliance with the PELs.

NEW SECTION

WAC 296-850-135 Respiratory protection. (1) General. The employer must provide respiratory protection at no cost to the employee and ensure that each employee uses respiratory protection:

(a) During periods necessary to install or implement feasible engineering and work practice controls where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL;

(b) During operations, including maintenance and repair activities and nonroutine tasks, when engineering and work practice controls are not feasible and airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL;

(c) During operations for which an employer has implemented all feasible engineering and work practice controls when such controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL;

(d) During emergencies; and

(e) When an employee who is eligible for medical removal under WAC 296-850-160(1) chooses to remain in a job with airborne exposure at or above the action level, as permitted by WAC 296-850-160 (2)(b).

(2) **Respiratory protection program.** Where this standard requires an employer to provide respiratory protection, the selection and use of such respiratory protection must be in accordance with chapter 296-842 WAC, Respirators.

(3) The employer must provide at no cost to the employee a powered air-purifying respirator (PAPR) instead of a negative pressure respirator when:

- (a) Respiratory protection is required by this standard;
- (b) An employee entitled to such respiratory protection requests a PAPR; and

(c) The PAPR provides adequate protection to the employee in accordance with subsection (2) of this section, respiratory protection program of this rule.

NEW SECTION

WAC 296-850-140 Personal protective clothing and equipment. (1) Provision and use. The employer must provide at no cost, and ensure that each employee uses, appropriate personal protective clothing and equipment in accordance with the written exposure control plan required under subsection (1) of this section and other applicable requirements for personal protective equipment. (WAC 296-800-160 Summary personal protective equipment (PPE). Chapter 296-155 WAC, Part C, Personal protective and lifesaving equipment. WAC 296-304-090 Personal protective equipment (PPE)—General requirements.):

(a) Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL; or

(b) Where there is a reasonable expectation of dermal contact with beryllium.

(2) Removal and storage.

(a) The employer must ensure that each employee removes all beryllium-contaminated personal protective clothing and equipment at the end of the work shift, at the completion of tasks involving beryllium, or when personal protective clothing or equipment becomes visibly contaminated with beryllium, whichever comes first.

(b) The employer must ensure that each employee removes beryllium-contaminated personal protective clothing and equipment as specified in the written exposure control plan required by WAC 296-850-130(1).

(c) The employer must ensure that each employee stores and keeps beryllium-contaminated personal protective clothing and equipment separate from street clothing and that storage facilities prevent cross-contamination as specified in the

written exposure control plan required by WAC 296-850-130(1).

(d) The employer must ensure that no employee removes beryllium-contaminated personal protective clothing or equipment from the workplace, except for employees authorized to do so for the purposes of laundering, cleaning, maintaining or disposing of beryllium-contaminated personal protective clothing and equipment at an appropriate location or facility away from the workplace.

(e) When personal protective clothing or equipment required by this standard is removed from the workplace for laundering, cleaning, maintenance or disposal, the employer must ensure that personal protective clothing and equipment are stored and transported in sealed bags or other closed containers that are impermeable and are labeled in accordance with WAC 296-850-165(3) and chapter 296-901 WAC, Globally harmonized system for hazard communication.

(3) Cleaning and replacement.

(a) The employer must ensure that all reusable personal protective clothing and equipment required by this standard is cleaned, laundered, repaired, and replaced as needed to maintain its effectiveness.

(b) The employer must ensure that beryllium is not removed from beryllium-contaminated personal protective clothing and equipment by blowing, shaking or any other means that disperses beryllium into the air.

(c) The employer must inform in writing the persons or the business entities who launder, clean or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of airborne exposure to and dermal contact with beryllium and that the personal protective clothing and equipment must be handled in accordance with this standard.

NEW SECTION

WAC 296-850-145 Hygiene areas and practices. (1)

General. For each employee working in a beryllium work area or required to use personal protective clothing or equipment by this rule in construction work, ship breaking, ship building, or ship repairing, the employer must:

(a) Provide readily accessible washing facilities in accordance with this standard and other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation) to remove beryllium from the hands, face, and neck; and

(b) Ensure that employees who have dermal contact with beryllium wash any exposed skin at the end of the activity, process, or work shift and prior to eating, drinking, smoking, chewing tobacco or gum, applying cosmetics, or using the toilet.

(2) **Change rooms.** In addition to the requirements of subsection (1)(a) of this section, the employer must provide employees who work in a beryllium work area with a designated change room in accordance with this standard and other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-

304-06002 Sanitation) where employees are required to remove their personal clothing.

(3) Showers.

(a) The employer must provide showers in accordance with other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation) where:

(i) Airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL; and

(ii) Employees' hair or body parts other than hands, face, and neck can reasonably be expected to become contaminated with beryllium.

(b) Employers required to provide showers must ensure that each employee showers at the end of the work shift or work activity if:

(i) The employee reasonably could have had airborne exposure above the TWA PEL or STEL; and

(ii) The employee's hair or body parts other than hands, face, and neck could reasonably have become contaminated with beryllium.

(4) **Eating and drinking areas.** Wherever the employer allows employees to consume food or beverages at a worksite where beryllium is present, the employer must ensure that:

(a) Beryllium-contaminated surfaces in eating and drinking areas are as free as practicable of beryllium;

(b) No employees enter any eating or drinking area with beryllium-contaminated personal protective clothing or equipment unless, prior to entry, surface beryllium has been removed from the clothing or equipment by methods that do not disperse beryllium into the air or onto an employee's body; and

(c) Eating and drinking facilities provided by the employer are in accordance with other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation).

(5) **Prohibited activities.** The employer must ensure that no employees eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas and other work areas where there is a reasonable expectation of exposure above the TWA PEL or STEL.

NEW SECTION

WAC 296-850-150 Housekeeping. (1) General.

(a) The employer must maintain all surfaces in beryllium work areas and regulated areas as free as practicable of beryllium and in accordance with the written exposure control plan required under WAC 296-850-130(1) and the cleaning methods required under this subsection;

(b) In construction work, ship breaking, ship building or ship repairing, when cleaning beryllium-contaminated areas, the employer must follow the written exposure control plan required under WAC 296-850-130(1); and

(c) The employer must ensure that all spills and emergency releases of beryllium are cleaned up promptly and in accordance with the written exposure control plan required under WAC 296-850-130(1) and the cleaning methods required under this subsection.

(2) Cleaning methods.

(a) The employer must ensure that surfaces in beryllium work areas and regulated areas are cleaned by HEPA-filtered vacuuming or other methods that minimize the likelihood and level of airborne exposure.

(b) The employer must not allow dry sweeping or brushing for cleaning surfaces in beryllium-work areas or regulated areas unless HEPA-filtered vacuuming or other methods that minimize the likelihood and level of airborne exposure are not safe or effective.

(c) The employer must not allow the use of compressed air for cleaning beryllium-contaminated surfaces unless the compressed air is used in conjunction with a ventilation system designed to capture the particulates made airborne by the use of compressed air.

(d) Where employees use dry sweeping, brushing, or compressed air to clean beryllium-contaminated surfaces, the employer must provide, and ensure that each employee uses, respiratory protection and personal protective clothing and equipment in accordance with WAC 296-850-135 Respiratory protection, and WAC 296-850-140 Personal protective clothing and equipment.

(e) The employer must ensure that cleaning equipment is handled and maintained in a manner that minimizes the likelihood and level of airborne exposure and the reentrainment of airborne beryllium in the workplace.

(3) Disposal and recycling. For materials that contain beryllium in concentrations of 0.1 percent by weight or more or are contaminated with beryllium, the employer must ensure that:

(a) Materials designated for disposal are disposed of in sealed, impermeable enclosures, such as bags or containers, that are labeled in accordance with WAC 296-850-165(3) warning labels.

(b) Materials designated for recycling are cleaned to be as free as practicable of surface beryllium contamination and labeled in accordance with WAC 296-850-165(3), or placed in sealed, impermeable enclosures, such as bags or containers, that are labeled in accordance with WAC 296-850-165(3).

NEW SECTION**WAC 296-850-155 Medical surveillance. (1) General.**

(a) The employer must make medical surveillance required by this section available at no cost to the employee, and at a reasonable time and place, to each employee:

(i) Who is or is reasonably expected to be exposed at or above the action level for more than thirty days per year;

(ii) Who shows signs or symptoms of CBD or other beryllium-related health effects;

(iii) Who is exposed to beryllium during an emergency; or

(iv) Whose most recent written medical opinion required by this section recommends periodic medical surveillance.

(b) The employer must ensure that all medical examinations and procedures required by this standard are performed by, or under the direction of, a licensed physician.

(c) When requested by an employee who provides the employer with an abnormal or borderline finding for a single

blood BeLPT or two borderline blood BeLPT, the employer must arrange for medical examinations and procedures to be performed at a CBD diagnostic center that is mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360).

(2) Frequency. The employer must provide a medical examination:

(a) Within thirty days after determining that:

(i) An employee meets the criteria of subsection (1)(a)(i) of this section, unless the employee has received a medical examination, provided in accordance with this standard, within the last two years; or who shows signs or symptoms of CBD or other beryllium-related health effects;

(ii) An employee meets the criteria of subsection (1)(a)(ii) or (iii) of this section.

(b) At least every two years thereafter for each employee who continues to meet the criteria of subsection (1)(a)(i), (ii), or (iv) of this section.

(c) At the termination of employment for each employee who meets any of the criteria of subsection (1)(a) of this section at the time the employee's employment terminates, unless an examination has been provided in accordance with this standard during the six months prior to the date of termination.

(3) Contents of examination.

(a) The employer must ensure that the PLHCP conducting the examination advises the employee of the risks and benefits of participating in the medical surveillance program and the employee's right to opt out of any or all parts of the medical examination.

(b) The employer must ensure that the employee is offered a medical examination that includes:

(i) A medical and work history, with emphasis on past and present airborne exposure to or dermal contact with beryllium, smoking history, and any history of respiratory system dysfunction;

(ii) A physical examination with emphasis on the respiratory system;

(iii) A physical examination for skin rashes;

(iv) Pulmonary function tests, performed in accordance with the guidelines established by the American Thoracic Society including forced vital capacity (FVC) and forced expiratory volume in one second (FEV1);

(v) A standardized BeLPT or equivalent test, upon the first examination and at least every two years thereafter, unless the employee is confirmed positive. If the results of the BeLPT are other than normal, follow-up BeLPT testing must be offered within thirty days, unless the employee has been confirmed positive or unless the employee requests a medical examination as according to subsection (1)(c) of this section. Samples must be analyzed in a laboratory certified under the College of American Pathologists/Clinical Laboratory Improvement Amendments (CLIA) guidelines to perform the BeLPT;

(vi) A low dose computed tomography (LDCT) scan, when recommended by the PLHCP after considering the employee's history of exposure to beryllium along with other

risk factors, such as smoking history, family medical history, sex, age, and presence of existing lung disease; and

(vii) Any other test deemed appropriate by the PLHCP.

(4) **Information provided to the PLHCP.** The employer must ensure that the examining PLHCP (and the evaluating CBD diagnostic center, if an evaluation is required under subsection (7) of this section) has a copy of this rule and must provide the following information, if known:

(a) A description of the employee's former and current duties that relate to the employee's airborne exposure to and dermal contact with beryllium;

(b) The employee's former and current levels of airborne exposure;

(c) A description of any personal protective clothing and equipment, including respirators, used by the employee, including when and for how long the employee has used that personal protective clothing and equipment; and

(d) Information from records of employment-related medical examinations previously provided to the employee, currently within the control of the employer, after obtaining written consent from the employee.

(5) **Licensed physician's written medical report for the employee.**

Exception: When the PLHCP assists the worker in filing a claim under Title 51 RCW, Industrial insurance, the PLHCP does not need to prepare a separate report for the employee if all the information required in this section is entered into the claim record, the report is directly shared with the employee, and the PLHCP explains the results of the examination to the employee. The PLHCP may provide additional reports or notes to make sure the employee understands the results of the examination and recommendations.

The employer must ensure that the employee receives a written medical report from the licensed physician within forty-five days of the examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section) and that the PLHCP explains the results of the examination to the employee. The written medical report must contain:

(a) A statement indicating the results of the medical examination, including the licensed physician's opinion as to whether the employee has:

(i) Any detected medical condition, such as CBD or beryllium sensitization (i.e., the employee is confirmed positive, as defined in WAC 296-850-090), that may place the employee at increased risk from further airborne exposure; and

(ii) Any medical conditions related to airborne exposure that require further evaluation or treatment.

(b) Any recommendations on:

(i) The employee's use of respirators, protective clothing, or equipment; or

(ii) Limitations on the employee's airborne exposure to beryllium.

(c) If the employee is confirmed positive or diagnosed with CBD or if the licensed physician otherwise deems it appropriate, the written report must also contain a referral for an evaluation at a CBD diagnostic center.

(d) If the employee is confirmed positive or diagnosed with CBD, the written report must also contain a recommendation for continued periodic medical surveillance.

(e) If the employee is confirmed positive or diagnosed with CBD, the written report must also contain a recommendation for medical removal from airborne exposure to beryllium, as described in WAC 296-850-160.

(6) **Licensed physician's written medical opinion for the employer.**

Exception: When a claim has been initiated the PLHCP does not need to prepare a separate report for the employer if all information required in this section is entered into the claim record. As part of initiating a claim, the employee agrees to share all of the relevant medical records, and the limits on information reported to the employer in this section do not apply.

(a) The employer must obtain a written medical opinion from the licensed physician within forty-five days of the medical examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section). The written medical opinion must contain only the following:

(i) The date of the examination;

(ii) A statement that the examination has met the requirements;

(iii) Any recommended limitations on the employee's use of respirators, protective clothing, or equipment; and

(iv) A statement that the PLHCP has explained the results of the medical examination to the employee, including any tests conducted, any medical conditions related to airborne exposure that require further evaluation or treatment, and any special provisions for use of personal protective clothing or equipment.

(b) If the employee provides written authorization, the written opinion must also contain any recommended limitations on the employee's airborne exposure to beryllium.

(c) If the employee is confirmed positive or diagnosed with CBD or if the licensed physician otherwise deems it appropriate, and the employee provides written authorization, the written opinion must also contain a referral for an evaluation at a CBD diagnostic center.

(d) If the employee is confirmed positive or diagnosed with CBD and the employee provides written authorization, the written opinion must also contain a recommendation for continued periodic medical surveillance.

(e) If the employee is confirmed positive or diagnosed with CBD and the employee provides written authorization, the written opinion must also contain a recommendation for medical removal from airborne exposure to beryllium, as described in WAC 296-850-160.

(f) The employer must ensure that each employee receives a copy of the written medical opinion described in this subsection within forty-five days of any medical examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section) performed for that employee.

(7) **CBD diagnostic center.**

(a) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360). The examination must be provided within thirty days of:

(i) The employer's receipt of a physician's written medical opinion to the employer that recommends referral to a CBD diagnostic center; or

(ii) The employee presenting to the employer a physician's written medical report indicating that the employee has been confirmed positive or diagnosed with CBD, or recommending referral to a CBD diagnostic center.

(b) The employer must ensure that the employee receives a written medical report from the CBD diagnostic center that contains all the information required in subsection (5)(a), (b), (c), and (e) of this section and that the PLHCP explains the results of the examination to the employee within thirty days of the examination.

(c) The employer must obtain a written medical opinion from the CBD diagnostic center within thirty days of the medical examination. The written medical opinion must contain only the information in subsection (6)(a) of this section, as applicable, unless the employee provides written authorization to release additional information. If the employee provides written authorization, the written opinion must also contain the information from subsection (6)(b), (d), and (e) of this section, if applicable.

(d) The employer must ensure that each employee receives a copy of the written medical opinion from the CBD diagnostic center described in this subsection within thirty days of any medical examination performed for that employee.

(e) After an employee has received the initial clinical evaluation at a CBD diagnostic center described in (a) of this subsection, the employee may choose to have any subsequent medical examinations for which the employee is eligible under this section performed at a CBD diagnostic center mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360). The employer must provide such examinations at no cost to the employee.

NEW SECTION

WAC 296-850-160 Medical removal. (1) An employee is eligible for medical removal, if the employee works in a job with airborne exposure at or above the action level and either:

(a) The employee provides the employer with:

(i) An abnormal or borderline finding for a single blood BeLPT test, until confirmatory testing is completed; or

(ii) A written medical report indicating a confirmed positive finding or CBD diagnosis; or

(iii) A written medical report recommending removal from airborne exposure to beryllium in accordance with WAC 296-850-155 (5)(e) or (7)(b); or

(b) The employer receives a written medical opinion recommending removal from airborne exposure to beryllium in accordance with WAC 296-850-155 (6)(e) or (7)(c).

(2) If an employee is eligible for medical removal, the employer must provide the employee with the employee's choice of:

(a) Removal as described in subsection (3) of this section; or

(b) Remaining in a job with airborne exposure at or above the action level, provided that the employer provides, and ensures that the employee uses, respiratory protection that complies with WAC 296-850-135 Respiratory protection, of this rule whenever airborne exposures are at or above the action level.

(3) If the employee chooses removal:

(a) If a comparable job is available where airborne exposures to beryllium are below the action level, and the employee is qualified for that job or can be trained within one month, the employer must remove the employee to that job. The employer must maintain for six months from the time of removal the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal.

(b) If comparable work is not available, the employer must maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal for six months or until such time that comparable work described in (a) of this subsection becomes available, whichever comes first.

(4) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal from a publicly or employer-funded compensation program, or receives income from another employer made possible by virtue of the employee's removal.

NEW SECTION

WAC 296-850-165 Communication of hazards. (1) **General.**

(a) Chemical manufacturers, importers, distributors, and employers must comply with all requirements of chapter 296-901 WAC, Globally harmonized system for hazard communication, for beryllium.

(b) In classifying the hazards of beryllium, at least the following hazards must be addressed: Cancer; lung effects (CBD and acute beryllium disease); beryllium sensitization; skin sensitization; and skin, eye, and respiratory tract irritation.

(c) Employers must include beryllium in the hazard communication program established to comply with the HCS. Employers must ensure that each employee has access to labels on containers of beryllium and to safety data sheets, and is trained in accordance with the requirements of chapter 296-901 WAC, Globally harmonized system for hazard communication, and subsection (4) of this section.

(2) **Warning signs.**

(a) **Posting.** The employer must provide and display warning signs at each approach to a regulated area so that each employee is able to read and understand the signs and take necessary protective steps before entering the area.

(b) **Sign specification.**

(i) The employer must ensure that the warning signs required by (a) of this subsection are legible and readily visible.

(ii) The employer must ensure each warning sign required by (a) of this subsection bears the following legend:

DANGER
REGULATED AREA
BERYLLIUM
MAY CAUSE CANCER
CAUSES DAMAGE TO LUNGS
AUTHORIZED PERSONNEL ONLY
WEAR RESPIRATORY PROTECTION AND PERSONAL
PROTECTIVE CLOTHING AND EQUIPMENT IN THIS AREA

(3) **Warning labels.** Consistent with chapter 296-901 WAC, Globally harmonized system for hazard communication, the employer must label each bag and container of clothing, equipment, and materials contaminated with beryllium, and must, at a minimum, include the following on the label:

DANGER
CONTAINS BERYLLIUM
MAY CAUSE CANCER
CAUSES DAMAGE TO LUNGS
AVOID CREATING DUST
DO NOT GET ON SKIN

(4) **Employee information and training.**

(a) For each employee who has, or can reasonably be expected to have, airborne exposure to or dermal contact with beryllium:

(i) The employer must provide information and training in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication;

(ii) The employer must provide initial training to each employee by the time of initial assignment; and

(iii) The employer must repeat the training required under this standard annually for each employee.

(b) The employer must ensure that each employee who is, or can reasonably be expected to be, exposed to airborne beryllium can demonstrate knowledge and understanding of the following:

(i) The health hazards associated with airborne exposure to and contact with beryllium, including the signs and symptoms of CBD;

(ii) The written exposure control plan, with emphasis on the location(s) of beryllium work areas, including any regulated areas, and the specific nature of operations that could result in airborne exposure, especially airborne exposure above the TWA PEL or STEL;

(iii) The purpose, proper selection, fitting, proper use, and limitations of personal protective clothing and equipment, including respirators;

(iv) Applicable emergency procedures;

(v) Measures employees can take to protect themselves from airborne exposure to and contact with beryllium, including personal hygiene practices;

(vi) The purpose and a description of the medical surveillance program required by WAC 296-850-155 including risks and benefits of each test to be offered;

(vii) The purpose and a description of the medical removal protection provided under WAC 296-850-160;

(viii) The contents of the standard; and

(ix) The employee's right of access to records under chapter 296-802 WAC, Employee medical and exposure records.

(c) When a workplace change (such as modification of equipment, tasks, or procedures) results in new or increased airborne exposure that exceeds, or can reasonably be expected to exceed, either the TWA PEL or the STEL, the employer must provide additional training to those employees affected by the change in airborne exposure.

(d) Employee information. The employer must make a copy of this rule and its appendices readily available at no cost to each employee and designated employee representative(s).

NEW SECTION

WAC 296-850-170 Recordkeeping. (1) Air monitoring data.

(a) The employer must make and maintain a record of all exposure measurements taken to assess airborne exposure as prescribed in WAC 296-850-115 Exposure assessment.

(b) This record must include at least the following information:

(i) The date of measurement for each sample taken;

(ii) The task that is being monitored;

(iii) The sampling and analytical methods used and evidence of their accuracy;

(iv) The number, duration, and results of samples taken;

(v) The type of personal protective clothing and equipment, including respirators, worn by monitored employees at the time of monitoring; and

(vi) The name, Social Security number, and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.

(c) The employer must ensure that exposure records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(2) Objective data.

(a) Where an employer uses objective data to satisfy the exposure assessment requirements under WAC 296-850-115, the employer must make and maintain a record of the objective data relied upon.

(b) This record must include at least the following information:

(i) The data relied upon;

(ii) The beryllium-containing material in question;

(iii) The source of the objective data;

(iv) A description of the process, task, or activity on which the objective data were based; and

(v) Other data relevant to the process, task, activity, material, or airborne exposure on which the objective data were based.

(c) The employer must ensure that objective data are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(3) Medical surveillance.

(a) The employer must make and maintain a record for each employee covered by medical surveillance under WAC 296-850-155.

(b) The record must include the following information about each employee:

(i) Name, Social Security number, and job classification;

(ii) A copy of all licensed physicians' written medical opinions for each employee; and

(iii) A copy of the information provided to the PLHCP as required by WAC 296-850-155(4).

(c) The employer must ensure that medical records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(4) Training.

(a) At the completion of any training required by this standard, the employer must prepare a record that indicates the name, Social Security number, and job classification of each employee trained, the date the training was completed, and the topic of the training.

(b) This record must be maintained for three years after the completion of training.

(5) **Access to records.** The employer shall ensure records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(6) **Transfer of records.** The employer must comply with the requirements involving transfer of records set forth in chapter 296-802 WAC, Employee medical and exposure records.

NEW SECTION

WAC 296-850-175 Dates. (1) **Effective date.** This standard shall become effective December 12, 2018.

(2) **Compliance dates.** All obligations of this standard commence and become enforceable on December 12, 2018, except:

(a) Change rooms and showers required by WAC 296-850-145 of this standard must be provided by March 11, 2019; and

(b) Engineering controls required by WAC 296-850-130 Methods of compliance, of this rule must be implemented by March 10, 2020.

NEW SECTION

WAC 296-850-180 Appendix A—Control strategies to minimize beryllium exposure of this standard is nonmandatory. WAC 296-850-130(2) of this chapter requires employers to use one or more of the control methods listed in WAC 296-850-130(2) to minimize worker exposure in each operation in a beryllium work area, unless the operation is exempt under WAC 296-850-130 (2)(b). This appendix sets forth a nonexhaustive list of control options that employers could use to comply with WAC 296-850-130(2) for a number of specific beryllium operations.

Table A.1: Exposure Control Recommendations

Operation	Minimal Control Strategy*	Application Group
Beryllium Oxide Forming (e.g., pressing, extruding)	<p>For pressing operations:</p> <p>(1) Install local exhaust ventilation (LEV) on oxide press tables, oxide feed drum breaks, press tumblers, powder rollers, and die set disassembly stations;</p> <p>(2) Enclose the oxide presses; and</p> <p>(3) Install mechanical ventilation (make-up air) in processing areas.</p> <p>For extruding operations:</p> <p>(1) Install LEV on extruder powder loading hoods, oxide supply bottles, rod breaking operations, centerless grinders, rod laydown tables, dicing operations, surface grinders, discharge end of extrusion presses;</p> <p>(2) Enclose the centerless grinders; and</p> <p>(3) Install mechanical ventilation (make-up air) in processing areas.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites
Chemical Processing Operations (e.g., leaching, pickling, degreasing, etching, plating)	<p>For medium and high gassing operations:</p> <p>(1) Perform operation with a hood having a maximum of one open side; and</p> <p>(2) Design process so as to minimize spills; if accidental spills occur, perform immediate cleanup.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Copper Rolling, Drawing and Extruding

Operation	Minimal Control Strategy*	Application Group
Finishing (e.g., grinding, sanding, polishing, deburring)	<p>(1) Perform portable finishing operations in a ventilated hood. The hood should include both downdraft and backdraft ventilation, and have at least two sides and a top.</p> <p>(2) Perform stationary finishing operations using a ventilated and enclosed hood at the point of operation. The grinding wheel of the stationary unit should be enclosed and ventilated.</p>	Secondary Smelting; Fabrication of Beryllium Alloy Products; Dental Labs
Furnace Operations (e.g., Melting and Casting)	<p>(1) Use LEV on furnaces, pelletizer; arc furnace ingot machine discharge; pellet sampling; arc furnace bins and conveyors; beryllium hydroxide drum dumper and dryer; furnace rebuilding; furnace tool holders; arc furnace tundish and tundish skimming, tundish preheat hood, and tundish cleaning hoods; dross handling equipment and drums; dross recycling; and tool repair station, charge make-up station, oxide screener, product sampling locations, drum changing stations, and drum cleaning stations.</p> <p>(2) Use mechanical ventilation (make-up air) in furnace building.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Nonferrous Foundries; Secondary Smelting
Machining	<p>Use: (1) LEV consistent with ACGIH® ventilation guidelines on deburring hoods, wet surface grinder enclosures, belt sanding hoods, and electrical discharge machines (for operations such as polishing, lapping, and buffing);</p> <p>(2) High velocity low volume hoods or ventilated enclosures on lathes, vertical mills, CNC mills, and tool grinding operations;</p> <p>(3) For beryllium oxide ceramics, LEV on lapping, dicing, and laser cutting; and</p> <p>(4) Wet methods (e.g., coolants).</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Copper Rolling, Drawing, and Extruding; Precision Turned Products
Mechanical Processing (e.g., material handling (including scrap), sorting, crushing, screening, pulverizing, shredding, pouring, mixing, blending)	<p>(1) Enclose and ventilate sources of emission;</p> <p>(2) Prohibit open handling of materials; and</p> <p>(3) Use mechanical ventilation (make-up air) in processing areas.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Aluminum and Copper Foundries; Secondary Smelting
Metal Forming (e.g., rolling, drawing, straightening, annealing, extruding)	<p>(1) For rolling operations, install LEV on mill stands and reels such that a hood extends the length of the mill;</p> <p>(2) For point and chamfer operations, install LEV hoods at both ends of the rod;</p>	Primary Beryllium Production; Copper Rolling, Drawing, and Extruding; Fabrication of Beryllium Alloy Products

Operation	Minimal Control Strategy*	Application Group
	(3) For annealing operations, provide an inert atmosphere for annealing furnaces, and LEV hoods at entry and exit points; (4) For swaging operations, install LEV on the cutting head; (5) For drawing, straightening, and extruding operations, install LEV at entry and exit points; and (6) For all metal forming operations, install mechanical ventilation (make-up air) for processing areas.	
Welding	For fixed welding operations: (1) Enclose work locations around the source of fume generation and use local exhaust ventilation; and (2) Install close capture hood enclosure designed so as to minimize fume emission from the enclosure welding operation. For manual operations: (1) Use portable local exhaust and general ventilation.	Primary Beryllium Production; Fabrication of Beryllium Alloy Products; Welding

* All LEV specifications should be in accordance with the ACGIH® Publication No. 2094, "Industrial Ventilation - A Manual of Recommended Practice" wherever applicable.

NEW SECTION

WAC 296-850-190 Appendix B—Considerations when using the blood beryllium lymphocyte proliferation test in the screening and evaluation of beryllium sensitization—Nonmandatory.

Purpose:

The purpose of this appendix is to provide medical information and recommendations to aid physicians and other licensed health care professionals (PLHCPs) regarding compliance with the medical surveillance provisions of the beryllium standard. Appendix B is for informational and guidance purposes only and none of the statements in Appendix B should be construed as imposing a mandatory requirement on employers that is not otherwise imposed by the beryllium standard (chapter 296-850 WAC, Beryllium). The complete medical surveillance requirements for examinations and procedures under this chapter are described in WAC 296-850-155.

Chronic Beryllium Disease and Beryllium Sensitization:

Chronic beryllium disease (CBD) is a chronic granulomatous (inflammatory) disease primarily of the lung, caused by exposure to beryllium that meets the diagnostic criteria published in the *Department of Labor and Industries Clinical Guideline for the Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*. Some patients diagnosed with CBD remain free of symptoms following diagnosis, while others develop progressive worsening of clinically significant disease. (Balmes et al. 2014. Page e54) "Medical therapy

of CBD is directed at suppressing the immune response to beryllium and subsequent granuloma formation and fibrosis." (Ibid)

Summarizing their review of the development of beryllium sensitization, the Federal Occupational Safety and Health Administration (OSHA) described how the immune systems of sensitized workers have been activated to react to beryllium exposures such that subsequent exposure to beryllium can progress to serious lung disease. (OSHA 2017, page 2492) According to this rule, sensitized workers are considered to be confirmed positive if supported by two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, or any cases confirmed by the criteria published in the *Department of Labor and Industries Clinical Guideline for the Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

It is prudent to remove sensitized workers from further exposure to beryllium. (Balmes et al. 2014; OSHA 2017)

Additional information regarding beryllium sensitization and chronic beryllium disease are included in the *Department of Labor and Industries Clinical Guideline for the Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*, which may be requested from the department.

The Beryllium Lymphocyte Proliferation Test:

The beryllium lymphocyte proliferation test is performed by taking lymphocytes from either bronchoalveolar lavage fluid (the BAL BeLPT) or peripheral blood (the blood

BeLPT), culturing them *in vitro*, and exposing them to beryllium sulfate to stimulate lymphocyte proliferation. The observation of beryllium-specific proliferation indicates beryllium sensitization.

While test results from either the blood BeLPT or the BAL BeLPT can be used to confirm sensitization to beryllium, (L&I Clinical Beryllium Guideline) it is the blood BeLPT that is typically used when screening for beryllium sensitization. Abnormal and borderline test results are considered "other than normal" in that they form the basis for diagnosing beryllium sensitization according to the diagnostic criteria used by this rule. Under these diagnostic criteria, no single blood BeLPT result can be used to diagnose beryllium sensitization.

The sensitivity of the BeLPT refers to its ability to correctly yield an other than normal result (i.e., abnormal or borderline) in those who are truly sensitized to beryllium. The specificity of the test refers to its ability to correctly yield a normal result in those who are not sensitized to beryllium.

Per Stange et al. (2004) and Middleton et al. (2006), for a single blood BeLPT the sensitivity is 0.723, and the specificity is 0.9737.

Abnormal or borderline results in workers who are in fact not sensitized to beryllium are considered false positives. Normal results in workers who are truly sensitized to beryllium are considered false negatives.

The diagnostic criteria for confirmed positive beryllium sensitization used by this rule requires any single abnormal or borderline blood BeLPT result be confirmed, which reduces the risk of unsensitized workers being falsely labeled as sensitized by false positive results of the blood BeLPT.

With a sensitivity of 0.723, a single blood BeLPT would be expected to falsely yield a negative result in nearly thirty percent of truly sensitized workers who undergo the test. Testing algorithms have been published that use multiple blood BeLPTs to reduce false negative results while continuing to control the risk of false positives. (Middleton et al. 2006, L&I Clinical Beryllium Guideline)

Thus, by controlling the sequence and number of blood BeLPTs he or she orders, the ordering provider exerts significant control over the risk that workers who are truly sensitized to beryllium could be falsely labeled as unsensitized due to false negative results of the blood BeLPT. The following is designed to provide information to assist the ordering provider who tailors these decisions to the needs of the population and individuals being tested.

These published testing algorithms reduce the risk of false negatives by using split-sample blood beryllium lymphocyte proliferation testing, which is the measurement of blood lymphocyte proliferation in two laboratory tests when a single sample of blood is split into two samples and sent to two independent laboratories, whereupon the lymphocytes are challenged with a soluble beryllium salt and two results returned. (Welch et al. 2004; Middleton et al. 2006; Balmes et al. 2014, OSHA 2017)

The highest sensitivity for performing beryllium sensitization testing using the blood BeLPT (86%) described in NIOSH beryllium rulemaking testimony (NIOSH page 32) relies upon a testing algorithm that requires either one or two rounds of testing, where split-sample blood BeLPTs are per-

formed at each round. Thus, a minimum of two initial blood BeLPTs are obtained from independent laboratories in this testing algorithm, followed if needed by a second simultaneously-obtained pair. (Middleton et al. 2006)

An alternative algorithm with a lower sensitivity (65.7%) uses a single blood BeLPT for the initial round of testing. If the initial result is abnormal or borderline, this triggers a second round of testing with a split-sample blood BeLPT. (Ibid)

Round two split-sample testing:

Although not required by this rule, providers should consider the advantages of using split-sample testing for the second round of blood BeLPT testing, compared to single-sample testing:

- If only a single blood BeLPT is performed during a second round of testing, nearly thirty percent of truly sensitized workers would be expected to have a false negative test result and additional evaluation recommended.

- Split-sample testing for the second round decreases the risk of such false-negative results

- Based on published blood BeLPT performance characteristics (Stange et al. 2004; Middleton et al. 2006) false negative tests are more common than false positives (unless beryllium sensitization is sufficiently rare in the screened population.)

- For some result patterns, split-sample testing may be a faster way to arrive at a sensitization determination, which may be particularly relevant for workers who are receiving medical removal protection benefits while the diagnostic evaluation proceeds

- The risk of false-positives is low with either algorithm that uses split-sample testing (Middleton et al. 2006)

Per WAC 296-850-155 (3)(b)(v) and (vii), employers must make split-sample testing available to workers if requested by the provider who is determining whether an employee is sensitized to beryllium. In addition, WAC 296-850-155 (3)(b)(v) and (vii) requires employers to make multiple rounds of blood BeLPT testing available if requested by the provider. Providers need not cease testing if an initial abnormal or borderline result is followed by single- instead of split-sample testing and a single negative blood BeLPT results, for example.

Per WAC 296-850-155 (5)(c) and (6)(c) providers may at any time choose to refer workers to their choice of either a chronic beryllium disease diagnostic center that is mutually agreed upon by the employer and the employee, or to a facility recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360).

Round one split-sample testing:

Although not required by this rule, providers should also consider circumstances under which split-sample testing at the time of the initial evaluation may be advantageous:

- This achieves the highest sensitivity (86%) of any screening algorithm described in this appendix, while controlling the risk of false-positive test results. (Middleton et al. 2006)

- Except in populations where beryllium sensitization is sufficiently rare, this increase in sensitivity compared to per-

forming the first round of testing with just a single blood BeLPT significantly reduces the number of false negative test results relative to the increase in false positives.

- Patient-specific considerations include the risk of loss-to-follow-up, the expected time to next screening examination, provider index of suspicion, and the consequences of sustaining ongoing exposure to beryllium in the case of a missed diagnosis.

Additional considerations:

The tests used to diagnose beryllium sensitization may have been performed at any time following exposure. (L&I Clinical Beryllium Guideline) Thus, there may be a need to gather additional records of tests that have yielded abnormal or borderline results, but that may not be in the possession of the employer or provided to the provider at the start of the screening examination.

Diagnostic criteria used in the rule anticipate the possibility of false-negative testing: If deemed appropriate, sensitization can be confirmed by bronchoalveolar lavage BeLPT (BAL BeLPT). (L&I Clinical Beryllium Guideline)

Diagnosing chronic beryllium disease using the secondary diagnostic pathway requires all criteria be met and requires the performance of both the blood BeLPT and BAL BeLPT (unless medically contraindicated), but does not require sensitization be confirmed as described in the primary diagnostic pathway. (L&I Clinical Beryllium Guideline)

Concluding recommendations:

Providers should consider providing split-sample blood BeLPTs in nearly all circumstances where round two testing is indicated or required.

Providers should consider whether patient- and population-based considerations warrant using split-sample testing for the first round of blood BeLPT testing.

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WSR 18-17-163

PERMANENT RULES

TRANSPORTATION COMMISSION

[Filed August 21, 2018, 2:55 p.m., effective February 1, 2019]

Effective Date of Rule: February 1, 2019.

Purpose: The purpose of this rule making is to propose amendments to definitions, toll rate exemptions, and administrative fee rules in chapter 468-270 WAC to provide a consistent set of non-HOV exemptions and fees for all toll facilities in the state. This rule brings consistency to exemption definitions; expands transit, rideshare, private bus, and school bus exemptions to the Tacoma Narrows Bridge facility; eliminates the requirement that emergency vehicles be responding to or returning from a bona fide emergency; and removes the short-term account discount.

Citation of Rules Affected by this Order: New WAC 468-270-085, 468-270-105 and 468-270-115; repealing WAC 468-270-090, 468-270-091, 468-270-100 and 468-270-110; and amending WAC 468-270-030, 468-270-070, 468-270-071, 468-270-095, and 468-270-300.

Statutory Authority for Adoption: RCW 47.46.100, 47.56.030, 47.46.105, 47.56.795, and 47.56.850.

Adopted under notice filed as WSR 18-12-104 on June 5, 2018.

Changes Other than Editing from Proposed to Adopted Version: (1) New WAC 468-270-085 included references to WAC 468-270-100 and 468-270-110, which the proposed rule also repeals. The citations have been changed to WAC 468-270-105 and 468-270-115, which this rule creates as replacements to the repealed sections.

(2) In amendatory WAC 468-270-071, corrected reference to SR 520 Bridge toll rate table numbers in introduction, and removed reference to SR 520 Bridge Short-Term Account rates in weekend section of Table 2 (SR 520 Two-Axle Vehicle Toll Rates).

(3) In amendatory WAC 468-270-300, removed proposed change to table number of "Customer Fees and Discounts" table from Table 12 to Table 7. An upcoming rule making for SR 99 Tunnel toll rates will add new tables 7-11 back to chapter 468-270 WAC, at which time table will again be Table 12. This change reduces the administrative burden for both rule-making processes.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 5, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 5, Repealed 4.

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

Date Adopted: July 17, 2018.

Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-030 Definitions. "Authorized emergency vehicle" ~~((includes but is not limited to a))~~ means an on-duty vehicle of any fire department, police department, sheriff's office, ((coroner, prosecuting attorney,)) Washington state patrol, ambulance service, public or private ((or any other emergency vehicle as defined in RCW 46.04.040)) and which is equipped with emergency lights and siren and used to respond to emergency calls.

~~("Bona fide emergency" occurs when an authorized emergency vehicle, as defined herein, responds to or returns from an emergency call.)~~

"Cash customer" means a toll customer who pays the toll on the Tacoma Narrows Bridge ~~((in cash))~~ at a toll booth.

"Citizens advisory committee" means the citizens committee established by RCW 47.46.090 that advises the transportation commission on Tacoma Narrows Bridge toll rates.

"Department" means the Washington state department of transportation (WSDOT).

"Express toll lanes" means one or more highway lanes that can be used by authorized high-occupancy vehicles, and by toll-paying vehicles, where toll rates are set to maintain travel speed and reliability.

"Good To Go!TM" is the name of the department's toll collection system.

"Good To Go!TM Pass" means the transponder device used to pay a toll by a customer who has a ~~((prepaid))~~ toll account.

"High-occupancy toll (HOT) lanes" means one or more lanes of a highway that charges tolls as a means of regulating access to or the use of the lanes in order to maintain travel speed and reliability. HOT lane supporting facilities include, but are not limited to, approaches, enforcement areas, improvements, buildings, and equipment.

"Highway or transit operating and maintenance vehicle" means a vehicle assigned to operate or maintain the toll facility, including incident response vehicles, transit ser-

vice supervisor or maintenance vehicles, and agency tow trucks.

"On-duty" means the vehicle is operating in an official capacity.

"Pass" see *Good To Go!TM Pass*.

"Pay By Mail" means the method used to pay a photo toll when a toll bill is mailed to the vehicle's registered owner.

"Pay By Plate" means the method used to pay a photo toll by a customer who has a ~~((prepaid))~~ toll account ~~((through the use of a photo toll system)).~~

"Photo toll" means a charge associated with a particular vehicle that is identified by its license plate ~~((and includes Pay By Mail, Pay By Plate and Customer-Initiated Payment)).~~

~~("Short Term Account" means the method used to pay a photo toll when there is no regular toll account and the customer initiates payment no later than three days after the toll transaction.)~~ "Privately owned and operated passenger bus" means: (a) A vehicle with a carrying capacity of sixteen or more persons, including the operator, which must be clearly marked or identified to display the business name and/or logo on the driver and passenger sides of the vehicle; operate on a fixed schedule and fixed route, serve the public and/or employees, and meet the annual certification requirements of the department; and (b) privately owned and operated passenger buses designed for carrying ten or more persons, including the operator, with an elevated passenger deck located over a baggage compartment, including charter buses, which serve the public on a regular schedule and on a continuing basis.

"School bus" means a vehicle with a seating capacity of more than sixteen persons, including the driver, regularly used to transport students to and from school or in connection with school activities.

"Toll account" means a ~~((prepaid))~~ *Good To Go!TM* account that is linked to a Pass (transponder) or license plates in order to pay a toll by automatic debit.

"Toll account" means a ~~((prepaid))~~ *Good To Go!TM* account that is linked to a Pass (transponder) or license plates in order to pay a toll by automatic debit.

"Transponder (Pass)" means a device attached to a toll customer's vehicle that automatically identifies the toll customer's vehicle as it passes through the toll facility.

"Transportation commission (commission)" means the Washington state transportation commission whose duties and composition are set out in chapter 47.01 RCW.

AMENDATORY SECTION (Amending WSR 16-11-092, filed 5/18/16, effective 7/1/16)

WAC 468-270-070 What are the toll rates on the Tacoma Narrows Bridge? The toll rates for the Tacoma Narrows Bridge are shown in Table 1.

**Table 1, Effective July 1, 2015
Tacoma Narrows Bridge Toll Rates**

Vehicle Axles	Good to Go! TM Pass ¹	Cash ¹	Pay By Mail ¹	Good To Go! TM Pay by Plate ²	((Short Term Account³))
2	\$5.00	\$6.00	\$7.00	\$5.25	(((\$6.50))
3	\$7.50	\$9.00	\$10.50	\$7.75	(((\$10.00))
4	\$10.00	\$12.00	\$14.00	\$10.25	(((\$13.50))
5	\$12.50	\$15.00	\$17.50	\$12.75	(((\$17.00))

Vehicle Axles	Good to Go! TM Pass ¹	Cash ¹	Pay By Mail ¹	Good To Go! TM Pay by Plate ²	((Short Term Account³))
6	\$15.00	\$18.00	\$21.00	\$15.25	(((\$20.50))

Notes: ¹The rate has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

~~(³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.))~~

AMENDATORY SECTION (Amending WSR 16-11-091, filed 5/18/16, effective 7/1/16)

WAC 468-270-071 What are the toll rates on the SR 520 Bridge? Tables 2 through ~~((42))~~ 6 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

~~((TABLE 2, Effective July 1, 2016
SR 520 BRIDGE
TWO AXLE VEHICLE TOLL RATES~~

Mondays through Fridays	Good To Go!TM Pass⁴	Pay-By Mail⁴	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.-	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.-	\$1.90	\$3.90	\$2.15	\$3.40
6 a.m. to 7 a.m.-	\$3.25	\$5.25	\$3.50	\$4.75
7 a.m. to 9 a.m.-	\$4.10	\$6.10	\$4.35	\$5.60
9 a.m. to 10 a.m.-	\$3.25	\$5.25	\$3.50	\$4.75
10 a.m. to 2 p.m.-	\$2.55	\$4.55	\$2.80	\$4.05
2 p.m. to 3 p.m.-	\$3.25	\$5.25	\$3.50	\$4.75
3 p.m. to 6 p.m.-	\$4.10	\$6.10	\$4.35	\$5.60
6 p.m. to 7 p.m.-	\$3.25	\$5.25	\$3.50	\$4.75
7 p.m. to 9 p.m.-	\$2.55	\$4.55	\$2.80	\$4.05
9 p.m. to 11 p.m.-	\$1.90	\$3.90	\$2.15	\$3.40
11 p.m. to 11:59 p.m.-	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!TM Pass⁴	Pay-By Mail⁴	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.-	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.-	\$1.30	\$3.30	\$1.55	\$2.80
8 a.m. to 11 a.m.-	\$1.95	\$3.95	\$2.20	\$3.45
11 a.m. to 6 p.m.-	\$2.50	\$4.50	\$2.75	\$4.00
6 p.m. to 9 p.m.-	\$1.95	\$3.95	\$2.20	\$3.45
9 p.m. to 11 p.m.-	\$1.30	\$3.30	\$1.55	\$2.80
11 p.m. to 11:59 p.m.-	\$0.00	\$0.00	\$0.00	\$0.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

~~³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.~~

⁴The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 3, Effective July 1, 2016
SR 520 BRIDGE
THREE AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay-By Mail²	Pay By Plate³	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$2.85	\$5.85	\$3.10	\$5.35
6 a.m. to 7 a.m.	\$4.90	\$7.90	\$5.15	\$7.40
7 a.m. to 9 a.m.	\$6.15	\$9.15	\$6.40	\$8.65
9 a.m. to 10 a.m.	\$4.90	\$7.90	\$5.15	\$7.40
10 a.m. to 2 p.m.	\$3.85	\$6.85	\$4.10	\$6.35
2 p.m. to 3 p.m.	\$4.90	\$7.90	\$5.15	\$7.40
3 p.m. to 6 p.m.	\$6.15	\$9.15	\$6.40	\$8.65
6 p.m. to 7 p.m.	\$4.90	\$7.90	\$5.15	\$7.40
7 p.m. to 9 p.m.	\$3.85	\$6.85	\$4.10	\$6.35
9 p.m. to 11 p.m.	\$2.85	\$5.85	\$3.10	\$5.35
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!TM Pass¹	Pay-By Mail²	Pay By Plate³	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$1.95	\$4.95	\$2.20	\$4.45
8 a.m. to 11 a.m.	\$2.95	\$5.95	\$3.20	\$5.45
11 a.m. to 6 p.m.	\$3.75	\$6.75	\$4.00	\$6.25
6 p.m. to 9 p.m.	\$2.95	\$5.95	\$3.20	\$5.45
9 p.m. to 11 p.m.	\$1.95	\$4.95	\$2.20	\$4.45
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
⁴The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 4, Effective July 1, 2016
SR 520 BRIDGE
FOUR AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay-By Mail²	Pay By Plate³	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$3.80	\$7.80	\$4.05	\$7.30
6 a.m. to 7 a.m.	\$6.50	\$10.50	\$6.75	\$10.00
7 a.m. to 9 a.m.	\$8.20	\$12.20	\$8.45	\$11.70
9 a.m. to 10 a.m.	\$6.50	\$10.50	\$6.75	\$10.00
10 a.m. to 2 p.m.	\$5.10	\$9.10	\$5.35	\$8.60
2 p.m. to 3 p.m.	\$6.50	\$10.50	\$6.75	\$10.00
3 p.m. to 6 p.m.	\$8.20	\$12.20	\$8.45	\$11.70
6 p.m. to 7 p.m.	\$6.50	\$10.50	\$6.75	\$10.00

Mondays through Fridays	Good To Go!TM Pass¹	Pay-By Mail¹	Pay By Plate²	Short-Term Account³
7 p.m. to 9 p.m.	\$5.10	\$9.10	\$5.35	\$8.60
9 p.m. to 11 p.m.	\$3.80	\$7.80	\$4.05	\$7.30
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00
Saturdays and Sundays⁴	Good To Go!TM Pass¹	Pay-By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$2.60	\$6.60	\$2.85	\$6.10
8 a.m. to 11 a.m.	\$3.90	\$7.90	\$4.15	\$7.40
11 a.m. to 6 p.m.	\$5.00	\$9.00	\$5.25	\$8.50
6 p.m. to 9 p.m.	\$3.90	\$7.90	\$4.15	\$7.40
9 p.m. to 11 p.m.	\$2.60	\$6.60	\$2.85	\$6.10
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

- Notes:
- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
 - ²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
 - ³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
 - ⁴The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 5, Effective July 1, 2016
SR 520 BRIDGE
FIVE AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!TM Pass¹	Pay-By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$4.75	\$9.75	\$5.00	\$9.25
6 a.m. to 7 a.m.	\$8.15	\$13.15	\$8.40	\$12.65
7 a.m. to 9 a.m.	\$10.25	\$15.25	\$10.50	\$14.75
9 a.m. to 10 a.m.	\$8.15	\$13.15	\$8.40	\$12.65
10 a.m. to 2 p.m.	\$6.40	\$11.40	\$6.65	\$10.90
2 p.m. to 3 p.m.	\$8.15	\$13.15	\$8.40	\$12.65
3 p.m. to 6 p.m.	\$10.25	\$15.25	\$10.50	\$14.75
6 p.m. to 7 p.m.	\$8.15	\$13.15	\$8.40	\$12.65
7 p.m. to 9 p.m.	\$6.40	\$11.40	\$6.65	\$10.90
9 p.m. to 11 p.m.	\$4.75	\$9.75	\$5.00	\$9.25
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00
Saturdays and Sundays⁴	Good To Go!TM Pass¹	Pay-By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$3.25	\$8.25	\$3.50	\$7.75
8 a.m. to 11 a.m.	\$4.90	\$9.90	\$5.15	\$9.40
11 a.m. to 6 p.m.	\$6.25	\$11.25	\$6.50	\$10.75
6 p.m. to 9 p.m.	\$4.90	\$9.90	\$5.15	\$9.40
9 p.m. to 11 p.m.	\$3.25	\$8.25	\$3.50	\$7.75
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

- Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
⁴The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 6, Effective July 1, 2016
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay-By-Mail¹	Pay By Plate²	Short-Term Account²
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$5.70	\$11.70	\$5.95	\$11.20
6 a.m. to 7 a.m.	\$9.75	\$15.75	\$10.00	\$15.25
7 a.m. to 9 a.m.	\$12.30	\$18.30	\$12.55	\$17.80
9 a.m. to 10 a.m.	\$9.75	\$15.75	\$10.00	\$15.25
10 a.m. to 2 p.m.	\$7.65	\$13.65	\$7.90	\$13.15
2 p.m. to 3 p.m.	\$9.75	\$15.75	\$10.00	\$15.25
3 p.m. to 6 p.m.	\$12.30	\$18.30	\$12.55	\$17.80
6 p.m. to 7 p.m.	\$9.75	\$15.75	\$10.00	\$15.25
7 p.m. to 9 p.m.	\$7.65	\$13.65	\$7.90	\$13.15
9 p.m. to 11 p.m.	\$5.70	\$11.70	\$5.95	\$11.20
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!TM Pass¹	Pay-By-Mail¹	Pay By Plate²	Short-Term Account²
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$3.90	\$9.90	\$4.15	\$9.40
8 a.m. to 11 a.m.	\$5.85	\$11.85	\$6.10	\$11.35
11 a.m. to 6 p.m.	\$7.50	\$13.50	\$7.75	\$13.00
6 p.m. to 9 p.m.	\$5.85	\$11.85	\$6.10	\$11.35
9 p.m. to 11 p.m.	\$3.90	\$9.90	\$4.15	\$9.40
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

- Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
⁴The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.))

TABLE ((7)) 2, Effective July 1, 2017
SR 520 BRIDGE
TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²	((Short-Term Account²))
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50	(((\$2.75))
5 a.m. to 6 a.m.	\$2.00	\$4.00	\$2.25	(((\$3.50))
6 a.m. to 7 a.m.	\$3.40	\$5.40	\$3.65	(((\$4.90))
7 a.m. to 9 a.m.	\$4.30	\$6.30	\$4.55	(((\$5.80))
9 a.m. to 10 a.m.	\$3.40	\$5.40	\$3.65	(((\$4.90))

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short Term Account²))
10 a.m. to 2 p.m.	\$2.70	\$4.70	\$2.95	(((\$4.20))
2 p.m. to 3 p.m.	\$3.40	\$5.40	\$3.65	(((\$4.90))
3 p.m. to 6 p.m.	\$4.30	\$6.30	\$4.55	(((\$5.80))
6 p.m. to 7 p.m.	\$3.40	\$5.40	\$3.65	(((\$4.90))
7 p.m. to 9 p.m.	\$2.70	\$4.70	\$2.95	(((\$4.20))
9 p.m. to 11 p.m.	\$2.00	\$4.00	\$2.25	(((\$3.50))
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50	(((\$2.75))

Saturdays and Sundays⁽⁴⁾ ³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short Term Account²))
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50	(((\$2.75))
5 a.m. to 8 a.m.	\$1.40	\$3.40	\$1.65	(((\$2.90))
8 a.m. to 11 a.m.	\$2.05	\$4.05	\$2.30	(((\$3.55))
11 a.m. to 6 p.m.	\$2.65	\$4.65	\$2.90	(((\$4.15))
6 p.m. to 9 p.m.	\$2.05	\$4.05	\$2.30	(((\$3.55))
9 p.m. to 11 p.m.	\$1.40	\$3.40	\$1.65	(((\$2.90))
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50	(((\$2.75))

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³((For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
⁴)The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE ((§)) ³, Effective July 1, 2017
SR 520 BRIDGE
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short Term Account²))
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15	(((\$4.40))
5 a.m. to 6 a.m.	\$3.00	\$6.00	\$3.25	(((\$5.50))
6 a.m. to 7 a.m.	\$5.10	\$8.10	\$5.35	(((\$7.60))
7 a.m. to 9 a.m.	\$6.45	\$9.45	\$6.70	(((\$8.95))
9 a.m. to 10 a.m.	\$5.10	\$8.10	\$5.35	(((\$7.60))
10 a.m. to 2 p.m.	\$4.05	\$7.05	\$4.30	(((\$6.55))
2 p.m. to 3 p.m.	\$5.10	\$8.10	\$5.35	(((\$7.60))
3 p.m. to 6 p.m.	\$6.45	\$9.45	\$6.70	(((\$8.95))
6 p.m. to 7 p.m.	\$5.10	\$8.10	\$5.35	(((\$7.60))
7 p.m. to 9 p.m.	\$4.05	\$7.05	\$4.30	(((\$6.55))
9 p.m. to 11 p.m.	\$3.00	\$6.00	\$3.25	(((\$5.50))
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15	(((\$4.40))

Saturdays and Sundays⁽⁴⁾ ³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short Term Account²))
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15	(((\$4.40))
5 a.m. to 8 a.m.	\$2.10	\$5.10	\$2.35	(((\$4.60))
8 a.m. to 11 a.m.	\$3.10	\$6.10	\$3.35	(((\$5.60))

Saturdays and Sundays⁽⁴⁾ ³	Good To Go!TM Pass¹	Pay By Mail¹	<u>Good To Go!TM Pay By Plate²</u>	<u>((Short Term Account²))</u>
11 a.m. to 6 p.m.	\$4.00	\$7.00	\$4.25	(((\$6.50))
6 p.m. to 9 p.m.	\$3.10	\$6.10	\$3.35	(((\$5.60))
9 p.m. to 11 p.m.	\$2.10	\$5.10	\$2.35	(((\$4.60))
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15	(((\$4.40))

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³~~((For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.~~
⁴)The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE ((9)) 4, Effective July 1, 2017
 SR 520 BRIDGE
 FOUR-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	<u>Good To Go!TM Pay By Plate²</u>	<u>((Short Term Account²))</u>
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75	(((\$6.00))
5 a.m. to 6 a.m.	\$4.00	\$8.00	\$4.25	(((\$7.50))
6 a.m. to 7 a.m.	\$6.80	\$10.80	\$7.05	(((\$10.30))
7 a.m. to 9 a.m.	\$8.60	\$12.60	\$8.85	(((\$12.10))
9 a.m. to 10 a.m.	\$6.80	\$10.80	\$7.05	(((\$10.30))
10 a.m. to 2 p.m.	\$5.40	\$9.40	\$5.65	(((\$8.90))
2 p.m. to 3 p.m.	\$6.80	\$10.80	\$7.05	(((\$10.30))
3 p.m. to 6 p.m.	\$8.60	\$12.60	\$8.85	(((\$12.10))
6 p.m. to 7 p.m.	\$6.80	\$10.80	\$7.05	(((\$10.30))
7 p.m. to 9 p.m.	\$5.40	\$9.40	\$5.65	(((\$8.90))
9 p.m. to 11 p.m.	\$4.00	\$8.00	\$4.25	(((\$7.50))
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75	(((\$6.00))

Saturdays and Sundays⁽⁴⁾ ³	Good To Go!TM Pass¹	Pay By Mail¹	<u>Good To Go!TM Pay By Plate²</u>	<u>((Short Term Account²))</u>
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75	(((\$6.00))
5 a.m. to 8 a.m.	\$2.80	\$6.80	\$3.05	(((\$6.30))
8 a.m. to 11 a.m.	\$4.10	\$8.10	\$4.35	(((\$7.60))
11 a.m. to 6 p.m.	\$5.30	\$9.30	\$5.55	(((\$8.80))
6 p.m. to 9 p.m.	\$4.10	\$8.10	\$4.35	(((\$7.60))
9 p.m. to 11 p.m.	\$2.80	\$6.80	\$3.05	(((\$6.30))
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75	(((\$6.00))

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³~~((For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.~~
⁴)The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE ((40)) 5, Effective July 1, 2017
 SR 520 BRIDGE
 FIVE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short Term Account³))
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40	((\$7.65))
5 a.m. to 6 a.m.	\$5.00	\$10.00	\$5.25	((\$9.50))
6 a.m. to 7 a.m.	\$8.50	\$13.50	\$8.75	((\$13.00))
7 a.m. to 9 a.m.	\$10.75	\$15.75	\$11.00	((\$15.25))
9 a.m. to 10 a.m.	\$8.50	\$13.50	\$8.75	((\$13.00))
10 a.m. to 2 p.m.	\$6.75	\$11.75	\$7.00	((\$11.25))
2 p.m. to 3 p.m.	\$8.50	\$13.50	\$8.75	((\$13.00))
3 p.m. to 6 p.m.	\$10.75	\$15.75	\$11.00	((\$15.25))
6 p.m. to 7 p.m.	\$8.50	\$13.50	\$8.75	((\$13.00))
7 p.m. to 9 p.m.	\$6.75	\$11.75	\$7.00	((\$11.25))
9 p.m. to 11 p.m.	\$5.00	\$10.00	\$5.25	((\$9.50))
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40	((\$7.65))

Saturdays and Sundays⁽⁴⁾ 2	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short Term Account³))
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40	((\$7.65))
5 a.m. to 8 a.m.	\$3.50	\$8.50	\$3.75	((\$8.00))
8 a.m. to 11 a.m.	\$5.15	\$10.15	\$5.40	((\$9.65))
11 a.m. to 6 p.m.	\$6.65	\$11.65	\$6.90	((\$11.15))
6 p.m. to 9 p.m.	\$5.15	\$10.15	\$5.40	((\$9.65))
9 p.m. to 11 p.m.	\$3.50	\$8.50	\$3.75	((\$8.00))
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40	((\$7.65))

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

³((For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

⁴)The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE ((44)) 6, Effective July 1, 2017
 SR 520 BRIDGE
 SIX-AXLE OR MORE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short Term Account³))
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00	((\$9.25))
5 a.m. to 6 a.m.	\$6.00	\$12.00	\$6.25	((\$11.50))
6 a.m. to 7 a.m.	\$10.20	\$16.20	\$10.45	((\$15.70))
7 a.m. to 9 a.m.	\$12.90	\$18.90	\$13.15	((\$18.40))
9 a.m. to 10 a.m.	\$10.20	\$16.20	\$10.45	((\$15.70))
10 a.m. to 2 p.m.	\$8.10	\$14.10	\$8.35	((\$13.60))
2 p.m. to 3 p.m.	\$10.20	\$16.20	\$10.45	((\$15.70))
3 p.m. to 6 p.m.	\$12.90	\$18.90	\$13.15	((\$18.40))
6 p.m. to 7 p.m.	\$10.20	\$16.20	\$10.45	((\$15.70))

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short-Term Account³))
7 p.m. to 9 p.m.	\$8.10	\$14.10	\$8.35	(((\$13.60))
9 p.m. to 11 p.m.	\$6.00	\$12.00	\$6.25	(((\$11.50))
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00	(((\$9.25))
Saturdays and Sundays⁽⁴⁾ ³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²	((Short-Term Account³))
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00	(((\$9.25))
5 a.m. to 8 a.m.	\$4.20	\$10.20	\$4.45	(((\$9.70))
8 a.m. to 11 a.m.	\$6.15	\$12.15	\$6.40	(((\$11.65))
11 a.m. to 6 p.m.	\$7.95	\$13.95	\$8.20	(((\$13.45))
6 p.m. to 9 p.m.	\$6.15	\$12.15	\$6.40	(((\$11.65))
9 p.m. to 11 p.m.	\$4.20	\$10.20	\$4.45	(((\$9.70))
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00	(((\$9.25))

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³~~((For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.~~
⁴)The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

NEW SECTION

WAC 468-270-085 What vehicles are exempt from paying tolls on all toll facilities on Washington state highways? Except as provided herein, all vehicles using a toll facility must pay the required toll. Vehicles crossing the Tacoma Narrows Bridge are required to pay a toll only in the eastbound direction. Additional exemptions for high occupancy vehicles apply on the SR 167 HOT lanes and I-405 express toll lanes as defined in WAC 468-270-105 and 468-270-115 respectively.

Only qualified vehicles may be exempted from paying tolls. Exempted vehicles must provide directly for the operation, maintenance, safety, and/or person-carrying capacity of the tolled roadway or for emergency response. The registered owner and operator of the qualified vehicle must comply with the requirements of the department to obtain the exemption as specified in WAC 468-270-095.

The following vehicles, as defined further in WAC 468-270-030, shall qualify for exemption:

- (1) Highway and transit operating and maintenance vehicles, as authorized by the department;
- (2) Tow trucks authorized by the Washington state patrol responding to clear vehicles from the toll facility;
- (3) Authorized, on-duty emergency vehicles;
- (4) Publicly owned or operated transit buses;
- (5) Passenger motor vehicles licensed for ride-sharing as defined in RCW 46.18.285;
- (6) School buses; and
- (7) Privately owned and operated passenger buses meeting annual certification requirements of the department.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-095 What is required to claim a non-carpool toll exemption on ~~((the Tacoma Narrows Bridge, the SR 520 Bridge, or the I-405 express toll lanes))~~ all toll facilities on Washington state highways? Unless otherwise provided in this chapter and described in chapter 468-305 WAC, in order to receive the exemption and to maintain eligibility for toll exemptions, the department may require that the registered owner of the qualified vehicle or an authorized representative of the owner:

- (1) Open and maintain in good standing a "Good To Go!™" toll account;
- (2) Equip the vehicle with a pass;
- (3) Equip the vehicle with identification signage; and/or
- (4) Submit a certification that the vehicle meets the exemption requirements.

NEW SECTION

WAC 468-270-105 What high occupancy vehicles are exempt from paying tolls on the SR 167 HOT lanes? In addition to vehicles described in WAC 468-270-085, high occupancy vehicles described in WAC 468-510-010 are exempt from paying tolls. On SR 167 motorcycles and vehicles with two or more occupants are high occupancy vehicles. All other vehicles using the SR 167 HOT lanes must pay the required toll. All toll-paying vehicles must have a transponder and a valid toll account.

NEW SECTION

WAC 468-270-115 What high occupancy vehicles are exempt from paying tolls on the I-405 express toll lanes?
 In addition to vehicles described in WAC 468-270-085, high

occupancy vehicles including motorcycles and carpools as defined for the facility in WAC 468-270-120 are exempt from tolls if they meet the requirements specified in WAC 468-270-130.

AMENDATORY SECTION (Amending WSR 16-11-091, filed 5/18/16, effective 7/1/16)

WAC 468-270-300 What other fees and discounts may apply to toll customers? The commission is authorized to adopt rules to assess administrative fees as appropriate for toll collection processes. Additionally, a toll customer may be required to pay fees set forth by state law for attempts to collect funds due to a state agency.

The following table lists and explains the types and amount of administrative fees that a toll customer may be required to pay.

Table 12 Customer Fees and Discounts

Fee and Discount Type	When is the administrative fee charged?	What is the fee amount?
Paper Statements and Reprinting Fee	Upon each mailing of a paper statement at the account holder's request.	\$0.50 per page (with a minimum fee of \$1.50)
Inactive Account Fee	After 24 months of no transactions on the account, this one-time fee will be assessed.	\$5.00
Reprocessing Fee	This fee will be assessed when the department sends a reminder notice of unpaid tolls. The reminder notice to pay may be a summary or itemization of amounts owed and included as part of a toll bill or in any other correspondence to collect tolls.	\$5.00 per reminder notice to pay unpaid tolls
Pay By Plate Fee	A customer who establishes a prepaid toll account but passes through a toll facility without a pass will be assessed this fee in addition to the Good To Go! TM Pass toll rate.	\$0.25 per transaction
((Short Term Account	A customer will receive a discount off the Pay By Mail toll rate, if the customer pays for the transaction not later than 72 hours after driving on the toll facility.	\$0.50 per transaction credit off the Pay By Mail toll rate))

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 468-270-090 What vehicles are exempt from paying tolls on the Tacoma Narrows Bridge?
- WAC 468-270-091 What vehicles are exempt from paying tolls on the SR 520 Bridge?
- WAC 468-270-100 What vehicles are exempt from paying tolls on the SR 167 HOT lanes?
- WAC 468-270-110 What vehicles are exempt from paying tolls on the I-405 express toll lanes?

Amendment for which the content is explicitly and specifically dictated by statute is made in WAC 516-60-010.

Citation of Rules Affected by this Order: Amending WAC 516-21-220 and 516-60-010.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 18-13-074 on June 15, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.
 Date Adopted: August 22, 2018.

WSR 18-17-176

PERMANENT RULES

WESTERN WASHINGTON UNIVERSITY

[Filed August 22, 2018, 9:28 a.m., effective September 22, 2018]

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

Purpose: Housekeeping amendments to Title 516 WAC rules are needed for the following reasons:

Amendment that updates the title of a cited WAC is made in WAC 516-21-220.

Jennifer L. Sloan
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-220 Weapons and destructive devices.

Possession, use, storage, or manufacture of firearms, ammunition, explosives, or other weapons or destructive devices capable of causing bodily injury or damage to property, on university property or at official university functions, is a violation of the code. Weapons and destructive devices include, but are not limited to, the unauthorized use or possession of:

- (1) Firearms or projectile devices of any kind, including BB, pellet, paintball, and airsoft guns, bow and arrow, and sling shots;
- (2) Martial arts weapons of any kind, including nunchucks, swords, or throwing stars;
- (3) Fireworks of any kind;
- (4) Dangerous chemicals;
- (5) Any knife with a blade longer than three inches (excluding kitchen utensils); and
- (6) Weapons classified as dangerous in RCW 9.41.250.

This does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

See also WAC 516-52-020 (~~(Firearms and dangerous)~~) Weapons and armaments prohibited.

AMENDATORY SECTION (Amending WSR 04-09-106, filed 4/21/04, effective 5/22/04)

WAC 516-60-010 Waivers of tuition and fees.

(1) The board of trustees is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. Each of these laws, with the exception of those required by law, authorizes but does not require the board of trustees to grant waivers for different categories of students and provides for waivers of different fees. The board of trustees or its delegate must affirmatively act to implement the legislature's grant of authority. A list of waivers that the board has implemented can be found in the *Bulletin, Timetable of Classes*, university web site, or any subsequently adopted publication.

(2) Even when it has decided to implement a waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to any or all students who may be eligible under the terms of the laws, or it may decide to grant partial waivers. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection ~~((5))~~ (4) of this section. All waivers are subject to subsection ~~((5))~~ (4) of this section.

(3) The board of trustees also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waiver programs adopted under RCW 28B.15.915 are described in the sources identified in subsection (1) of this section. Waivers granted under RCW 28B.15.915 are subject to subsection ~~((5))~~ (4) of this section.

(4) ~~(Tuition and fees for self-sustaining courses and programs cannot be waived.~~

~~(5))~~) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915, except for those waivers required by law.

**WSR 18-17-181
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed August 22, 2018, 10:15 a.m., effective September 22, 2018]

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

Purpose: This permanent rule-making order adds a new section to chapter 392-140 WAC regarding the timeline for the repayment of conditional loans for the National Board for Professional Teaching Standards (NBPTS) process. The new rule aligns the loan repayment timeline with the assessment timeline for NBPTS.

Citation of Rules Affected by this Order: New WAC 392-140-976.

Statutory Authority for Adoption: Section 513 (4)(d) of ESSB 6032 (2018).

Other Authority: RCW 28A.405.415.

Adopted under notice filed as WSR 18-13-084 on June 18, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 22, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

NEW SECTION

WAC 392-140-976 Salary bonus for teachers and other certificated instructional staff who hold current

certification by the national board—Conditional loan program. (1) During the 2017-18 and 2018-19 school years, and within available funds, certificated instructional staff who have met the eligibility requirements and have applied for certification from the National Board for Professional Teaching Standards may receive a conditional loan of one thousand four hundred twenty-five dollars toward the current assessment fee, not including the initial up-front candidacy payment.

(2) The conditional loan shall be an advance on the first annual bonus provided under RCW 28A.405.415. The conditional loan is provided in addition to compensation received under a district's salary allocation and shall not be included in calculations of a district's average salary and associated salary limitation under RCW 28A.400.200.

(3)(a) Conditional loan recipients who fail to receive national board certification within three years following the completion of their second year of candidacy under the National Board for Professional Teaching Standards must repay the conditional loan.

(b) Repayment shall begin after the candidate has either:

- (i) Obtained the national board certification;
- (ii) Exhausted all years of eligibility under the National Board for Professional Teaching Standards; or
- (iii) Withdrawn their candidacy.

(4) The terms of repayment shall be pursuant to a promissory note or other instrument executed by the conditional loan recipient.