WSR 14-17-013
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 8, 2014, 1:53 p.m.]

The department of licensing, board of registration for professional engineers and land surveyors, requests withdrawal of the proposed rule making filed as WSR 14-06-101, chapter 196-29 WAC. The CR-102 was filed on March 5, 2014, and appearing in issue 14-06 of the State Register. This document serves as the official notification of our rule withdrawal.

Damon Monroe
Rules Coordinator

WSR 14-17-014
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 8, 2014, 2:00 p.m.]

The department of licensing, board of registration for professional engineers and land surveyors, requests withdrawal of the proposed rule making filed as WSR 14-06-104, chapter 196-29 WAC. The CR-102 was filed on March 5, 2014 and appearing in issue 14-06 of the State Register. This document serves as the official notification of our rule withdrawal.

Damon Monroe
Rules Coordinator

WSR 14-17-037
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Securities Division)
[Filed August 13, 2014, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-058.

Title of Rule and Other Identifying Information: The securities division proposes to create a new rule at WAC 460-23B-070 regarding the termination of salespersons for issuers. The proposed rule will specify that if the employment or association of a salesperson for an issuer is terminated, the salesperson and the issuer must notify the securities division of the termination by filing Form U5 with the division.

Hearing Location(s): Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501, on October 1, 2014, at 10:00 a.m.

Date of Intended Adoption: October 2, 2014.

Submit Written Comments to: Jill Vallely, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail jill.vallely@dfi.wa.gov, fax (360) 704-7035, by September 30, 2014.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 21.20.080 states that if the employment or association of a salesperson for an issuer is terminated, the salesperson and the issuer must notify the securities division of the termination. However, RCW 21.20.080 does not specify how to make this notification. The securities division proposes a new rule at WAC 460-23B-070 to specify that the required notification shall be made by filing Form U5 with the division.

Reasons Supporting Proposal: The rule will clarify how issuers and salespersons for issuers should comply with the existing statute. The Form U5 is the Uniform Termination Notice for Securities Industry Registration. It is used to notify regulators of the termination of securities salespersons and investment adviser representatives. Securities salespersons of issuers are not generally required to register as such with either the United States Securities and Exchange Commission or FINRA, the self-regulatory organization for broker-dealers and securities salespersons. However, the proposed rule would require the same form and termination notice as required at the federal level for securities salespersons associated with broker-dealers. In doing so, the rule promotes a uniform notification procedure for the termination of securities salespersons.

Statutory Authority for Adoption: RCW 21.20.070, 21.20.080, 21.20.450.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: DFI, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose more than minor costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

August 13, 2014
Scott Jarvis
Director

NEW SECTION

WAC 460-23B-070 Termination of salespersons for issuers. Pursuant to RCW 21.20.080, if a salesperson for an issuer terminates employment or association with an issuer, the issuer and the salesperson must notify the director of the termination by complying with the instructions to Form U5 and filing a paper copy of a completed Form U5 with the securities division within thirty days of termination.

WSR 14-17-041
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Denture Technology)
[Filed August 14, 2014, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-034.

Title of Rule and Other Identifying Information: Chapter 246-812 WAC, Board of denturists, amending the chapter to implement SHB 1270 (chapter 171, Laws of 2013) and make other rule changes.

Hearing Location(s): Richland Courtyard Marriott, 480 Columbia Point Drive, Point Room, Richland, WA 99352, on September 26, 2014, at 10:30 a.m.

Date of Intended Adoption: September 26, 2014.

Submit Written Comments to: Vicki Brown, Program Manager, Health Professions and Facilities, Board of Denturists, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by September 26, 2014.

Assistance for Persons with Disabilities: Contact Vicki Brown by September 19, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Denturist-related duties once assigned to the secretary of health are now the duties of the board of denturist[s] (board), with the exception of issuance of licenses. Existing rules need to be aligned with the legislative change including: Replacing references to the secretary with references to the board; adopting existing rules that denturists were required to comply with under the secretary's authority, but now fall under the duty of the board, including sexual misconduct and mandatory reporting requirements. In addition, the board is proposing general housekeeping and clarification changes, amending the continuing competency requirements, adding new temporary practice permit requirements for military spouses, new requirements for background checks for temporary practice permits and a new retired active licensure status; and clarifying the inactive status license requirements, and criteria for denturist education program approval.

Reasons Supporting Proposal: SHB 1270 amended chapter 18.30 RCW making the board the disciplining authority for licensed denturists. Rule making is necessary to align the existing rules with the legislative change in authority. In addition the board reviewed chapter 246-812 WAC and is proposing general housekeeping and clarification changes, and other updates.

Statutory Authority for Adoption: Chapter 18.30 RCW, SHB 1270 (chapter 171, Laws of 2013).

Statute Being Implemented: Chapter 18.30 RCW, SSB [SHB] 1270 (chapter 171, Laws of 2013).

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

Name of Proponent: Department of health, board of denturists, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicki Brown, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Brown, Health Professions/Facilities, Board of Denturists, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4865, fax (360) 236-2901, e-mail vicki.brown@doh.wa.gov.

August 14, 2014
Trina Castle
Executive Director

Chapter 246-812 WAC

BOARD OF ((~~DENTURE TECHNOLOGY~~)) DENTURISTS

AMENDATORY SECTION (Amending WSR 03-12-061, filed 6/2/03, effective 7/3/03)

WAC 246-812-010 Definitions. The ((~~following terms are so defined for the purposes of~~)) definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) **"Acquired immunodeficiency syndrome"** or **"AIDS"** means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(2) **"Approval"** and **"accreditation"** are used interchangeably with reference to sanctioning of courses.

(3) **"Board"** means the Washington state board of denturists((~~, whose address is:~~

~~Department of Health~~
~~Health Profession Quality Assurance~~
~~Washington State Board of Denturists~~
~~310 Israel Rd. SE, PO Box 47867~~
~~Olympia, WA 98504-7867~~)).

(4) **"Bruxism"** means the excessive grinding of the teeth and/or excessive clenching of the jaw.

(5) **"Department"** means the department of health.

(6) **"Office on AIDS"** means that section within the department of health with jurisdiction over public health matters as defined in chapter 70.24 RCW.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-015 Adjudicative proceedings—Procedural rules. ((~~Adjudicative proceedings are conducted pursuant to~~)) The board adopts the model procedural rules for adjudicative proceedings as ((~~adopted by the department of health and~~)) contained in chapter ((~~246-10~~)) 246-11 WAC((~~, including subsequent amendments~~)).

AMENDATORY SECTION (Amending WSR 05-23-101, filed 11/17/05, effective 1/1/06)

WAC 246-812-020 Continuing competency requirements. (1) ((~~Purpose. The board in agreement with the secretary of the department of health has determined that the public health, safety and welfare of the citizens of the state will be served by requiring all denturists, licensed under chapter 18.30 RCW, to continue their professional development via continuing competency after receiving their licenses.~~

~~(2) Effective date. The effective date for the continuing competency requirements for denturists is January 1, 2006. The reporting cycle for verifying completion of continuing competency hours will begin on January 1, 2008, and each renewal date thereafter.~~

~~(3) Requirements. A licensed~~)) To renew a license a denturist must complete ((~~thirty~~)) fifteen clock hours of continuing competency, ((~~every two~~)) each year((~~s, prior to his or her biennial renewal date~~)) following the first license renewal. The ((~~licensee~~)) denturist must sign a declaration attesting to the completion of the required number of hours as part of the ((~~biennial~~)) annual renewal requirement. ((~~The department of health may randomly audit up to twenty-five percent of practitioners for compliance with these rules, after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.~~

~~(4)~~)) (2) A denturist who has an endorsement to provide nonorthodontic removable oral devices must complete two hours of continuing competency every three years. This must include continuing competency in the making, placing, constructing, altering, reproducing, or repairing of bruxism devices and snoring devices.

(a) These continuing competency credit hours may be used to meet the renewal requirements for the denturist license.

(b) Continuing competency credit hours will not be counted for instruction regarding devices or services intended to treat obstructive sleep apnea or temporomandibular joint dysfunction.

(3) Acceptable continuing competency((~~—~~)) - Qualification of courses for continuing competency credit. The board will not authorize or approve specific continuing competency courses. Continuing competency course work must contribute to the professional knowledge and development of the practitioner, or enhance services provided to ((~~clients~~)) patients.

For the purposes of this chapter, acceptable continuing competency means courses offered or authorized by industry recognized state, local, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors or types of continuing competency courses include, but are not limited to:

(a) Courses offered or sponsored by the Washington ((~~State~~)) Denturist Association, Oregon State Denturist Association, National Denturist Association, International Federation of Denturists, Washington State Dental Association or by programs approved by the board under WAC 246-812-200 through 246-812-230.

(b) Basic first aid, cardio pulmonary resuscitation, basic life support, advanced cardiac life support, or emergency related training such as courses offered or authorized by the American Heart Association, the American Cancer Society; training offered or sponsored by Occupational Safety and Health Administration (OSHA) or Washington Industrial Safety and Health Act (WISHA); or any other organizations or agencies.

(c) All forms of educational media related to denturism, available through internet, mail or independent reading, that include an assessment tool upon completion, ((~~may~~)) not to exceed ((~~ten~~)) five hours ((~~for the two-year period~~)) per year.

(d) A licensee who serves as a teacher or who lectures in continuing competency programs ((~~and/or~~)) or courses, that contribute to the professional competence of a licensed denturist may accumulate the same number of hours obtained by licensed denturists attending the program ((~~and/or~~)) or course ((~~may~~)) not to exceed ((~~sixteen~~)) eight hours ((~~for the two-year period~~)) per year.

(e) Attendance at a continuing competency program with a featured speaker(s) ((~~may~~)), not to exceed ((~~sixteen~~)) eight hours ((~~for the two-year period~~)) per year.

(f) Time spent preparing an original technical or clinical article for a professional publication ((~~may~~)) not to exceed ((~~twelve~~)) six hours ((~~for the two-year period~~)) per year.

(g) Nonclinical courses relating to denturist practice organization and management, patient management, or methods of health delivery ((~~may~~)) not to exceed ((~~eight~~)) four hours ((~~for the two-year period~~)) per year.

(h) Denturist licensure examination standardization and calibration workshops and clinical examination administration not to exceed five hours per year.

(i) Provision of clinical denturist services in a documented volunteer capacity when preceded by educational/instructional training prior to provision of services not to exceed five hours per year.

(j) Successful passage of the denturist jurisprudence examination not to exceed two hours every three years.

(k) Estate planning, financial planning, investments, and personal health courses are not acceptable.

((~~(5)~~)) (4) The board may disallow any claim of credit for a continuing competency course that does not meet the requirements of subsection ((~~(4)~~)) (2) of this section.

((~~(6)~~)) (5) Failure to complete the continued competency requirements by time of license renewal, or failure to provide adequate documentation of completion, is grounds for denying renewal of ((~~his or her~~)) the individual's license until such time as the ((~~licensee~~)) denturist demonstrates compliance.

((~~(7)~~)) (6) Documentation required. Credit for a continuing competency course may not be claimed by a ((~~licensee~~)) denturist unless the course organizer provides the ((~~licensee~~)) denturist with documentation of course attendance.

((~~(8)~~)) (7) Exceptions. ((~~The following are exceptions from the continuing competency requirements:~~)) Upon a showing of good cause by the ((~~licensee~~)) denturist, the board may waive the ((~~licensee~~)) denturist from any, all, or part of the continuing competency requirements in this chapter or may grant additional time for the ((~~licensee~~)) denturist to complete the requirements. Good cause includes, but is not limited to:

(a) Illness;

(b) Medical necessity or family emergency;

(c) Hardship to practice; or

(d) Other extenuating circumstances.

(((~~(9)~~))) (8) The requirements of this section are in addition to the requirements in chapter 246-12 WAC, Part 7, related to continuing competency. The board may randomly audit up to twenty-five percent of licensed denturists for compliance with these rules, after the credential is renewed.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-120 Denturist licensure—Initial eligibility and application requirements. ((~~To be eligible for Washington state denturist licensure, the applicant shall complete an application and shall include written documentation to meet eligibility criteria. Each applicant shall provide:~~)) An applicant for a denturist license must submit to the board:

(1) A ((~~signed, notarized~~)) completed application ((~~and required fee. (Refer to WAC 246-812-990 for fee schedule.)~~

~~(2) Proof that they meet the basic eligibility requirements identified in RCW 18.30.090, documented by the signed, notarized affidavit processed as part of the application.~~

~~(3) Applicants must complete~~));

(2) The application fee required under WAC 246-812-990;

(3) An official transcript from an educational institution approved by the board; and

(4) Verification of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(((~~(4) Photograph. A recent photograph, signed and dated, shall be attached to the application.~~)))

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-125 Denturist licensure—Endorsement. (1) For the purposes of endorsement as provided in RCW 18.30.090 (1)(a) licensing ((~~authorities shall be~~)) standards are determined to be substantially equivalent that meet the following criteria:

(((~~(1)~~))) (a) A written examination((~~ applicants must have successfully completed a written examination~~)) which ((~~included~~)) includes:

(i) Testing in the areas of:

(((~~(a)~~))) (A) Oral pathology;

(((~~(b)~~))) (B) Head and oral anatomy and physiology; and

(((~~(c)~~))) (C) Dental laboratory technology;

((~~Additionally, the examination must include~~)) (ii) Testing in four of the following test categories:

(((~~(d)~~))) (A) Partial denture construction and design;

(((~~(e)~~))) (B) Microbiology;

(((~~(f)~~))) (C) Clinical dental technology;

(((~~(g)~~))) (D) Clinical jurisprudence;

(((~~(h)~~))) (E) Asepsis;

(((~~(i)~~))) (F) Medical emergencies;

(((~~(j)~~))) (G) Cardiopulmonary resuscitation.

(((~~(2)~~))) (b) A practical examination((~~ applicants must have successfully completed~~)) which includes a clinical examination.

(2) An applicant for licensure as a denturist who is currently licensed to practice denturism in another state, territory of the United States, District of Columbia, or Puerto Rico must file an application with the board and submit:

(a) Documentation verifying that the applicant has successfully completed the testing requirements in subsection (1) of this section; and

(b) The application fee required in WAC 246-812-990.

NEW SECTION

WAC 246-812-131 Temporary practice permit—Military spouse. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for the profession. The board adopts the procedural rules as adopted by the department of health in WAC 246-12-051.

NEW SECTION

WAC 246-812-135 Background check—Temporary practice permit. The board conducts background checks on all applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The board may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active denturist license in another state that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington.

(2) A temporary practice permit grants the individual the full denturist scope of practice.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license;

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required;

(c) Provide verification of having an active unrestricted denturist license from another state, territory of the United States, District of Columbia or Puerto Rico that has substantially equivalent licensing standards to those in Washington state; and

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-150 Examination—Content and scores. An applicant ((~~seeking licensure in Washington~~)) for licensure as a denturist by examination must successfully complete a written and practical examination as specified in RCW 18.30.100. In order to be licensed, an applicant ((~~shall be~~)) is required to obtain at least an overall passing score of seventy percent on both the written examination and ((~~an overall score of seventy percent~~)) on the practical examination.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-155 Denturist examination scores. An applicant must pass ((~~all sections of the~~)) both the written examination and the practical demonstration of skills within three attempts. After three failures on either exam, the applicant must petition the board for permission to take any further examination. The board shall have complete discretion regarding such petition and the conditions under which further examination permission may be granted.

NEW SECTION

WAC 246-812-158 Examination review procedures. (1) A candidate who does not pass the written or clinical examination may request informal review of their examination results by the board of denturists.

(a) The request must be in writing and must be received by the department within thirty calendar days of the postmark date of the examination results letter.

(b) The board will not set aside its prior determination unless the candidate shows error in examination content or procedure, bias, prejudice, or discrimination in the examination process.

(c) The board will not consider any challenges to examination scores unless the total revised score on any examination section would result in a passing score on that section of the examination.

(2) The procedure for filing an informal review is as follows:

(a) The candidate must contact the denturist program at the department of health for an appointment to appear personally to review incorrect answers on the written portion of failed examination, and score sheets on the failed clinical portion of the examination.

(b) During the appointment the candidate will be provided a standardized form to defend their examination answers.

(c) The candidate must specifically identify the challenged portion(s) of the examination and must state the specific reason(s) why the candidate feels the results of the examination should be changed.

(d) The candidate may not take more than two hours to complete the form for the written portion and two hours to complete the form for the clinical portion.

(e) The candidate may bring in notes, texts, or appropriate documentation to the appointment. The candidate may not be accompanied by another person.

(f) The candidate may not bring any electronic or other equipment to the review appointment that records audio, records visual images, allows two-way communication, or otherwise retains or transmits information.

(g) The candidate is not allowed to retain a copy of the examination, examination results, or the standardized form. Nor may the candidate take written notes or pictures away from the appointment.

(h) Following the informal review, the candidate can decide not to challenge the examination results. The candidate must sign a statement on department forms indicating that the request for informal review is withdrawn. Withdrawal will not affect the right of the candidate to retake the examination at a later date.

(3) The board will only review and consider the standardized form completed by the candidate. The consideration will take place in open session at the board's next regularly scheduled meeting. The board will notify the candidate in writing, within thirty days of the meeting, of its decision.

(4) A candidate's failure to follow the informal review process may result in the loss of the right to formal review.

(5) Any candidate who has completed the informal review process and is not satisfied with the result may submit a request for a formal hearing to be held before the board of denturists.

(a) The request must be made in writing and must be received by the department within thirty calendar days of the postmark date of the results of the board's informal examination review.

(b) The written request must specifically identify the challenged portion(s) of the examination and must state the specific reason(s) why the candidate feels the results of the examination should be changed.

(c) The board will not set aside its prior determination unless the candidate shows error in examination content or procedure, bias, prejudice, or discrimination in the examination process.

(d) The board will not consider any challenges to the written examination score unless the total revised score would result in a passing score.

(6) The formal hearing will be held pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the model procedural rules for adjudicative proceeding of the department, chapter 246-11 WAC.

AMENDATORY SECTION (Amending WSR 03-12-061, filed 6/2/03, effective 7/3/03)

WAC 246-812-160 Expired license. A denturist with an expired license may return his or her license to active license.

(1) If ((~~the~~)) a denturist's license has expired for three years or less, the ((~~practitioner~~)) denturist must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If ((~~the~~)) a denturist's license has expired for more than three years, the ((~~practitioner~~)) denturist must:

(a) Successfully pass the examinations as provided in RCW 18.30.100; and

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-161 Inactive ((~~credential~~)) license. (1) A ((~~practitioner~~)) licensed denturist may obtain an inactive ((~~credential. Refer to~~)) license by meeting the requirements of ((~~chapter 246-12 WAC, Part 4~~)) WAC 246-12-090.

(2) An inactive license must be renewed every year on the denturist's birthday according to WAC 246-12-100 and 246-812-990.

(3) A denturist with an inactive license may return to active status.

(a) If a license is inactive for three years or less, to return to active status the denturist must meet the requirements of WAC 246-12-110 and 246-812-990.

(b) If a license is inactive for more than three years and the denturist has been actively practicing in a jurisdiction approved by board under RCW 18.30.090(1), to return to active status the denturist must:

(i) Submit to the board primary source verification of the active denturist license, submitted directly from another licensing entity. The verification must include:

(A) The license number;

(B) Issue date;

(C) Expiration date; and

(D) Whether the denturist is or has been the subject of final or pending disciplinary action;

(ii) Submit to the board verification of current active practice in a jurisdiction approved by the board under RCW 18.30.090(1) for the last three years; and

(iii) Meet the requirements of WAC 246-12-110 and 246-812-990.

(c) If a license is inactive for more than three years, and the denturist has not been actively practicing in a jurisdiction approved by the board under RCW 18.30.090(1), to return to active status the denturist must submit to the board:

(i) A written request to change licensure status;

(ii) The applicable fees according to WAC 246-812-990;

(iii) Documentation of successful completion of the examinations as required in RCW 18.30.100;

(iv) Primary source verification of all denturist or health care licenses held, submitted directly from the licensing agency. The certification must include:

(A) The license number;

(B) Issue date;

(C) Expiration date; and

(D) Whether the practitioner is or has been the subject of final or pending disciplinary action;

(v) Written declaration that continuing competency requirements for the two most recent years have been met according to WAC 246-812-090;

(vi) Proof of successful completion of the approved written jurisprudence examination within the past year; and

(vii) Proof of AIDS education according to WAC 246-817-120.

NEW SECTION

WAC 246-812-165 Retired active license. (1) A licensed denturist may place their credential in "retired active" status by meeting the requirements of this section.

(2) A licensed denturist who holds a retired active license may only practice in intermittent or emergent circumstances.

(a) Intermittent means the licensed denturist will practice no more than ninety days a year.

(b) Emergent means the licensed denturist will practice only in emergency circumstances such as earthquakes, floods, times of declared war, or other states of emergency.

(3) To obtain a retired active license a licensed denturist must:

(a) Meet the requirements of WAC 246-12-120; and

(b) Pay the appropriate fee in WAC 246-812-990.

(4) To renew a retired active license the licensed denturist must:

(a) Meet the requirements in WAC 246-12-130. The retired active license fee is in WAC 246-812-990.

(b) Have completed fifteen hours of continuing competency every year in compliance with WAC 246-812-020.

(c) Renew their retired active license every year on their birthday.

(5) To return to active status the licensed denturist must:

(a) Meet the requirements in WAC 246-12-140. The active renewal fee is in WAC 246-812-990.

(b) Meet the continuing competency requirements in WAC 246-812-020.

(6) A licensed denturist who holds a retired active license is subject to a continuing competency audit.

EDUCATION AND PROGRAM APPROVAL

NEW SECTION

WAC 246-812-200 Approval of denturist program. At the board's discretion, the board may accept proof of a national professional association's approval of a program based on standards and requirements which are substantially equivalent to those identified in this chapter, in lieu of the requirements contained in this chapter. Approval in this manner must be on a form provided by the board. The board will consider for approval any program which meets the requirements as outlined in this chapter.

(1) To request board approval of a denturist education program, the authorized representative must submit to the board an application provided by the board.

(2) The authorized representative may request approval of the program as of the date of the application or retroactively to a specified date. The board approval is valid for five years. The approved program must reapply for renewed approval not less than one hundred eighty days prior to the expiration date.

(3) The application for approval of a program must include, but not be limited to, the standards identified in WAC 246-812-220.

(4) The board may conduct a site inspection of the program prior to granting approval.

(5) After completing the evaluation of the application, the board may grant or deny approval, or grant approval conditioned upon appropriate modification to the application.

(6) If the board denies an application or grants conditional approval, the authorized representative of the applicant program may request a review within ninety days of the board's decision. After ninety days, the applicant program may only obtain review by submitting a new application.

(7) The authorized representative must notify the board within thirty days of any significant changes including, but not limited to, educational administration, instructor qualifications, facilities, or content of training.

(8) The board may inspect an approved program at reasonable intervals for compliance. Approval may be withdrawn if the board finds failure to comply with the requirements of law, this chapter, or representations in the program's application under this chapter.

(9) The authorized representative must correct deficiencies which resulted in withdrawal of the board's approval within timelines specified by the board. The program must present its correction plan and evidence of actions taken to the board for approval.

NEW SECTION

WAC 246-812-220 Standards required for approval of schools or programs of denturism. The following standards are used by the board in considering a denturism program application for approval:

(1) Curriculum. The curriculum must consist of a list of courses offered and the number of course hours or credits. Courses offered must include:

(a) Head and oral anatomy and physiology;

(b) Oral pathology;

(c) Partial denture construction and design;

(d) Microbiology;

(e) Dental laboratory technology;

(f) Clinical jurisprudence;

(g) Asepsis;

(h) Medical emergencies; and

(i) Cardiopulmonary resuscitation.

(2) Academic standards. The program must have policies and procedures on:

(a) Minimum standards for measuring student progress;

(b) Admission;

(c) Progression;

(d) Graduation;

(e) Withdrawal;

(f) Dismissal; and

(g) Transfer of credits, both in and out of the program.

(3) Faculty. Faculty members shall be qualified by training and experience to give effective instruction in the subjects taught. The program must have:

(a) A policy on minimum competency standards for instructors;

(b) A statement or policy on faculty members' participation in curriculum development and evaluation; and

(c) Professional resumes for each instructor or trainer.

(4) Clinical and laboratory instruction. The program must have the following policies and forms:

(a) Policies pertaining to clinical and laboratory instruction, including:

(i) Supervision of students; and

(ii) Treatment decision making.

(b) Disclosure statement to provide to clients;

(c) Client intake and screen form; and

(d) Client feedback form.

(5) Facilities. The facilities must effectively accommodate the number of students, faculty, and staff and include appropriate provisions for safety. The program must have:

(a) A floor plan of the facility, including classrooms, clinic, and laboratory;

(b) A list of equipment in each classroom;

(c) A list of the equipment in the clinic;

(d) A list of the equipment in the laboratory; and

(e) A list of contents of the library.

(6) Records. The program shall maintain a system of records for each student beginning with application credentials through the entire period of attendance. The program must have:

(a) A transcript;

(b) A completion certificate; and

(c) A policy on release of student records.

(7) Other information. Any other information about the program as required by the board.

NEW SECTION

WAC 246-812-230 Site review procedures for approval of programs of denturism. (1) The board, at its discretion, may send a representative or evaluation committee to inspect any program requesting approval or renewed approval as an approved denturist program.

(2) Such inspections may be at any reasonable time during the normal operating hours of the program. The report of the representative or evaluation committee and the program's response shall be submitted as part of the documentation necessary for the board's action on the program's application for approval.

NEW SECTION

WAC 246-812-310 Record content. (1) A licensed denturist who treats patients shall maintain legible, complete, and accurate patient records.

(2) The patient record must reflect diagnosis, treatment performed, and financial records.

(3) The patient record must include at least the following information:

(a) For each record entry, documented verification or signature by the responsible denturist;

(b) The date of each patient record entry, document, radiograph or model;

(c) Up-to-date treatment plan;

(d) The physical examination findings documented by subjective complaints, objective findings, and an assessment or diagnosis of the patient's condition;

(e) An up-to-date dental and medical history that may affect treatment;

(f) Any diagnostic aid used including, but not limited to, images, radiographs, and recommended tests and test results.

Retention of molds or study models for full mouth reconstruction is at the discretion of the denturist;

(g) A complete description of all treatment/procedures administered at each visit;

(h) Referrals and any communication to and from any health care provider; and

(i) Notation of communication to or from patients or patient guardians, including:

(i) Notation or documentation of the discussion of potential risk(s) and benefit(s) of proposed treatment and alternative to treatment, including no treatment;

(ii) Post treatment instructions;

(iii) Patient complaints and resolutions; and

(iv) Termination of denturist-patient relationship.

(4) A patient record may contain manual or electronic treatment notes:

(a) Complete manual treatment notes must not be erased or deleted from the record.

(i) Mistaken manual entries must be corrected with a single line drawn through the incorrect information.

(ii) New or corrected information must be initialed and dated.

(b) Complete electronic treatment notes must include deletions, edits, and corrections.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-320 ((~~Maintenance and~~)) Record retention ((~~of patient records~~)) and accessibility requirements. ((~~Any denturist who treats patients in the state of Washington shall maintain complete treatment records regarding patients treated. These records shall include, but shall not be limited to, treatment plans, patient charts, patient histories, correspondence, financial data and billing. These records shall be retained by the denturist for five years in an orderly, accessible file and shall be readily available for inspection by the secretary or its authorized representative. Copies of records may be forwarded to a second party upon the patient's or authorized agent's written request. In such cases, office records shall state the date on which the records were released, method forwarded and to whom, and the reason for the release. A reasonable fee may be charged the patient to cover mailing and clerical costs.~~

~~In offices where more than one denturist is performing the services, the records must specify the denturist who performed the services.~~)) (1) A licensed denturist who treats patients eighteen years and older shall keep readily accessible patient records for at least six years from the date of the last treatment.

(2) A licensed denturist who treats patients under the age of eighteen years old shall keep readily accessible patient records for at least six years after the patient reaches eighteen years old.

(3) A licensed denturist shall respond to a written request to examine or copy a patient's record within fifteen working days after receipt of the request. A licensed denturist shall comply with chapter 70.02 RCW for all patient requests.

(4) A licensed denturist shall comply with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act, 45 C.F.R. destruction and privacy regulations.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-330 Privileged communications. A denturist shall not, without the consent of the patient, reveal any information acquired in attending such patient, which was necessary to enable the denturist to treat the patient. This ((~~shall~~)) does not apply to the release of information in an official proceeding where the release of information may be compelled by law.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-340 Patient abandonment. ((~~The~~)) A denturist ((~~shall always be free to~~)) may accept or reject a ((~~particular~~)) patient, ((~~bearing in mind that whenever possible a denturist~~)) but shall respond to any reasonable request for ((~~his/her~~)) services in the interest of public health and welfare.

The attending denturist, without reasonable cause, shall not neglect, ignore, abandon, or refuse to complete the current procedure for a patient. If the denturist chooses to withdraw responsibility for a patient of record, the denturist shall:

(1) Advise the patient that termination of treatment is contemplated and that another denturist should be sought to complete the current procedure and for future care; and

(2) Advise the patient that the denturist shall remain reasonably available under the circumstances for up to fifteen calendar days from the date of such notice to render emergency care related to that current procedure.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-350 License display—Notification of address. Every person who engages in the practice of denturism in this state ((~~shall~~)) must display their license, at all times, in a ((~~conspicuous~~)) place ((~~within their office. Whenever requested, they shall exhibit their license to the secretary or the secretary's authorized agent~~)) plainly visible to individuals receiving services on the premises and be readily available for inspection by any designee of the board. Every licensee shall notify the ((~~secretary~~)) board of the physical business address or addresses, including changes, where the licensee shall engage in the practice of denturism.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-360 Identification of new dentures. Every complete upper and lower denture and removable partial denture fabricated by a denturist licensed under the provisions of chapter 18.30 RCW, or fabricated pursuant to the denturist's work order or under the denturist's direction or supervision, ((~~shall~~)) must be marked with the name of the patient for whom the denture is intended. The markings

((~~shall~~)) must be done during fabrication and ((~~shall~~)) must be permanent, legible, and cosmetically acceptable. The exact location of the markings and the methods used to apply or implant them ((~~shall~~)) must be determined by the denturist fabricating the denture. If, in the professional judgment of the denturist, this identification is not practical, identification ((~~shall~~)) must be provided as follows:

(1) The initials of the patient may be shown alone, if use of the patient's name is impracticable; or

(2) The identification marks may be omitted in their entirety if none of the forms of identification specified in subsection (1) of this section is practicable, clinically safe, or the patient declines.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-390 Improper billing practices. The ((~~following acts shall constitute grounds for which disciplinary action may be taken~~)) board may take disciplinary action for billing practices including, but not limited to, the following:

(1) Rebating or offering to rebate to an insured any payment to the licensee by the third-party payor of the insured for services or treatments rendered under the insured's policy.

(2) Submitting to any third-party payor a claim for a service or treatment at a greater or an inflated fee or charge other than the usual fee the licensee charges for that service or treatment when rendered without third-party reimbursement.

NEW SECTION

WAC 246-812-395 Mandatory reporting. The board adopts the model rules for mandatory reporting as contained in chapter 246-16 WAC.

SEXUAL MISCONDUCT

NEW SECTION

WAC 246-812-470 Definitions. The definitions in this section apply throughout this section and WAC 246-812-480 unless the context requires otherwise.

(1) "Denturist" means an individual applying for a credential or credentialed specifically as defined in chapter 18.30 RCW.

(2) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to, the health care of a patient.

(3) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decisions of the patient.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients, including palliative care, as consistent with community standards of practice for the denturist profession. The activity must be within the scope of practice of the denturist.

(5) "Patient" means an individual who receives health care services from a denturist. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent, and context of the professional relationship between the denturist and the person. The person that is not receiving treatment or professional services is not the sole determining factor.

NEW SECTION

WAC 246-812-480 Sexual misconduct. (1) A denturist shall not engage, or attempt to engage, in sexual misconduct with a current patient, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus, or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis, and treatment and within the denturist's scope of practice;

(c) Rubbing against a patient or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling, or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals without using gloves;

(g) Not allowing a patient privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(h) Not providing the patient a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient or key party;

(j) Removing patient or client's clothing, or gown, or draping without consent, emergent medical necessity or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the denturist;

(l) Masturbation or other sex act by the denturist in the presence of the patient or key party;

(m) Suggesting or discussing the possibility of a dating, sexual, or romantic relationship after the professional relationship ends;

(n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(o) Soliciting a date with a patient or key party;

(p) Discussing the sexual history, preferences or fantasies of the denturist;

(q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(r) Making statements regarding the patient or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening, or harming a patient or key party;

(t) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes; or for the educational or marketing purposes with the consent of the patient or key party; and

(u) Showing a patient or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sexual offense listed in RCW 9.94A.030.

(3) A denturist shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

(4) A denturist shall not engage or attempt to engage in the activities listed in subsection (1) of this section with a former patient or key party within two years after the provider-patient/provider-client relationship ends.

(5) After the two-year period of time described in subsection (3) of this section, a denturist shall not engage or attempt to engage in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient or key party will seek or require additional services from the denturist; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(6) When evaluating whether a denturist has engaged or has attempted to engage in sexual misconduct, the board will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another denturist;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the denturist and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the denturist;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(7) Patient or key party initiation or consent does not excuse or negate the denturist's responsibility.

(8) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another denturist;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the denturist profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the denturist where there is no evidence of or potential for exploiting the patient or client.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-510 Definitions—Sterilization. The ((~~following definitions pertain to~~)) definitions in this section apply throughout WAC 246-812-501 through 246-812-520, unless the context clearly requires otherwise.

(1) **"Communicable diseases"** means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water or air.

(2) **"Decontamination"** means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

(3) **"Direct care staff"** are the denturist staff who directly provide denturist care to patients.

(4) **"Sterilize"** means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-520 Use of barriers and sterilization techniques. The use of barriers and sterilization techniques is the primary means of assuring that there is the least possible chance of the transmission of communicable diseases from denturist and staff to patients, from patient to patient and from patient to denturist and staff. To prevent patient to patient cross contamination, instruments and supplies contaminated or likely to be contaminated with blood or saliva and touched during treatment must be sterilized between patients or discarded except as otherwise set forth below. Surfaces and equipment which are likely to be contaminated with blood or saliva and touched during treatment must be decontaminated or covered with a barrier which is discarded and replaced between patients except as otherwise set forth below:

(1) Denturists shall comply with the following barrier techniques:

(a) Gloves ((~~shall~~)) must be used by the denturist and direct care staff during treatment which involves intraoral procedures or contact with items potentially contaminated with the patient's bodily fluids. Fresh gloves ((~~shall~~)) must be used for every intraoral patient contact. Gloves ((~~shall~~)) must not be washed or reused for any purpose. The same pair of gloves ((~~shall~~)) must not be used, removed, and reused for the same patient at the same visit or for any other purpose. Gloves that have been used for denturist treatment ((~~shall~~)) must not be reused for any nondenturist purpose.

(b) Masks ((~~shall~~)) must be worn by the denturist and direct care staff when splatter or aerosol is likely.

(c) Unless effective surface decontamination methods are used, protective barriers ((~~shall~~)) must be placed over areas which are likely to be touched during treatment, not removable to be sterilized, and likely to be contaminated by blood or saliva. These procedures must be followed between each patient. These include but are not limited to:

(i) Delivery unit;

(ii) Chair controls (not including foot controls);

(iii) Light handles;

(iv) Head rest;

(v) Instrument trays;

(vi) Treatment area and laboratory countertops/benches.

(d) Protective eyewear shields ((~~shall~~)) must be worn by the denturist and direct care staff and provided to all patients during times when splatter or aerosol is expected.

(2) Denturists shall comply with the following sterilization requirements:

(a) Every denturist office ((~~shall~~)) must have the capability to ultrasonically clean and sterilize contaminated items by autoclave, dry heat, unsaturated formaldehyde/alcohol vapor (such as MDT Chemiclave®) or ethylene oxide, where adequate ventilation is provided. Sterilizers ((~~shall~~)) must be tested by a biological spore test on at least a weekly basis. In the event of a positive biological spore test, the denturist shall take immediate remedial action to ensure the objectives of (a) of this subsection are accomplished. Documentation ((~~shall~~)) must be maintained either in the form of a log reflecting dates and person(s) conducting the testing or copies of reports from an independent testing entity. The documentation ((~~shall~~)) must be maintained for a period of at least five years.

(b) The following items ((~~shall~~)) must be sterilized by an appropriate autoclave, dry heat, unsaturated formaldehyde/alcohol vapor (such as MDT Chemiclave®) or ethylene oxide sterilization method between patients:

(i) Hand instruments;

(ii) Air-water syringe tips;

(iii) High volume evacuator tips;

(iv) Nose cone sleeves;

(v) Metal impression trays.

(c) Gross debris ((~~shall~~)) must be removed from items prior to sterilization. Ultrasonic ((~~disinfectant~~)) solution cleaning ((~~shall~~)) must be used whenever possible.

(d) Nondisposable items used in patient care which cannot be autoclaved, dry heat, unsaturated formaldehyde/alcohol vapor (such as MDT Chemiclave®) or ethylene oxide sterilized ((~~shall~~)) must be immersed ((~~and ultrasonically cleaned~~)) in a chemical sterilant. If such a technique is used, the solution ((~~shall~~)) must be approved by the Environmental Protection Agency and used in accordance with the manufacturer's directions for sterilization.

(e) Items such as impressions contaminated with blood or saliva ((~~shall~~)) must be thoroughly rinsed, appropriately disinfected, placed in and transported to the denturist laboratory in an appropriate case containment device that is properly sealed and separately labeled.

(f) In the laboratory: Ragwheels ((~~shall~~)) must be sterilized or disinfected; patient pumice ((~~shall~~)) must be discarded after each use; and, patient burrs and stones ((~~shall~~)) must be sterilized or disinfected.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-601 Purpose. The ((~~secretary~~)) board recognizes the need to establish a means of proactively providing early recognition and treatment options for denturists whose competency may be impaired due to the abuse of drugs or alcohol. The ((~~secretary~~)) board intends that such denturists be treated and their treatment monitored so that they can return to or continue to practice their profession in a way which safeguards the public. To accomplish this the ((~~secretary~~)) board shall approve voluntary substance abuse monitoring programs and shall refer denturists impaired by substance abuse to approved programs as an alternative to instituting disciplinary proceedings as defined in RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-610 Definitions. The ((~~following general terms are defined within the context used in this chapter:~~)) definitions in this section apply throughout WAC 246-812-601 through 246-812-630 unless the context clearly requires otherwise.

(1) **"Aftercare"** is that period of time after intensive treatment that provides the denturist and the denturist's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment or monitoring program staff.

(2) **"Approved substance abuse monitoring program"** or **"approved monitoring program"** is a program the ((~~secretary~~)) board has determined meets the requirements of the law and the criteria established by the ((~~secretary~~)) board in WAC 246-812-620 which enters into a contract with denturists who have substance abuse problems regarding the required components of the denturist's recovery activity and oversees the denturist's compliance with these requirements. Substance abuse monitoring programs do not provide evaluation or treatment to participating denturists.

(3) **"Approved treatment facility"** is a facility approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 70.96A.020((~~(2) or 69.54.030~~)) (3) to provide intensive alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out-of-state must be equivalent to the standards required for approval under RCW 70.96A.020((~~(2) or 69.54.030~~)) (3).

(4) **"Contract"** is a comprehensive, structured agreement between the recovering denturist and the approved monitoring program stipulating the denturist's consent to comply with the monitoring program and its required components of the denturist's recovery activity.

(5) **"Health care professional"** is an individual who is licensed, certified, or registered in Washington to engage in the delivery of health care to patients.

(6) **"Random drug screens"** are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person being tested.

(7) **"Substance abuse"** means the impairment, as determined by the ((~~secretary~~)) board, of a denturist's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(8) **"Support group"** is a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which denturists may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.

(9) **"Twelve-step groups"** are groups such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-620 Approval of substance abuse monitoring programs. The ((~~secretary~~)) board shall approve the monitoring program(s) which shall participate in the substance abuse monitoring program. A monitoring program approved by the ((~~secretary~~)) board may be contracted with an entity outside the department but within the state, out-of-state, or a separate structure within the department.

(1) The approved monitoring program shall not provide evaluation or treatment to the participating denturists.

(2) The approved monitoring program staff must have the qualifications and knowledge of both substance abuse and the practice of denturism as defined in this chapter to be able to evaluate:

(a) Clinical laboratories;

(b) Laboratory results;

(c) Providers of substance abuse treatment, both individuals and facilities;

(d) Support groups;

(e) The denturist work environment; and

(f) The ability of the denturist to practice with reasonable skill and safety.

(3) The approved monitoring program shall enter into a contract with the denturist and the ((~~secretary~~)) board to oversee the denturist's compliance with the requirements of the program.

(4) The approved monitoring program may make exceptions to individual components of the contract on an individual basis.

(5) The approved monitoring program staff shall ((~~recommend~~)) determine, on an individual basis, whether a denturist shall be prohibited from engaging in the practice of denturism for a period of time and restrictions, if any, on the denturist's access to controlled substances in the work place.

(6) The approved monitoring program shall maintain records on participants.

(7) The approved monitoring program ((~~shall be~~)) is responsible for providing feedback to the denturist as to whether treatment progress is acceptable.

(8) The approved monitoring program shall report to the ((~~secretary~~)) board any denturist who fails to comply with the requirements of the monitoring program.

(9) The approved monitoring program shall receive from the ((~~secretary~~)) board guidelines on treatment, monitoring, and limitations on the practice of denturism for those participating in the program.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-630 Participation in approved substance abuse monitoring program. (1) In lieu of disciplinary action, the denturist may accept ((~~secretary~~)) board referral into the approved substance abuse monitoring program.

(a) The denturist shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation ((~~shall~~)) must be performed by health care professional(s) with expertise in chemical dependency. The person(s) performing the evaluation shall not also be the provider of the recommended treatment.

(b) The denturist shall enter into a contract with the ((~~secretary~~)) board and the approved substance abuse monitoring program to comply with the requirements of the program which ((~~shall~~)) must include, but not be limited to:

(i) The denturist shall undergo intensive substance abuse treatment in an approved treatment facility.

(ii) The denturist shall agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(iii) The denturist must complete the prescribed aftercare program of the intensive treatment facility, which may include individual and/or group psychotherapy.

(iv) The treatment counselor(s) shall provide reports to the approved monitoring program at specified intervals. Reports ((~~shall~~)) must include treatment, prognosis, and goals.

(v) The denturist shall submit to random drug screening as specified by the approved monitoring program.

(vi) The denturist shall attend support groups facilitated by a health care professional and/or twelve-step group meetings as specified by the contract.

(vii) The denturist shall comply with specified employment conditions and restrictions as defined by the contract.

(viii) The denturist shall sign a waiver allowing the approved monitoring program to release information to the ((~~secretary~~)) board if the denturist does not comply with the requirements of this contract.

(c) The denturist is responsible for paying the costs of the physical and psychosocial evaluation, substance abuse treatment, and random drug screens.

(d) The denturist may be subject to disciplinary action under RCW 18.130.160, if the denturist does not consent to be referred to the approved monitoring program, does not comply with specified employment restrictions, or does not successfully complete the program.

(2) A denturist who is not being investigated by the ((~~secretary~~)) board or subject to current disciplinary action or currently being monitored by the ((~~secretary~~)) board for substance abuse may voluntarily participate in the approved substance abuse monitoring program without being referred by

the ((~~secretary~~)) board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the ((~~secretary~~)) board if they meet the requirements of the approved monitoring program as defined in subsection (1) of this section.

(3) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in subsection (1) of this section. Records held by the ((~~secretary~~)) board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-812-170	License renewal form.
WAC 246-812-400	Denturist associations or societies.
WAC 246-812-410	Insurance carriers.
WAC 246-812-420	Professional liability carriers.
WAC 246-812-430	Courts.
WAC 246-812-440	State and federal agencies.
WAC 246-812-450	Professional standards review organizations.

WSR 14-17-044
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed August 14, 2014, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-060.

Title of Rule and Other Identifying Information: WAC 182-543-6000 DME and related supplies, medical supplies and related services—Noncovered.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 23, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 24, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on September 23, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 15, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Remove lumbar supports for pregnancy from the list of personal and/or comfort items which the agency does not cover.

Reasons Supporting Proposal: Lumbar supports require prior authorization.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, HCA, Rules and Publications, (360) 725-1306; Implementation and Enforcement: Erin Mayo, HCA, Health Care Services, (360) 725-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

August 14, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-035, filed 3/25/14, effective 4/25/14)

WAC 182-543-6000 DME and related supplies, medical supplies and related services—Noncovered. The medicaid agency pays for DME and related supplies, medical supplies and related services only when listed as covered in this chapter. The agency evaluates a request for any durable medical equipment (DME) and related supplies, prosthetics, orthotics, and medical supplies listed as noncovered in this chapter under the provisions of WAC 182-501-0160. In addition to the noncovered services found in WAC 182-501-0070, the agency does not cover:

(1) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by the agency for the client contributes to an increased utility bill;

(2) Instructional materials such as pamphlets and video tapes;

(3) Hairpieces or wigs;

(4) Material or services covered under manufacturers' warranties;

(5) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;

(6) Supplies and equipment used during a physician office visit, such as tongue depressors and surgical gloves;

(7) Prosthetic devices dispensed for cosmetic reasons;

(8) Home improvements and structural modifications, including but not limited to the following:

(a) Automatic door openers for the house or garage;

(b) Electrical rewiring for any reason;

(c) Elevator systems and elevators;

(d) Installation of, or customization of existing, bathtubs or shower stalls;

(e) Lifts or ramps for the home;

(f) Overhead ceiling track lifts;

(g) Saunas;

(h) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;

(i) Swimming pools; and

(j) Whirlpool systems, such as jacuzzis, hot tubs, or spas.

(9) Nonmedical equipment, supplies, and related services, including but not limited to, the following:

(a) Back-packs, pouches, bags, baskets, or other carrying containers;

(b) Bedboards/conversion kits, and blanket lifters (e.g., for feet);

(c) Car seats for children seven years of age and younger or less than four feet nine inches tall, except for prior authorized positioning car seats under WAC 182-543-3200;

(d) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;

(e) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;

(f) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:

(i) Devices intended for amplifying voices (e.g., microphones);

(ii) Interactive communications computer programs used between patients and health care providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services;

(iii) Two-way radios;

(iv) Rental of related equipment or services; and

(v) Devices requested for the purpose of education.

(g) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads, and light boxes;

(h) Ergonomic equipment;

(i) DME that is used in a clinical setting;

(j) Exercise classes or equipment such as exercise mats, exercise balls, bicycles, tricycles, stair steppers, weights, or trampolines;

(k) Generators;

(l) Computer software other than speech generating software, printers, and computer accessories (such as anti-glare shields, backup memory cards);

(m) Computer utility bills, telephone bills, internet service bills, or technical support for computers or electronic notebooks;

(n) Any communication device that is useful to someone without severe speech impairment (including but not limited to cellular telephone and associated hardware, walkie-talkie, two-way radio, pager, or electronic notebook);

(o) Racing strollers/wheelchairs and purely recreational equipment;

(p) Room fresheners/deodorizers;

(q) Bidet or hygiene systems, "sharps" containers, paraffin bath units, and shampoo rings;

(r) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;

(s) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or

(t) Wheeled reclining chairs, lounge and/or lift chairs (including but not limited to geri-chair, posture guard, or lazy boy).

(10) Blood pressure monitoring:

(a) Sphygmomanometer/blood pressure apparatus with cuff and stethoscope;

(b) Blood pressure cuff only; and

(c) Automatic blood pressure monitor.

(11) Transcutaneous electrical nerve stimulation (TENS) devices and supplies, including battery chargers;

(12) Functional electrical stimulation (FES) bike;

(13) Wearable defibrillators;

(14) Disinfectant spray;

(15) Periwash;

(16) Bathroom equipment used inside or outside of the physical space of a bathroom:

(a) Bath stools;

(b) Bathtub wall rail (grab bars);

(c) Bed pans;

(d) Bedside commode chair;

(e) Control unit for electronic bowel irrigation/evacuation system;

(f) Disposable pack for use with electronic bowel system;

(g) Potty chairs;

(h) Raised toilet seat;

(i) Safety equipment (including but not limited to belt, harness or vest);

(j) Shower chairs;

(k) Shower/commode chairs;

(l) Sitz type bath or equipment;

(m) Standard and heavy duty bath chairs;

(n) Toilet rail;

(o) Transfer bench for tub or toilet;

(p) Urinal male/female.

(17) Personal and/or comfort items, including but not limited to the following:

(a) Bathroom and hygiene items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;

(b) Full electric beds;

(c) Bedding items, such as mattress pads, blankets, mattress covers/bags, pillows, pillow cases/covers, sheets, and bumper pads;

(d) Bedside items, such as bed trays, carafes, and over-the-bed tables;

(e) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, socks, custom vascular supports (CVS), surgical stockings, gradient compression stockings, and custom compression garments ((~~and lumbar supports for pregnancy~~));

(f) Clothing protectors, surgical masks, and other protective cloth furniture coverings;

(g) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;

(h) Diverter valves and handheld showers for bathtub;

(i) Eating/feeding utensils;

(j) Emesis basins, enema bags, and diaper wipes;

(k) Health club memberships;

(l) Hot or cold temperature food and drink containers/holders;

(m) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;

(n) Impotence devices;

(o) Insect repellants;

(p) Massage equipment;

(q) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 182-530 WAC;

(r) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;

(s) Page turners;

(t) Radio and television;

(u) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services;

(v) Toothettes and toothbrushes, waterpics, and periodontal devices whether manual, battery-operated, or electric;

(18) Certain wheelchair features and options including, but not limited to, the following:

(a) Attendant controls (remote control devices);

(b) Canopies, including those used for strollers and other equipment;

(c) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);

(d) Decals;

(e) Hub Lock brake;

(f) Identification devices (such as labels, license plates, or name plates);

(g) Lighting systems;

(h) Replacement key or extra key;

(i) Speed conversion kits; and

(j) Trays for clients in a skilled nursing facility.

(19) New DME, supplies, or related technology that the agency has not evaluated for coverage. See WAC 182-543-2100.

WSR 14-17-046
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed August 14, 2014, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-104.

Title of Rule and Other Identifying Information: Lists of vehicle owners—Definition of "legitimate businesses."

Hearing Location(s): Highways-Licenses Building, 1125 Washington Street S.E., Conference Room 413, Olympia, WA (check in at counter on first floor), on September 25, 2014, at 3:00 p.m.

Date of Intended Adoption: September 26, 2014.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by September 24, 2014.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by September 24, 2014, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 308-10-010 to add a definition for "legitimate businesses" for purposes of releasing lists of vehicle owners under RCW 46.12.630.

Reasons Supporting Proposal: A recent amendment to RCW 46.12.630 (section 1, chapter 79, Laws of 2014) authorizes the release of lists of vehicle owners to "legitimate businesses as defined by the department in rule."

Statutory Authority for Adoption: RCW 46.01.110 and 46.12.630.

Statute Being Implemented: RCW 46.12.630.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

August 14, 2014
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-010 Definitions. (1) The definitions set forth in RCW 42.56.010 shall apply to this chapter.

(2) ((~~"Designee" is a department employee authorized by the public records officer to receive and respond to a public records request.~~

~~(3)~~)) "Commercial purpose" means using or intending to use information for the purpose of facilitating a profit expecting business activity.

(3) The "department of licensing" is the agency created pursuant to chapter 46.01 RCW. The department of licensing shall hereinafter be referred to as the department. Where appropriate, the term department also refers to the staff and employees of the department of licensing.

(4) "Designee" is a department employee authorized by the public records officer to receive and respond to a public records request.

(5) "Director" means the director of the department of licensing as appointed by the governor.

(((5) "Listing (list)" means an item-by-item series of names, figures, words or numbers written or printed one after the other.))

(6) "Individual" means a natural person.

(7) (("Commercial purpose" means using or intending to use information for the purpose of facilitating a profit expecting business activity.)) "Legitimate business," for purposes of RCW 46.12.630, means a company with a valid and unexpired business license that is:

(a) A licensed Washington business; or

(b) Not required to be licensed in this state, but has a federal employer identification number, federal tax number, or uniform business identifier (UBI).

(8) "Listing (list)" means an item-by-item series of names, figures, words, or numbers written or printed one after the other.

(9) "Profession" when applied to department records, or the release of department record information, means any state regulated business, profession or occupation administered by the assistant director, business and professions division.

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

WSR 14-17-049
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2014-04—Filed August 14, 2014, 4:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-107.

Title of Rule and Other Identifying Information: Pediatric routine vision screening.

Hearing Location(s): Office of the Insurance Commissioner, Training Room (TR-120), 5000 Capitol Boulevard S.E., Tumwater, WA, on September 29, 2014, at 9:00 a.m.

Date of Intended Adoption: October 1, 2014.

Submit Written Comments to: Kate Reynolds, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by September 26, 2014.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by September 26, 2014, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pediatric routine vision screening was defined in the rule making regarding essential health benefits. The current definition was evaluated based on what services are included in a routine vision screening and what services are included in a comprehensive eye exam.

Reasons Supporting Proposal: The revised definition separates routine vision screening and comprehensive vision screening for clarification for issuers and consumers.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200.

Statute Being Implemented: RCW 48.43.715.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kate Reynolds, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7170; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: AnnaLisa Gellermann, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule revision is a clarification of an essential health benefit as specified in the Affordable Care Act and follows federal guidance established in the federal employees dental and vision insurance program. This clarification identifies dilation and refraction testing as distinct benefits separate from routine vision screening and included under a comprehensive eye exam. Therefore, under the provisions of RCW 34.05.328 (5)(iii), no cost-benefit analysis is required.

August 14, 2014
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-15-025, filed 7/9/13, effective 7/10/13)

WAC 284-43-880 Pediatric vision services. A health benefit plan must include "pediatric vision services" in its essential health benefits package. The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-878 (1) through (9), but does not include pediatric vision services. Pediatric vision services are vision services delivered to enrollees under age nineteen.

(1) A health benefit plan must cover pediatric vision services as an embedded set of services.

(2) **Supplementation:** The state EHB-benchmark plan requirements for pediatric vision benefits must be offered at a substantially equal level and classified consistent with the designated supplemental base-benchmark plan for pediatric vision services, the Federal Employees Vision Plan with the largest enrollment and published by the U.S. Department of Health and Human Services at www.cciioo.cms.gov on July 2, 2012.

(a) The vision services included in the pediatric vision services category are:

(i) Routine vision screening; and

(ii) A comprehensive eye exam for children, including dilation as professionally indicated((,)) and with refraction every calendar year;

(((~~ii~~))) (iii) One pair of prescription lenses or contacts every calendar year, including polycarbonate lenses and scratch resistant coating. Lenses may include single vision, conventional lined bifocal or conventional lined trifocal, or lenticular lenses;

(((~~iii~~))) (iv) One pair of frames every calendar year. An issuer may establish networks or tiers of frames within their plan design as long as there is a base set of frames to choose from available without cost sharing;

(((~~iv~~))) (v) Contact lenses covered once every calendar year in lieu of the lenses and frame benefits. Issuers must apply this limitation based on the manner in which the lenses must be dispensed. If disposable lenses are prescribed, a sufficient number and amount for one calendar year's equivalent must be covered. The benefit includes the evaluation, fitting and follow-up care relating to contact lenses. If determined to be medically necessary, contact lenses must be covered in lieu of eyeglasses at a minimum for the treatment of the following conditions: Keratoconus, pathological myopia, aphakia, anisometropia, aniseikonia, aniridia, corneal disorders, post-traumatic disorders, and irregular astigmatism;

(((~~v~~))) (vi) Low vision optical devices including low vision services, training and instruction to maximize remaining usable vision as follows:

(A) One comprehensive low vision evaluation every five years;

(B) High power spectacles, magnifiers and telescopes as medically necessary, with reasonable limitations permitted; and

(C) Follow-up care of four visits in any five year period, with prior approval.

(b) The pediatric vision supplemental base-benchmark specifically excludes, and issuer must not include in its actuarial value for the category:

(i) Visual therapy, which is otherwise covered under the medical/surgical benefits of the plan;

(ii) Two pairs of glasses may not be ordered in lieu of bifocals;

(iii) Medical treatment of eye disease or injury, which is otherwise covered under the medical/surgical benefits of the plan;

(iv) Nonprescription (Plano) lenses; and

(v) Prosthetic devices and services, which are otherwise covered under the rehabilitative and habilitative benefit category.

WSR 14-17-058
PROPOSED RULES
GAMBLING COMMISSION
[Filed August 15, 2014, 8:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-017.

Title of Rule and Other Identifying Information: WAC 230-03-052 Resident agent to be appointed by out-of-state applicants and licensees and 230-03-050 Additional information required from applicants for licensing.

Hearing Location(s): Spokane Davenport Hotel, 10 South Post Street, Spokane, WA 99201, (509) 455-8888, on October 9 or 10, 2014, at 9:00 a.m. or 1:00 p.m. Note: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: October 9 or 10, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by October 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We have received a petition for rule change from Mr. Nathan Schreiner, Squaxin Island legal department. The petitioner's amendment would no longer require out-of-state licensees that do not have a business office or licensed premise[s] in the state to designate a "natural person" as resident agent or provide a "home address" for the agent. The amendment would allow out-of-state licensees to use registered agent services with locations in the state.

Additionally, housekeeping changes are proposed to replace "resident agent" with "registered agent," to mirror other statutory provisions relating to registered agents (e.g., RCW 23B.05.010).

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Mr. Nathan Schreiner, Squaxin Island legal department, private.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 15, 2014
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-03-050 Additional information required from applicants for licensing. (1) Applicants must give us details or copies of the following information on or attached to their application:

(a) The name of the ((~~resident~~)) registered agent as required by state law, and the agent's business ((~~and home~~)) address located in the state; and

(b) Internal Revenue Service tax exemption letter, if one is necessary; and

(c) All lease or rental agreements, whether oral or written, between the applicant and the owner of the site where the applicant will conduct gambling activity; and

(d) Any franchise agreements or other agreements, whether written or oral, between the applicant and distributors or manufacturers of equipment or between the applicant and any other person whose agreements relate to gambling activities or gambling equipment; and

(e) All proposed financing, consulting, and management agreements or contracts between applicant and any gambling service supplier; and

(f) Enough personal information to ensure each substantial interest holder is qualified to hold a license or participate in an authorized gambling activity; and

(g) For commercial applicants: Articles of incorporation, limited liability corporation formation, partnership agreement, and other documents which set out the applicant's business structure; and

(h) For charitable and nonprofit organization applicants: Articles of incorporation and bylaws; or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization.

(2) Applicants must also give us any other information we request within thirty days of the request or within any other time frame we provide.

AMENDATORY SECTION (Amending WSR 08-20-007, filed 9/18/08, effective 1/1/09)

WAC 230-03-052 ((~~Resident~~)) Registered agent to be appointed by out-of-state applicants and licensees. (1) All applicants and licensees that do not have a business office or licensed premises within Washington state must appoint a ((~~resident~~)) registered agent for receiving and accepting service of process and other communications from us.

(2) The ((~~resident~~)) registered agent must have a physical Washington state address at which the agent is available for service of process and be:

(a) A ((~~natural person who is a resident living in Washington state; and~~

~~(b) At least eighteen years old.~~

~~(3) The resident agent's name, business address, and home address must be filed with us~~)) company authorized to conduct business in this state; or

(b) An individual resident of this state who is at least eighteen years old.

WSR 14-17-059
PROPOSED RULES
GAMBLING COMMISSION
[Filed August 15, 2014, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-030.

Title of Rule and Other Identifying Information: WAC 230-15-295 Digital video recording equipment requirements.

Hearing Location(s): Spokane Davenport Hotel, 10 South Post Street, Spokane, WA 99201, (509) 455-8888, on October 9 or 10, 2014, at 9:00 a.m. or 1:00 p.m. Note: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: October 9 or 10, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by October 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change would require Class F and house-banked card room licensees' digital video recording and playback of images to have sufficient magnification and clarity to show fluid motion and allow the viewer to clearly distinguish the value of currency, coins, gaming chips, playing cards, and outcome of the game and effectively monitor in detail all areas requiring video coverage.

- Current Class F and house-banked card room licensees would only have to meet the new requirement when they install new digital recording equipment.
- If a new Class F or house-banked card room opens, the digital recording equipment must meet the proposed requirements below.
- Existing card rooms that are sold would not be required to meet these new standards until they install new equipment.

Staff worked with Class F and house-banked card room licensees on this rule change.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

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

Small Business Economic Impact Statement - RCW 19.85.040

Rules Package: WAC 230-15-295 Digital video recording equipment requirements.

Involvement of Small Businesses: All licensees impacted by this proposal were provided notification of the

proposed changes by e-mail on May 13, 2014. Staff worked with the Recreational Gaming Association, an industry group for card rooms, on this proposal. Notice was published in the June 2014 editions of our Focus on Gambling newsletter and Card Room Connection newsletter, which are posted on our web site and mailed to licensees impacted by this proposal. The proposal was discussed at the July 11, 2014, study session in Grand Mound, Washington. This process provided small businesses opportunities in the development of the new rule. To date, we have received no objections to this proposal.

1. Description of the reporting, recordkeeping and other compliance requirements of the proposed rule:

- Current Class F and house-banked card room licensees would only have to meet the new requirement when they install new digital recording equipment.
- If a new Class F or house-banked card room opens, the digital recording equipment must meet the proposed requirements below.
- Existing card rooms that are sold would not be required to meet these new standards until they install new equipment.
- The proposed change would also require:
    - Video recording and playback of images to have sufficient magnification and clarity to show fluid motion and allow the viewer to clearly distinguish the value of currency, coins, gaming chips, playing cards, and outcome of the game and effectively monitor in detail all areas requiring video coverage.
    - Each user to sign in with their own ID and password.
    - Surveillance systems to have an audio or visual indication of a system malfunction.
    - Surveillance systems to record the date and time when:
        - → Users log in and out of system; and
        - → Video signals from gaming cameras are interrupted and when connection is restored; and
        - → Video is recorded to removable storage media along with the date, time, and camera being copied including the user at the time; and
        - → System failure occurs; and
        - → Remote access to the system begins and ends along with the ability to identify the person or organization accessing the system and the files accessed during the remote access.

2. Kinds of professional services that a small business is likely to need in order to comply: Card room licensees would likely require the use of a licensed service supplier that specializes in installing digital video surveillance equipment.

3. The actual costs to small business of compliance, including costs of equipment, supplies, labor and increased administrative costs: There is no cost for existing card rooms to meet the proposed changes if they continue to use their current digital video or analog recording equipment.

However, when a card room does replace their digital video equipment they may have additional cost if they also need to purchase new cameras to meet the rule requirements. Some cameras currently in use may work with new digital video equipment but will not give the required clarity that is needed to meet the new rule requirements. These cameras would need to be replaced.

The cost of a new camera is approximately $200. Labor to install each camera is $100 - $200. Card rooms would need at least one camera for each card table, one for the count area, and one for the cage.

4. Whether compliance with the rule, based on feedback received from licensees, will cause businesses to lose sales or revenue: There are no recordkeeping, reporting, or compliance requirements that will impose additional costs on our current licensees. The type of video recording equipment a card room uses has no relationship to revenue. We do not believe it will cause card rooms to lose revenues.

5. A determination of whether the proposed rule will have a disproportionate impact on small businesses: Card rooms would likely need to hire a licensed service supplier to install new cameras. Installation labor costs per hour are $50-$75. It would take one to two hours to install each camera. Card rooms impacted range from the largest with $13,495,742 in gross receipts in 2013 to $336,804 for the smallest. The cost per hour of labor is the same regardless of the size of the card room. Because the costs are the same for all card rooms, if a card room chose to hire a licensed service supplier, the financial impact would be greater on a smaller, versus a larger card room. Therefore, the cost of compliance could have a disproportionate impact on small businesses.

6. Steps taken by the agency to reduce the costs of the rule on small businesses or reasonable justification for not doing so. Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses":

a. **Reducing, modifying, or eliminating substantive regulatory requirements;**

We are not requiring current licensees to comply with the new requirements unless they choose to purchase and install new digital video equipment.

b. **Simplifying, reducing, or eliminating recordkeeping and reporting requirements;**

There are no immediate requirements for current licensees. If a licensee chooses to install new digital video recording it must have the features to meet the requirements.

c. **Reducing the frequency of inspections;**

There will be no additional inspections because of this rule change.

d. **Delaying compliance timetables;**

Current licensees are not required to meet the new requirements until they choose to purchase and install new digital video equipment.

e. **Reducing or modifying fine schedules for noncompliance; or**

We usually don't fine licensees for the first incident of noncompliance. Licensees are typically given verbal and written warnings before fines are considered for noncompliance.

f. **Any other mitigation techniques including those suggested by small businesses or small business advocates.**

We have not had the opportunity to receive suggestions yet. We will consider any we receive.

7. A description of how the gambling commission will involve small businesses in the development of the rule: All rules are discussed at study session(s) before they are up for discussion and possible filing by the commissioners. The purpose of these study sessions is to get input from the industry. This rule was discussed at the July 2014 study session.

8. A list of industries that will be required to comply with the rule: 7132. There are approximately fifty-six house-banked and Class F card rooms (gambling establishments) that would be required to comply with this rule.

9. An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule: We do not believe the proposed rule change will result in the creation or loss of any jobs.

A copy of the statement may be obtained by contacting Susan Newer, Rules Coordinator, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504, phone (360) 486-3466, fax (360) 486-3625, e-mail Susan.Newer@wsgc.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 15, 2014
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-295 Digital video recording equipment requirements. Digital recording, including audio recording where required, using a digital recording and storage system, must:

(1) Record all images on a hard drive; and

(2) Lock so that access to the erase and reformat functions and system data files is restricted to persons authorized in the internal controls; and

(3) Provide uninterrupted recording of surveillance, during playback or copying. Licensees may use motion-activated recording; and

(4) Be capable of copying original images maintaining the original native format; and

(5) Be stored at a rate of not less than twenty-five images per second; and

(6) Record images at a minimum resolution of 320 x 240 and display during playback at a minimum resolution of 640 x 480 or meet subsection (11)(d) of this section; and

(7) Store images in a format that is readable by our computer equipment; and

(8) Store images in a format that we can verify and authenticate; and

(9) Include the accurate time and date the video was originally recorded on the recorded images; and

(10) Be equipped with an uninterruptible power source to allow a proper system shutdown; and

(11) Meet the additional requirements in this subsection, if you open a new Class F or house-banked card room using digital video recording equipment or install new digital video recording equipment in your existing Class F or house-banked card room. However, if you buy an existing card room, you will not be required to meet these requirements until you install new digital video recording equipment.

(a) Each user must have a sign in with a unique ID and password that is not shared with other users; and

(b) Have an audio or visual indication of a malfunction; and

(c) Digital video recording equipment must track at least the following functions, which are available to us and a person designated by the licensee to oversee the equipment (system administrator) by a menu button on the digital video recording system:

(i) Date and time users log in and out; and

(ii) Date and time when video signals from gaming cameras are interrupted and when connection is restored; and

(iii) Date, time, and user when video is recorded to removable storage media along with the date, time, and camera being copied; and

(iv) Date and time when the equipment fails to record video or audio when required; and

(v) Date and time when remote access to equipment begins and ends along with the ability to identify the person or organization accessing the equipment and the files accessed during the remote access.

(d) Record and playback images with sufficient magnification and clarity that shows fluid motion and allows the viewer to clearly distinguish the value of currency, coins, gaming chips, playing cards, and outcome of the game and effectively monitor in detail all required areas.

WSR 14-17-060
PROPOSED RULES
GAMBLING COMMISSION
[Filed August 15, 2014, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-037.

Title of Rule and Other Identifying Information: WAC 230-15-740 Preparing required financial statements.

Hearing Location(s): Spokane Davenport Hotel, 10 South Post Street, Spokane, WA 99201, (509) 455-8888, on October 9 or 10, 2014, at 9:00 a.m. or 1:00 p.m. Note: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: October 9 or 10, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by October 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change would increase the dollar limit, from $3 million to $6 million, in determining the level of service required by a cer-

tified public accountant in preparing financial statements for house-banked card rooms.

Staff worked extensively with licensees on this proposal in 2013 and 2014 to come to this proposed rule change.

Statutory Authority for Adoption: RCW 9.46.070 (12), (14), (21), 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328

August 15, 2014
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-740 Preparing required financial statements.

Definitions.

(1) The following definitions apply to all subsections of this rule:

(a) "Financial statements" means documents, including, at least: Balance sheet, statement of income, statement of retained earnings or changes in equity, statement of cash flows, and all required notes or disclosures.

(b) "Card room gross receipts" means all receipts from all house-banked and nonhouse-banked card games offered by the house-banked card room.

(c) "Independent" means there is no relationship that may influence a certified public accountant's impartiality and objectivity in rendering services.

Filing with the commission.

(2) House-banked card game licensees must submit financial statements covering all financial activities of the licensees' business premises for each business year within one hundred twenty days following the end of their business year.

(3) We may authorize a sixty-day extension if a licensee submits a written request explaining the need for the extension.

Audited financial statements - Gross receipts of over ((~~three~~)) six million dollars.

(4) Licensees with house-banked card ((~~game~~)) room gross receipts of more than ((~~three~~)) six million dollars for the business year must hire an independent, certified public accounting firm licensed by the Washington state board of accountancy to audit the licensee's financial statements according to Generally Accepted Auditing Standards (GAAS).

Reviewed financial statements - Gross receipts of one to ((~~three~~)) six million dollars.

(5) Licensees with house-banked card room gross receipts of one to ((~~three~~)) six million dollars for the business year must hire an independent, certified public accounting firm licensed by the Washington state board of accountancy to review the licensee's financial statements according to the Statements on Standards for Accounting and Review Services (SSARS) or audit the licensee's financial statements according to GAAS.

Compiled financial statements - Gross receipts of less than one million dollars.

(6) Licensees with house-banked card room gross receipts of less than one million dollars for the business year must hire an independent, certified public accounting firm licensed by the Washington state board of accountancy to compile the licensee's financial statements according to SSARS or audit the licensee's financial statements according to GAAS. This compilation must include all required notes or disclosures on an accrual basis of accounting.

Financial statement preparation.

(7) Licensees must prepare financial statements on a comparative basis. For the first year of operation only, licensees do not have to submit comparative financial statements. Licensees must report gross revenues from each licensed activity separate and apart from all other revenues.

(8) All financial statements must be prepared in accordance with the United States' Generally Accepted Accounting Principles (GAAP).

Consolidated financial statements.

(9) Commonly owned or operated business premises may present consolidated financial statements. Licensees must include consolidated schedules presenting separate financial statements for each licensed card room location.

Change in business year.

(10) Licensees must notify us in writing within thirty days if they change their business year. Licensees must submit financial statements covering the period from the end of the previous business year to the end of the new business year.

WSR 14-17-061
PROPOSED RULES
GAMBLING COMMISSION
[Filed August 15, 2014, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-081.

Title of Rule and Other Identifying Information: WAC 230-06-045 Conducting gambling activities on licensed business premises only and 230-11-105 Retain and store raffle records.

Hearing Location(s): Spokane Davenport Hotel, 10 South Post Street, Spokane, WA 99201, (509) 455-8888, on October 9 or 10, 2014, at 9:00 a.m. or 1:00 p.m. Note: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: October 9 or 10, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by October 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These two rules were identified as needing amendments to bring them inline with current agency practice.

WAC 230-06-045, this rule requires licensees to conduct all gambling activities on the licensed premises with the exception of raffle ticket sales. The proposed change would allow all aspects of a raffle to be conducted off the licensed premises not just ticket sales. Currently most raffle drawings do not take place on the licensed premise[s] and some cannot be conducted there, like the alternative format duck race raffles.

WAC 230-11-105, this rule states that organizations operating raffles that do not have an administrative or business office must have a records custodian that resides in Washington state. The proposed change would clarify the records custodian is responsible for retaining all raffle records in Washington state after the raffle has been completed. The change would require the name, address, and phone number of the records custodian to be reported to us.

Organizations may maintain raffle records outside the state of Washington if they submit a written request. The proposed change requires organizations to include the following in their request:

- The reason records need to be maintained outside of the state of Washington;
- Address where records will be maintained; and
- Name, address, and telephone number of the records custodian.

The proposed change also requires records approved to be maintained outside of Washington state to be delivered to us within seven days of our request.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0277.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 15, 2014
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-17-132, filed 8/22/06, effective 1/1/08)

WAC 230-06-045 Conduct gambling activities on licensed business premises only. (1) Licensees must conduct all gambling activities, except for raffles ((~~ticket sales~~)), on the licensed business premises.

(2) Charitable or nonprofit organizations licensed to conduct bingo and punch board and pull-tab games may sell punch boards and pull-tabs to customers of a licensed card room if the charitable or nonprofit organization:

(a) Shares a common wall with the card room; and

(b) Controls all doors, counters, or windows allowing customer access through the common wall between the two premises and the charitable or nonprofit organization can securely close and lock the doors, counters, or windows; and

(c) Keeps and sells the punch board and pull-tab games and redeems prizes only on their licensed business premises. Punch board and pull-tab players may take already purchased punch boards and pull-tabs into the card room area; and

(d) Allows only its employees to sell the punch board and pull-tabs; and

(e) Posts signs at the door, window, or counter common to the two business premises that clearly notify customers of the organization's identity.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

WAC 230-11-105 Retain and store raffle records. (1) Records for unlicensed raffles must be kept for one year following the date of the raffle drawing.

(2) Records for licensed raffles must be kept for three years from the end of the licensees' fiscal year in which the raffle was completed.

(3) Organizations must keep all records at the main administrative or business office of all organizations that are located in Washington and have the records available for our review or audit.

(4) Organizations that do not have an administrative or business office must have and designate a records custodian that resides in Washington. The records custodian is responsible for retaining all raffle records in Washington state after the raffle has been completed. The organization will provide us with the following information:

(a) The name, address, and telephone number of the records custodian; and

(b) The address of the location where records will be maintained.

(5) We may allow an organization to maintain records outside the state of Washington if the organization submits a written request. We may withdraw this permission at any time. The request must include the following information:

(a) The reason records need to be maintained outside of the state of Washington;

(b) The name, address, and telephone number of the records custodian; and

(c) The address of the location where records will be maintained.

(6) Records approved to be maintained outside the state of Washington must be delivered to us within seven days of our request.

WSR 14-17-073
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Securities Division)

[Filed August 18, 2014, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-043.

Title of Rule and Other Identifying Information: The rule making would create a new chapter entitled Crowdfunding at chapter 460-99C WAC consisting of twenty-five rules implementing the new crowdfunding exemption created by the Washington Jobs Act of 2014 (Washington Jobs Act) (codified at RCW 21.20.880 through 21.20.886). This new exemption from securities registration will be available for securities offerings of up to $1 million in a twelve month period for companies based in Washington and selling to Washington residents. As provided in the Washington Jobs Act, the director of the department of financial institutions (DFI) must adopt rules before securities issuers may begin using the new exemption.

Hearing Location(s): DFI, 150 Israel Road S.W., Tumwater, WA 98501, on September 25, 2014, at 1:00 p.m.

Date of Intended Adoption: September 25, 2014.

Submit Written Comments to: Faith Anderson, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail faith.anderson@dfi.wa.gov, fax (360) 704-6480, by September 23, 2014.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed chapter will implement the new exemption from securities registration created by the Washington Jobs Act for crowdfunding offerings.

The proposed rules define key terms pertaining to the crowdfunding exemption; specify the types of issuers and offerings that may use the exemption; mandate the use of the Washington Crowdfunding Form as the disclosure document for offerings under the exemption; establish the requirements for making an initial exemption filing, an amended filing, or a renewal filing with the securities division; establish the requirements for escrow agreements; specify the information to be included in quarterly reports; adopt investor protection measures such as bad actor disqualification and investor cancellation rights; describe the optional role of "portals" in assisting with crowdfunding offerings; establish recordkeeping requirements; require the filing of advertisements; set filing fees; describe the various restrictions on crowdfunding offerings under the Washington Jobs Act and Section 3 (a)(11) of the Securities Act of 1933 and Rule 147 adopted thereunder; and establish other rules necessary to implement the crowdfunding exemption.

Reasons Supporting Proposal: The Washington Jobs Act (codified at RCW 21.20.880 through 21.20.886) requires the securities division to adopt rules implementing the new crowdfunding exemption no later than October 1, 2014. Once the rules are adopted, the new crowdfunding exemption will be available to securities issuers in Washington. The proposed rules establish filing procedures for the exemption, adopt investor protection measures, and provide information to issuers regarding the exemption.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: DFI, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Faith Anderson, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

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

Small Business Economic Impact Statement

Introduction: This small business economic impact statement (SBEIS) has been prepared in connection with the crowdfunding rules drafted by DFI, securities division (securities division) to implement the Washington Jobs Act (codified at RCW 21.20.880 through 21.20.886).

The Washington Jobs Act created a new exemption from securities registration designed to assist Washington start-up companies in accessing capital through crowdfunding offerings. A "crowdfunding" offering is an equity offering that raises capital from many investors who contribute relatively

small amounts. The exemption will be available for offerings of up to $1 million in a twelve month period for companies based in Washington and selling to Washington residents. As provided in the Washington Jobs Act, the director of DFI must adopt rules before securities issuers may use the new exemption.

Summary of Cost Reduction Measures: As detailed in this SBEIS, the securities division gathered information on the possible economic impact of the draft crowdfunding rules. In response to the small business economic impact survey, and in response to comments received from interested persons, the securities division made changes to the initial draft of the crowdfunding rules. These changes were designed to reduce costs for securities issuers using the crowdfunding exemption. These changes include the following:

- The securities division eliminated the requirement in draft WAC 460-99C-040 that issuers submit a legal opinion letter with the exemption filing made with division;
- The securities division revised draft WAC 460-99C-030 to allow offerings of convertible preferred stock to use the crowdfunding exemption;
- The securities division revised the advertising rule in draft WAC 460-99C-250 to state that certain types of advertisements, such as tombstone advertisements, do not need to be filed with the securities division;
- The securities division revised draft WAC 460-99C-180 to eliminate the requirement that the issuer provide quarterly financial statements prepared in accordance with U.S. GAAP. Instead, the issuer must provide an annual financial statement; and
- The securities division revised the investor cancellation provisions in draft WAC 460-99C-120 to remove the requirement that investors reaffirm their investments within seven days of notification of a material change in the issuer. Investors still must be notified of material changes and have the right to cancel their investments until such time as the minimum offering amount has been raised; however, their investments will not be subject to automatic cancellation.

In addition, when the crowdfunding rules are adopted, the securities division will take steps to educate the public regarding the exemption. The securities division will develop a frequently asked questions (FAQ) publication that will address compliance matters raised during the rule-making process. The securities division may also conduct presentations and provide information on its web site concerning the crowdfunding exemption. The securities division anticipates that these measures may help reduce compliance costs for issuers and portals. However, as discussed in this SBEIS, the securities division does not believe that additional cost reduction measures are feasible.

Procedural Background: The Washington Jobs Act was passed by both houses of the legislature in early March 2014 and signed by [the] governor on March 28, 2014. On March 13, 2014, the securities division filed a CR-101 preproposal statement of inquiry with the code reviser's office stating that the securities division was commencing the process to adopt rules to implement the Washington Jobs Act.

The securities division subsequently prepared draft rules and a draft Washington Crowdfunding Form which were distributed to interested persons in a mailing on June 9, 2014. At the same time, the securities division conducted an electronic survey of small securities issuers, state registered broker-dealers, port districts, local associate development organizations, and other interested persons located in Washington to determine the potential economic impact of the rule making.

Since that time, the securities division has made certain changes to the draft rules in response to feedback received from interested persons. The securities division now intends to proceed with the rule-making process by formally proposing the draft crowdfunding rules in a CR-102 filing with the code reviser.

Summary of Crowdfunding Rules: The rule making would create new chapter 460-99C WAC consisting of twenty-five rules pertaining to the new crowdfunding exemption created by the Washington Jobs Act. At the same time that the securities division drafted the crowdfunding rules, the securities division developed a draft Washington Crowdfunding Form which will serve as both the exemption application form and the disclosure document for the offering.

The rules define key terms, mandate the use of the Washington Crowdfunding Form, and describe the procedures for making an initial exemption filing, a renewal filing, or an amended filing. In addition, the rules address recordkeeping requirements, the optional role of "portals" in assisting with crowdfunding offering, and the various restrictions on crowdfunding offerings under the Washington Jobs Act and Section 3 (a)(11) of the Securities Act of 1933 and Rule 147 adopted thereunder. Finally, the securities division developed certain rules, such as cancellation provisions and bad actor disqualification rules, to ensure a basic level of investor protection. The crowdfunding rules are described in greater detail below.

Filing Procedure: As a preliminary matter, the securities division determined that it would be helpful to issuers if the securities division drafted self-contained crowdfunding rules. As part of this, the securities division created several rules which reiterate key sections of the Washington Job Act so that issuers do not need to refer to both the rules and the Washington Jobs Act. Therefore, at WAC 460-99C-060 the securities division restates RCW 21.20.880(1) which provides that a filing must be declared exempt by the director before the issuer can offer or sell securities in reliance on the crowdfunding exemption. In WAC 460-99C-070, the securities division specifies that the exemption period will last for one year, at which time the issuer can renew the offering for one additional twelve month period. WAC 460-99C-260 sets the filing fee for an initial filing at $600 and the renewal filing fee at $100. These provisions are similar to filing procedures for other registration and exemption options in Washington.

Because the crowdfunding exemption is a new exemption, the securities division needed to develop a filing procedure for the exemption. To that end, WAC 460-99C-040 specifies the documents that an issuer must submit with the application, including a completed Washington Crowdfunding Form, financial statements prepared in accordance with

U.S. GAAP, the articles of other charter documents for the issuer, the bylaws or operating agreement for the issuer, an escrow agreement for the impound of the minimum offering amount, a filing fee, and a copy of advertisements to be used with the offering.

The securities division developed the Washington Crowdfunding Form to serve as the disclosure document for crowdfunding offerings. Pursuant to WAC 460-99C-050, the issuer must provide the most recent version of the Washington Crowdfunding Form to all investors a reasonable time prior to the sale of the securities to that investor. Meanwhile, WAC 460-99C-090 specifies that while the offering is ongoing, the issuer must file an amended Washington Crowdfunding Form with the securities division at least annually, and at any time there is a material change that would affect the accuracy of the form. The amended Washington Crowdfunding Form must be declared exempt prior to its use. Issuers seeking to renew their exemption must follow the renewal filing procedure outlined in WAC 460-99C-100.

Mechanics and Limitations of the Offering: The securities division drafted several rules regarding the mechanics of the crowdfunding exemption. First, the Washington Jobs Act imposed limitations on the amount an investor can invest in crowdfunding offerings, calculated based on either the investor's net worth or annual income. The securities division restated these limitations at WAC 460-99C-150, and added information regarding how to determine an investor's net worth or annual income. Second, the legislature designed the Washington Jobs Act crowdfunding exemption to be conducted in conjunction with the federal intrastate offering exemption under Section 3 (a)(11) of the Securities Act of 1933 and Rule 147 promulgated thereunder. In accordance with Rule 147, securities offered under the crowdfunding exemption may only be sold to Washington residents and resale is restricted for nine months following the end of the offering. In addition, the Washington Jobs Act imposes its own restrictions by limiting resale of the securities for one year following the date of sale. These restrictions are incorporated into the rules at WAC 460-99C-170 and 460-99C-160. Finally, the securities division drafted an integration provision at WAC 460-99C-200 to provide guidance on when a securities offering may be considered integrated with a prior offering.

Given the nature of the crowdfunding exemption and its simplified disclosure document, the securities division determined that not all types of offerings may be appropriate for the crowdfunding exemption. The Washington Jobs Act states that the crowdfunding exemption is intended "to facilitate investment by Washington residents in Washington start-ups" and "to provide Washington businesses and investors the opportunity to benefit from equity crowdfunding." Because start-up companies typically do not have the past earnings to support a debt offering, the securities division drafted WAC 460-99C-030 to state that debt offerings may not use the exemption. The securities division also states in WAC 460-99C-030 that the exemption is not available to portfolio companies, blind pools, holding companies, and other types of offerings that would not be able to provide adequate disclosure using the Washington Crowdfunding Form, and would typically not be able to accomplish their purpose in offerings of less than $1 million.

Under the Washington Jobs Act, a crowdfunding offering must specify a minimum target offering amount which must be met before the escrow agent will release any offering proceeds to the issuer. WAC 460-99C-110 states that the minimum target offering amount must be raised in a period no longer that [than] twelve months from the date the offering is declared exempt by the securities division. WAC 460-99C-020 defines who can act as an "escrow agent" and WAC 460-99C-130 specifies the requirements for contents of the agreement with the escrow agent. These requirements are consistent with the requirements for other types of securities offerings.

Recordkeeping Requirements: To help ensure that issuers comply with the limitations under the Washington Jobs Act, the securities division drafted WAC 460-99C-140 which requires that the issuer obtain evidence of residency and a signed copy of the investor certification and acknowledgment form from each investor prior to accepting funds. The investor certification and acknowledgment form is a page included in the Washington Crowdfunding Form which outlines the residency requirements, resale restrictions, and aggregate investment restrictions on the securities offered under the crowdfunding exemption. The rule at WAC 460-99C-160 provides a helpful nonexclusive list of documents that will be considered prima facie evidence of residency in Washington.

The securities division drafted a rule at WAC 460-99C-190 which requires the filing of a final sales report at the close of the offering. The final sales report must contain the number of securities sold, the dollar amount of securities sold, and the number of investors. This requirement is consistent with sales report requirements for other types of securities offerings.

The securities division also drafted a books and records rule at WAC 460-99C-240 which states that issuers using the exemption must keep and maintain physical or electronic records relating to offers and sales of securities under the exemption. The records to be kept include the Washington Crowdfunding Form and exhibits thereto, evidence of residency of investors, the investor certification and acknowledgment form for each investor, a final sales report, and all quarterly reports and communications with investors. The director may access or inspect any of the above records.

Portals: The Washington Jobs Act allows "portals" to assist issuers in preparing and filing the Washington Crowdfunding Form with the securities division. The Washington Jobs Act states that local associate development organizations, port districts, and any organization that qualifies under rules adopted by the securities division may act as portals. The securities division decided to expand who can act as a portal and therefore included broker-dealers registered in the state of Washington in the definition of "portal" in WAC 460-99C-020.

The securities division also drafted WAC 460-99C-210 to address the activities of portals. This rule restates provisions from the Washington Jobs Act regarding the services that a portal may provide to an issuer, and the specific information that a portal must obtain from an issuer before providing those services. The rule then creates certain prohibitions

on the activities of portals. The prohibited activities include providing investment advice unless registered as an investment adviser, soliciting purchases or sales of securities unless the portal is a registered broker-dealer, providing compensation for the solicitation of sales unless the portal is a registered broker-dealer, handling investor funds or securities or otherwise acting as an escrow agent, or engaging in underwriting or other activity that involves purchasing securities for the purpose of distribution. The prohibited activities rule alerts portals that certain activities related to securities offerings may require registration, and a portal cannot rely on the crowdfunding exemption when acting in those capacities.

Investor Protection: Finally, the securities division drafted several rules designed to protect the investing public. The Washington Jobs Act requires that issuers provide quarterly reports to investors for as long as the securities are outstanding. Under the statute, the quarterly reports must include executive officer and director compensation and a brief analysis by the management of the issuer of the business operations and financial condition of the issuer. The securities division added in WAC 460-99C-180 that the quarterly report must include the names of the issuer's officers, directors, and managing members, and the owners of twenty percent or more of a class of outstanding securities. In addition, the securities division specified that the issuer must provide its annual financial statement prepared in accordance with U.S. GAAP in the quarterly report for the quarter following the end of [the] issuer's fiscal year. This additional information will give investors a better picture of the current financial condition of the company, and will alert them to any changes in management.

The securities division added another protection for investors by creating an investor right of cancellation at WAC 460-99C-120. This provision allows investors to cancel their investments until the minimum target offering amount has been raised. The provision also states if there has been a material change to the terms of the offering or to the information provided by the issuer prior to the minimum being raised, the issuer must provide a notice of the change and of the issuer's right to cancel.

As instructed by the Washington Jobs Act, the securities division also drafted a bad actor disqualification rule at WAC 460-99C-220 which is substantially similar to the Regulation D Rule 506 bad actor disqualification provisions. These provisions prohibit the issuer from using the crowdfunding exemption if the issuer, or its promoters, officers, and twenty percent or greater owners of the voting equity of the company have engaged in prior bad acts such as violating securities laws.

Finally, the securities division drafted WAC 460-99C-230 which states that issuers who have previously used the crowdfunding exemption but who have been noncompliant with the quarterly reporting requirement in the two previous years are ineligible to conduct a new offering under the crowdfunding exemption. This disqualification provision is intended to ensure that issuers using the exemption comply with the quarterly reporting requirements envisioned by the statute.

Need for Economic Impact Statement: The Regulatory Fairness Act at RCW 19.85.030 provides that an agency shall prepare an SBEIS if the rules it is proposing would impose more than minor costs on businesses in an industry. Minor costs are defined by RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whatever is greater; or one percent of annual payroll.

The new crowdfunding exemption will be available to issuers as one of many available offering options. Companies choosing to conduct a securities offering might alternately elect to register the securities, to utilize a federal exemption from registration which preempts state securities laws, or to use other existing state exemptions. Unlike licensed businesses that are subject to ongoing oversight by the securities division due to the nature of their business activities, such as investment advisers and broker-dealers, no person will be subject to the costs of the crowdfunding exemption unless he or she elects to use the crowdfunding exemption over other offering options. As such, it is unclear whether the crowdfunding exemption and any costs associated with it can properly be said to be "imposed" on issuers in accordance with RCW 19.85.030.

Regardless, the crowdfunding rules drafted by the securities division may create additional costs because certain requirements were added to the requirements set forth in the Washington Jobs Act. Therefore, the securities division has determined that a small business economic impact [statement] may be required for this rule making.

Small Business Economic Impact Survey: In order to gather the information to prepare an SBEIS, RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of a proposed rule. To that end, the securities division prepared an electronic small business economic impact survey to survey businesses who may be impacted by the rule making.

Survey Pool: As indicated above, the crowdfunding exemption is one of numerous exemptions from registration available under the Securities Act of Washington. The securities division does not know in advance who might decide to conduct an offering under the crowdfunding exemption. As a result, the securities division had some difficulty determining who should be surveyed. Ultimately, the securities division compiled a survey pool that is described below.

Following the passage of the Washington Jobs Act, the securities division began maintaining a list of persons who had contacted the division and expressed interest in receiving updates regarding the crowdfunding exemption. At least some of these persons had expressed an interest in using the exemption. The twenty-five persons on this list were included in the survey pool. Next, the securities division ran a search of its database to compile a list of companies that made registration filings during the past five years for offerings of securities of not more than $1 million. The securities division also ran a search to identify issuers based in Washington who had made exemption filings for offering[s] of $1 million or less in the past year. The securities division reasoned that these groups of issuers might be likely to raise funds using the crowdfunding exemption (which is limited to offerings of not more than $1 million) and therefore included them in the

survey pool. Altogether, these two groups consisted of three hundred thirteen issuers.

In addition, because the Washington Jobs Act stated that local associate development organizations and port districts could act as portals, the securities division included all thirty-six local associate development organizations and seventy-five port districts in Washington in the survey pool. The securities division expanded the definition of portal in the draft rules by stating that registered broker-dealers could also act as portals. Therefore, the securities division included in the survey pool all broker-dealers registered and located in Washington, plus ten percent of broker-dealers registered in Washington but located out-of-state. At the time of the survey, the securities division had 1,922 registered broker-dealers, of which fifty were located in Washington. Finally, the securities division posted a link to the electronic survey in the crowdfunding section of our rule-making web site, http://dfi.wa.gov/sd/rulemaking.htm, so that any interested persons who did not otherwise receive the survey could take the survey.

Description of Survey Process: On June 9, 2014, the securities division sent a letter by e-mail to every person in the above-described survey pool. If a person or entity in the survey pool did not have an e-mail address on file, the securities division sent a hard copy of the letter by regular mail. The letter contained a link to an online survey, and included a copy of the draft rules and the draft Washington Crowdfunding Form. The letter explained the reasons for conducting the survey and requested that recipients complete the survey by accessing the link provided.

The online survey consisted of thirty-one questions. Each substantive question in the survey focused on a draft rule and provided a background statement briefly explaining the rule. The survey asked whether a particular rule would cause increased costs. The survey then requested information on the increased costs of professional services, equipment, supplies, labor, and administrative expenses associated with that rule. Each question also allowed a free form response for survey takers to explain any additional costs. In addition, the survey gathered data on the number of employees each survey respondent had, and asked whether the rule making as a whole would cause a loss of revenue or the loss or addition of any jobs.

The survey period lasted from June 9, 2014, until July 5, 2014. The securities division received sixty-four unique responses, however, not every person who began the survey completed the survey. Of the respondents, fifty-six were small businesses as defined by RCW 19.85.020(3) of the Regulatory Fairness Act because they had less than fifty employees.

At the same time that the survey was sent to the survey pool, the securities division sent the draft rules and draft Washington Crowdfunding Form to the three hundred sixty-one persons on its interested persons list for securities rule makings. The securities division considered comments received from this group along with the survey results in evaluating whether to make changes to the initial rules draft.

The results of the survey are discussed below.

REQUIRED ELEMENTS OF SBEIS

A brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rules and of the kinds of professional services that a small business is likely to need in order to comply with the requirements. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, and increased administrative costs.

The draft rules cover a variety [of] topics concerning reporting, recordkeeping, and other compliance requirements pertaining to the crowdfunding exemption. The rules create recordkeeping requirements; establish the procedures for making an initial exemption filing, a renewal filing, or an amendment filing with the securities division; and specify that financial statements must be prepared in accordance with U.S. GAAP.

The rules create a requirement to retain certain records relating to the offering for at least six years following the termination of the offering. These records may be retained in paper or electronic format, and issuers may incur expenses relating to the storage of these records. In addition, the rules expand the quarterly reporting requirements envisioned by the Washington Jobs Act by providing that an annual financial statement prepared in U.S. GAAP format must be provided to investors at least once per year. Issuers may incur expenses in the preparation, review, and distribution of the financial statements.

The rules specify the materials that must be included with the initial application for the exemption, including the completed Washington Crowdfunding Form and exhibits. In addition, the issuer must file an amendment of the Washington Crowdfunding Form whenever there are material changes in the company that would render the disclosures in the form inaccurate. Issuers will be required to spend time carefully completing the Washington Crowdfunding Form and reviewing it on a regular basis to ensure that it is accurate and not misleading. The issuer may incur expenses relating to the preparation, review, filing, and distribution of Washington Crowdfunding Form.

Though not required by the rules, issuers may choose to hire professional accounting services for assistance with preparing their financial statements in accordance with U.S. GAAP to comply with the filing requirements. In addition, issuers may choose to hire legal or other professional services to create or revise the Washington Crowdfunding Form, the exhibits to the form, quarterly reports, a final sales report, advertisements, and other documents and agreements needed in connection with the offering. Issuers may also consult professional services for advice on establishing systems or methods to ensure compliance with the reporting and disclosure requirements of the crowdfunding rules.

In addition, the rule making may have an economic impact on issuers using the exemption in the form of increased equipment, supplies, labor, and administrative costs. These costs may relate to postage and other mailing costs, copying expenses, computer or software expenses, and expenses associated with recordkeeping and record retention. The rule making may result in issuers hiring additional

employees to ensure compliance. Portals that choose to assist issuers with crowdfunding offerings may also incur expenses relating to the services they provide and may subsequently elect to hire additional employees. Issuers who choose to use the services of portals may be required to pay service fee charges by the portals.

Survey Results: The securities division surveyed interested persons to determine whether the requirements added in the rule making would add costs to their business. The survey provided a summary of each rule that created additional requirements, and asked whether the requirements would create any additional costs. The following chart provides the results to these initial questions.

Whether Rule Will Create Additional Costs		
Rule Provision	**Yes**	**No**
WAC 460-99C-020 Definitions	35%	65%
WAC 460-99C-030 Availability	11%	89%
WAC 460-99C-040 Filing requirements	43%	57%
WAC 460-99C-050 Information requirements	31%	69%
WAC 460-99C-090 Amendments/material changes	30%	70%
WAC 460-99C-100 Renewal filing requirements	22%	78%
WAC 460-99C-110 Minimum offering amount	18%	82%
WAC 460-99C-120 Cancellation	22%	78%
WAC 460-99C-130 Escrow agreement	21%	79%
WAC 460-99C-140 Issuer compliance with investment limitations	24%	76%
WAC 460-99C-150 Aggregate investment limitations	23%	78%
WAC 460-99C-180 Quarterly reporting requirements	33%	68%
WAC 460-99C-190 Final sales report	23%	78%
WAC 460-99C-200 Integration	18%	83%
WAC 460-99C-210 Activities of portals	15%	85%
WAC 460-99C-220 Bad actor disqualification	5%	95%
WAC 460-99C-230 Disqualification based on reporting failures	5%	95%
WAC 460-99C-240 Books and records	21%	79%
WAC 460-99C-250 Advertising	23%	77%
WAC 460-99C-260 Filing fees	36%	64%

Where the survey takers indicated that a draft rule would create additional costs, the survey requested information regarding the increased costs of professional services, equipment, supplies, labor, and administrative expenses attributable to each rule. Each survey taker provided information regarding its number of employees, which allowed the securities division to calculate the average cost per employee for each survey respondent. The costs per employee were then averaged together to provide an average cost increase per employee for each rule.

The following chart provides the average cost increase per employee for each rule for all survey respondents.

Average Cost Increase Per Employee (All Respondents)					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Administration**
WAC 460-99C-020	$ 506.19	$ 3.10	$ 1.61	$ 250.82	$ 277.25
WAC 460-99C-030	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-040	$ 176.74	$ -	$ 1.23	$ 54.99	$ 61.52
WAC 460-99C-050	$ 56.58	$ 0.14	$ 5.44	$ 5.44	$ 35.95
WAC 460-99C-090	$ 101.40	$ -	$ 1.10	$ 4.76	$ 73.36
WAC 460-99C-100	$ 18.93	$ -	$ 1.09	$ 9.50	$ 3.80
WAC 460-99C-110	$ 14.64	$ -	$ 1.43	$ 6.87	$ 3.56
WAC 460-99C-120	$ 16.22	$ -	$ 1.97	$ 9.18	$ 4.25
WAC 460-99C-130	$ 35.02	$ -	$ -	$ 2.33	$ 5.65
WAC 460-99C-140	$ 141.85	$ -	$ 2.56	$ 5.68	$ 98.53
WAC 460-99C-150	$ 29.81	$ -	$ 0.75	$ 14.37	$ 2.50
WAC 460-99C-180	$ 205.97	$ -	$ 6.44	$ 30.94	$ 121.92
WAC 460-99C-190	$ 39.89	$ -	$ 1.46	$ 3.64	$ 13.93
WAC 460-99C-200	$ 13.94	$ -	$ 1.25	$ 7.61	$ 4.17

Average Cost Increase Per Employee (All Respondents)					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Administration**
WAC 460-99C-210	$ 19.58	$ -	$ -	$ 12.61	$ 7.08
WAC 460-99C-220	$ -	$ -	$ -	$ 0.02	$ -
WAC 460-99C-230	$ -	$ -	$ -	$ 0.02	$ -
WAC 460-99C-240	$ 57.16	$ -	$ 1.28	$ 10.29	$ 31.15
WAC 460-99C-250	$ 7.45	$ -	$ 1.28	$ 2.56	$ 5.29

The following chart provides the average cost increase per employee as a result of the draft rule setting an initial filing fee and a renewal filing fee.

Average Cost Increase Per Employee (All Respondents)		
Filing Fees	**For Initial Filings**	**For Renewal Filings**
WAC 460-99C-260	$ 158.67	$ 22.21

The following chart provides the average cost increase per employee only for those survey respondents who indicated that a particular rule would create additional costs, and who provided information on the amount of the cost increase.

Average Cost Increase Per Employee (Respondents With Increased Costs Only)					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Administration**
WAC 460-99C-020	$ 2,414.14	$ 192.31	$ 100.00	$ 2,221.56	$ 1,718.97
WAC 460-99C-030	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-040	$ 636.26	$ -	$ 33.33	$ 424.23	$ 301.98
WAC 460-99C-050	$ 462.07	$ 6.67	$ 66.67	$ 133.33	$ 251.62
WAC 460-99C-090	$ 476.57	$ -	$ 25.83	$ 55.95	$ 492.59
WAC 460-99C-100	$ 217.72	$ -	$ 50.00	$ 109.23	$ 87.50
WAC 460-99C-110	$ 219.66	$ -	$ 32.18	$ 102.99	$ 53.42
WAC 460-99C-120	$ 182.51	$ -	$ 44.23	$ 137.71	$ 63.68
WAC 460-99C-130	$ 301.17	$ -	$ -	$ 100.00	$ 121.43
WAC 460-99C-140	$ 1,191.58	$ -	$ 53.85	$ 119.23	$ 1,379.49
WAC 460-99C-150	$ 596.15	$ -	$ 30.00	$ 191.56	$ 100.00
WAC 460-99C-180	$ 1,029.83	$ -	$ 128.85	$ 412.59	$ 812.79
WAC 460-99C-190	$ 265.96	$ -	$ 29.23	$ 72.73	$ 139.29
WAC 460-99C-200	$ 278.85	$ -	$ 50.00	$ 152.27	$ 83.33
WAC 460-99C-210	$ 391.67	$ -	$ -	$ 252.27	$ 141.67
WAC 460-99C-220	$ -	$ -	$ -	$ 0.91	$ -
WAC 460-99C-230	$ -	$ -	$ -	$ 0.91	$ -
WAC 460-99C-240	$ 445.82	$ -	$ 50.00	$ 133.80	$ 303.71
WAC 460-99C-250	$ 72.66	$ -	$ 50.00	$ 100.00	$ 41.29

The following chart provides the average cost increase per employee as a result of the draft rule setting an initial filing fee and a renewal filing fee, but only for those survey respondents who indicated that a particular rule would create additional costs, and who provided information on the amount of the cost increase.

Average Cost Increase Per Employee (Respondents With Increased Costs Only)		
	For Initial Filings	**For Renewal Filings**
WAC 460-99C-260	$ 412.55	$ 108.27

Analysis of Increased Costs: The survey results indicated that certain draft rules might create greater costs than others. These were the draft rules regarding the definitions for the chapter, filing requirements, information requirements, cancellation provisions, amendments, advertising, quarterly reports, final sales reports, books and records, and filing fees. The survey results are described in further detail below.

WAC 460-99C-020 Definitions: The securities division created a definition in WAC 460-99C-020 for "escrow agent." The escrow agent who serves as agent for the impoundment of the proceeds of the offering must be inde-

pendent of the issuer and be independently audited or examined on a regular basis. It should be noted that the need for escrow of minimum target offering proceeds is a requirement under the Washington Jobs Act, and such requirement would provide insufficient protection to the public if the escrow agent was not independent.

The securities division also created a definition in WAC 460-99C-020 for "portal." In addition to the local associate development organizations and port districts specified in the Washington Jobs Act, the securities division expanded the definition of "portal" to include broker-dealers registered in Washington. However, it should be noted that no local association development organization, port district, or broker-dealer is required to provide assistance with crowdfunding offerings. They may decline to participate in crowdfunding even if they meet the definition of "portal."

Approximately thirty-five percent of survey respondents indicated that the draft rule at WAC 460-99C-020 would increase costs. The responses indicated an average cost per employee of $506.19 for professional services, $250.82 for labor, and $277.25 for increased administrative costs. Of the thirty-five percent who indicated that the rule would increase costs, those costs included an average cost increase per employee of $2,414.14 for professional services, $192.31 for equipment, $100.00 for supplies, $2,221.56 for labor, and $1,718.97 for increased administrative costs.

In their response to this question, several survey respondents submitted free form comments in addition to their estimates of increased expenses. Several comments focused on the expenses portals will occur due to the new crowdfunding exemption. Some comments expressed that expenses would result from insurance, bookkeeping, and accounting expenses for portals. They also stated that portals would not receive any particular funding for crowdfunding assistance, and expressed uncertainty regarding whether they could charge a fee for crowdfunding services. One commenter discussed that there will be expenses associated with a port district needing to familiarize itself with the crowdfunding rules even if it chooses not to participate.

The survey question regarding the draft definitions rule at WAC 460-99C-020 was the first substantive question of the survey. Based on the free form answers to the survey question, it appears that some of the respondents may have been providing comments relating to the rules as a whole. For instance, one survey respondent expressed that the regulatory burdens might knock potential investors out of the market. This comment does not appear related to the draft definition rule. Therefore, it is not clear whether some survey respondents may have provided dollar figures in response to this question that were intended to apply to the rule making as a whole. It may be that some of the expenses reported in response to this survey question refer to costs associated with other sections of the rules. Otherwise, it is unclear why the definitions rule would create such increased costs.

WAC 460-99C-040 Filing requirements: WAC 460-99C-040 lists the items that must be submitted with the exemption application, including the Washington Crowdfunding Form. This is a multipage form designed to serve as the disclosure document for offerings using the crowdfunding exemption. In addition to spending their own time, issuers may elect to pay for legal or consulting services to assist with the preparation of the Washington Crowdfunding Form. WAC 460-99C-040 also requires that the Washington Crowdfunding Form contain exhibits including operating agreements, charter documents, and corporate resolutions authorizing the sale of securities, most of which likely already exist and should not increase expenses. However, the issuer also must submit financial statements prepared in accordance with GAAP. While the financial statements do not need to be audited, issuers may choose to use the services of a certified public accountant or other accounting professional for assistance in putting their financials in GAAP format. This may increase costs.

The survey results indicated that approximately forty-three percent of survey respondents believed that the rule specifying the items to be submitted when applying to use the crowdfunding exemption would result in increased expenses. These expenses would include an average of $176.74 per employee for professional services, $54.99 per employee for labor, and $61.52 per employee for increased administrative costs. Of the forty-three percent who indicated that the rule would increase costs, those costs included an average cost increase per employee of $636.26 for professional services, $424.23 for labor, and $301.98 for increased administrative costs.

We note that under state and federal securities laws, securities issuers must disclose all material information concerning an offering and must not make any misleading statements or omissions. Regardless of whether an offering is registered or exempt, all securities issuers must provide disclosure of the same type of information that is disclosed in the Washington Crowdfunding Form. As a result, any preparation costs related to disclosure materials cannot properly be said to be imposed by the crowdfunding rules, but rather by long-standing securities laws designed to prevent fraud.

In the initial draft of WAC 460-99C-040, the securities division required issuers to submit a legal opinion letter regarding the securities to be issued in the offering. To comply with this requirement, issuers would need to hire the services of an attorney. The securities division received several comments indicating that this particular requirement would increase costs and was unnecessary. In an effort to reduce costs for issuers, the securities division decided to remove the legal opinion letter requirement. However, the securities division does not believe any of the other filing requirements in WAC 460-99C-040 can be eliminated.

WAC 460-99C-050 Information requirements: The draft rule at WAC 460-99C-050 states that the issuer must provide the most recent version of the Washington Crowdfunding Form and exhibits to prospective investors at a reasonable time prior to the sale of securities.

The survey results indicated that approximately thirty-one percent of survey respondents believed that this would result in increased expenses. These expenses would include an average of $56.58 per employee for professional services and $35.95 for increased administrative costs. Of the thirty-one percent who indicated that the rule would increase costs, those costs included an average cost increase per employee of $452.08 for professional services, $133.33 for labor and $251.62 for increased administrative costs.

Under securities laws, securities issuers generally must disclose all material information concerning the offering. This applies whether an offering is registered or qualifies for an exemption. It is common practice that this disclosure is provided in writing. Therefore, it is unclear how WAC 460-99C-050 would create increased expenses for a securities offering using the crowdfunding exemption as compared to another exemption or registration option.

Regardless, there may be some expenses associated with providing the Washington Crowdfunding Form to investors. Securities issuers may incur copying and mailing expenses if they elect to provide the form nonelectronically, and may incur administrative expenses due to time spent distributing the Washington Crowdfunding Form.

WAC 460-99C-090 Amendments and material changes: The draft rule at WAC 460-99C-090 requires issuers using the crowdfunding exemption to amend the Washington Crowdfunding Form during the offering period if there is a material change that would affect the accuracy of the information in the form. The form must be updated at least once every twelve months. WAC 460-99C-090 is consistent with the requirement to disclose material information which arises under RCW 21.20.010 and applies to every securities offering. These requirements exist so that prospective investors are fully informed.

The survey results indicated that approximately thirty percent of survey respondents believed that this would result in increased expenses. These expenses would include an average of $101.40 per employee for professional services and $73.36 for increased administrative costs. Of the thirty percent who indicated that the changes would increase costs, those costs included an average cost increase per employee of $476.57 for professional services, $424.23 for labor and $301.98 for increased administrative costs.

Issuers must take the time to update the Washington Crowdfunding Form when there has been a material change in the information provided in the form. On a regular basis, issuers will need to assess whether an amendment to the form is needed, draft the amendment, and file it with the securities division. If the offering has not yet met its minimum target offering amount, the issuer must distribute the amended Washington Crowdfunding Form to investors in the offering. While not required, issuers may choose to hire professional services to assist with the drafting of the amended form. This may increase costs, but the securities division believes these costs are justified because they serve an investor protection purpose.

WAC 460-99C-100 Renewal filing requirements: WAC 460-99C-100 specifies that a renewal application must be filed at least thirty days prior to the expiration of the exemption, and must include an updated Washington Crowdfunding Form, sales report for sales to date, a filing fee of $100, and financial statements as of the issuer's last fiscal year, including an interim financial statement if the fiscal year ended more than ninety days ago.

The survey results indicated that approximately twenty-two percent of survey respondents believed that the renewal filing requirements rule would result in increased expenses. These expenses would include an average of $18.93 per employee for professional services. Of the twenty-two percent who indicated that the rule would increase costs, those costs included an average cost increase per employee of $217.72 for professional services and $109.23 for labor costs.

Issuers applying for renewal of the crowdfunding exemption will need to spend time updating the Washington Crowdfunding Form and preparing financial statements. Issuers may decide to use professional services for these tasks, which may increase expenses. There may be postage, copying, and other costs related to filing the renewal application with the securities division. Finally, the renewal fee will increase issuer's administrative expenses. However, the securities division believes the renewal fee is necessary because of the division's own administrative expenses incurred in the review and processing of renewal filings.

WAC 460-99C-120 Investor right to cancellation: WAC 460-99C-120 states that investors have a right to cancel their investments at any time prior to the minimum target offering amount being raised. In addition, this rule also requires issuers to notify investors prior to the target minimum offering deadline of any material changes in the information provided in the Washington Crowdfunding Form. In the initial draft of the rules circulated with the survey, the rule also included a provision stating that if investors do not reconfirm their investment in writing within seven days of receiving notification of material changes, the investment would be automatically cancelled and the investor's funds returned from escrow.

The survey results indicated that approximately twenty-two percent of survey respondents believed that cancellation provisions would increase expenses, but failed to provide data on the amount of increased expenses. The free form comments to this survey question suggested it would be difficult for issuers to know how much money they had raised, because it would be subject to automatic cancellation if investors did not respond to the seven day notices. In addition, if investments were cancelled under the provisions of this rule, it might take the issuer longer to raise funds and would delay the implementation of the issuer's business plan. Finally, the rule might cause issuers to incur administrative expenses relating to sending out notices to investors.

After evaluating the survey results, the securities division decided to remove the seven day cancellation provision in an effort to reduce compliance costs for issuers. Issuers still must notify investors of material changes, and investors still have the ability to cancel their investments. However, the administrative costs to issuers have been reduced.

WAC 460-99C-140 Issuer compliance with investor limitations: The draft rule at WAC 460-99C-140 requires that prior to accepting investor funds, issuers must obtain evidence of the Washington residency of the investor and a signed copy of the investor certifications and acknowledgments page from the Washington Crowdfunding Form. The securities division drafted this rule to ensure that issuers comply with the restrictions of the Washington crowdfunding exemption and the federal intrastate offering exemption. If the issuer fails to meet these restrictions, the issuer may be offering securities in violation of the registration provisions of both the Securities Act of Washington and the Securities Act of 1933.

The survey results indicated that approximately twenty-four percent of survey respondents believed that this rule would increase costs. These expenses would include an average of $141.85 per employee for professional services and $98.53 in increased administrative expenses. Of the twenty-four percent who indicated that the rule would increase costs, those costs included an average cost increase per employee of $1,191.58 for professional services, $119.23 for labor costs, and $1,379.49 for increased administrative expenses.

This rule may create administrative expenses in connection with obtaining and then storing the specified records. There also may be labor expended in reviewing the documents to ensure that investors are Washington residents and have properly signed the investor certifications and acknowledgments page. However, the rule will help issuers remain compliant with Washington crowdfunding exemption and the federal intrastate offering exemption.

WAC 460-99C-180 Quarterly reporting requirements: The Washington Jobs Act mandates that issuers provide quarterly reports for as long as the securities issued in the crowdfunding offering are outstanding. The quarterly report must include a discussion of the issuer's financial condition and operations. In the initial draft of the rules distributed with the economic impact survey, the securities division added a requirement that the quarterly reports include quarterly financial statements prepared in accordance with U.S. GAAP.

The survey results indicated that approximately thirty-three percent of survey respondents believed this rule would increase expenses. These expenses would include an average of $205.97 per employee for professional services and $121.92 in increased administrative expenses. Of the thirty-three percent who indicated that the rule would increase costs, those costs included an average cost increase per employee of $1,029.83 for professional services, $412.59 for labor costs, and $812.79 in increased administrative expenses.

Many issuers are not experienced in preparing financial statements in accordance with U.S. GAAP and may incur increased expenses from the need to hire professional services for assistance. In recognition of this, the securities division revised its initial draft of WAC 460-99C-180 to remove the requirement for financial statements each quarter. Instead, the securities division will require that the issuer provide its annual financial statement to investors once a year in the quarterly report following the end of the issuer's fiscal year. Investors will still receive regular information on the financial condition of the company in the form of a narrative discussion in the quarterly report, but the change will reduce costs for issuers.

WAC 460-99C-190 Final sales report: The draft rule at WAC 460-99C-190 requires issuers using the crowdfunding exemption to file a final sales report with the securities division at the conclusion of the offering. The final sales report must state the time period the offering was open, the number of shares or units sold, the number of investors that purchased shares or units, and the dollar amount sold.

The survey results indicated that approximately twenty-three percent of survey respondents believed that the final sales report requirement would increase expenses. These expenses would include an average of $39.89 per employee for professional services and $13.93 in increased administrative expenses. Of the twenty-three percent who indicated that the changes would increase costs, those costs included an average cost per employee of $265.92 for professional services and $139.29 per employee in increased administrative expenses.

All registered offerings and certain exempt offerings must file a final sales report in Washington. Among other things, this allows the securities division to monitor that issuers have not exceeded the registered amount of securities. Because the crowdfunding exemption has an offering amount limitation of $1 million, the securities division feels it is essential that issuers file final sales reports. In addition, the final sales report will provide useful information to the securities division regarding the effectiveness of the new crowdfunding exemption as a tool for raising capital for small businesses. However, issuers may incur administrative expenses relating to the preparation of the final sales report and the filing of the report with the securities division.

WAC 460-99C-240 Books and records: WAC 460-99C-240 specifies that the issuer must keep records relating to the crowdfunding offering for at least six years following the termination of the offering. The records the issuer must keep, in either physical or electronic format, include the Washington Crowdfunding Form and exhibits thereto, evidence of residency of investors, the investor certification and acknowledgment form for each investor, final sales report, and all quarterly reports and communications with investors. Issuers may incur expenses relating to the physical or digital storage of these items.

The survey results indicated that approximately twenty-one percent of survey respondents believed that the rule requiring issuers keep books and records relating to the offering would increase expenses. These expenses would include an average of $57.16 per employee for professional services and $31.15 in increased administrative expenses. Of the twenty-one percent who indicated that the rule would increase costs, those costs included an average cost increase per employee of $445.82 for professional services, $133.80 for labor, and $303.71 in increased administrative expenses. The securities division believes that recordkeeping is essential in order to demonstrate compliance with the crowdfunding exemption. Therefore, costs cannot be further reduced.

WAC 460-99C-250 Advertising: WAC 460-99C-250 requires issuers to file advertising for a crowdfunding offering with the securities division at least seven days prior to its distribution. The survey results indicated that approximately twenty-three percent of survey respondents believed that this rule would increase costs. Of the twenty-three percent who indicated that the rule would increase costs, those costs included an average cost increase per employee of $72.66 for professional services and $100.00 per employee in increased administrative expenses.

Unlike other state offering exemptions, the crowdfunding exemption allows general solicitation and advertising. The securities division reviews advertisements for registered offerings, and a similar review is appropriate for the crowdfunding exemption because of the presence of general solicitation. The securities division believes it is important to review advertisements prior to dissemination to ensure that

misleading statements are not made to the public, and to ensure that such advertising is limited to Washington residents in compliance with federal law. Issuers may incur expenses relating to filing the advertisements with the securities division, including the need to wait at least seven days before disseminating advertisements to the public. In addition, certain issuers may incur expenses if they engage professional services to review the advertisements prior to submitting them to the division. In an attempt to reduce costs, the securities division revised the draft rule to state that certain types of documents, such as "tombstone" advertisements and periodic financial reports, do not need to be submitted for review.

WAC 460-99C-260 Filing fees: Finally, the survey results indicated that approximately thirty-six percent of the survey respondents believed the filing fees associated with initial and renewal applications would increase their expenses. The Washington Jobs Act permits the securities division to charge a fee to cover the expenses of administering the crowdfunding exemption. The securities division drafted a rule proposing a flat fee of $600 for initial crowdfunding exemption applications. This is the same as the filing fee for an initial application for franchise registration, and is similar to the filing fees for other exempt offerings and for registered offerings of $1 million or less. The securities division believes the $600 filing fee is therefore reasonable.

Whether compliance with the proposed rule will cause businesses to lose sales or revenue.

The rule making may result in lost sales or revenue for issuers and portals participating in crowdfunding. The securities division's survey revealed that thirteen percent of survey respondents believed that compliance with the draft rules would result in lost sales or revenue. In contrast, eighty-seven percent of survey respondents did not believe the draft rules would cause lost sales or revenue. The thirteen percent who believed the draft rules would lead to lost sales or revenue estimated that they would lose $5,833 in revenue per employee.

The survey requested a free form answer regarding which specific provisions in the draft rules would cause the lost sales or revenue. Most of the survey respondents did not provide any comments; however, one person mentioned that there would be increased costs in terms of time spent on the offering.

An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule.

The securities division surveyed the survey pool specified earlier in this SBEIS in order to determine whether the crowdfunding rule making might result in the addition or elimination of any jobs.

Approximately six percent of survey respondents anticipated that the rule making would cause them to eliminate jobs. None of these six percent provided an estimate of the number of jobs that would be eliminated. Approximately ninety-four percent of survey takers did not anticipate that they would eliminate any jobs.

Approximately seventeen percent of survey respondents indicated that the rule making would cause them to add jobs. These seventeen percent provided estimates ranging from the addition of 0.5 jobs to 5 jobs each. Approximately eighty-three percent of survey takers did not anticipate adding any jobs.

Based on the survey results, the securities division estimates that the average issuer or portal will not eliminate any jobs as a result of the draft crowdfunding rules. However, there may be a few issuers or portals who add jobs.

A comparison of compliance costs for the small business segment and the large business segment of the affected industries, and whether the impact on small business is disproportionate.

RCW 19.85.040 requires that the securities division determine whether compliance with the proposed rules will have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the rules.

The securities division categorized each survey response based on whether it came from a small business or whether it represented the ten percent of businesses that were the largest businesses that responded. The two categories were then compared to each other. The survey results tended to show that the increased costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses.

The results may be impacted by the fact that the survey pool included both portals and potential securities issuers. The majority of issuers who responded to the survey are small businesses who have only a handful of employees. Meanwhile, the majority of the largest ten percent of businesses surveyed were portals. The expenses relating to the crowdfunding exemption would naturally tend to be higher for an issuer, who must prepare the application materials and may need to pay for legal and accounting services, than it would be for a portal that is merely assisting the issuer in preparing or filing the application.

Portals are also not required to provide assistance under the Washington Jobs Act, and several survey respondents expressed that they did not intend to provide assistance with these offerings. Furthermore, portals that choose to participate may elect to limit the types of services they provide. In contrast, any issuer that wishes to conduct an offering under the crowdfunding exemption must meet all the requirements of the statute and rules. Ultimately, we believe that the issuers who were motivated to respond to the survey may be more likely than portals to actually engage in crowdfunding, and answered the survey questions accordingly.

The securities division examined the data to determine whether it would be appropriate to conduct separate economic impact analyses for issuers and portals. However, based on the relatively small number of respondents to the survey, and the fact that many respondents failed to provide data on cost increases, the securities division determined that further bisecting the data would not result in a more reliable analysis.

The following chart compares the average cost increase per employee associated with the draft rules for both the largest ten percent of businesses required to comply and small businesses. Small businesses are defined as fifty or fewer employees. The largest ten percent of business[es] were likewise determined by the number of employees.

Average Cost Increase Per Employee - Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Administration**
WAC 460-99C-020					
Small Businesses	$ 579.50	$ 3.56	$ 1.85	$ 287.14	$ 318.33
Largest 10%	$ 15.15	$ -	$ -	$ 7.58	$ -
WAC 460-99C-030					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-040					
Small Businesses	$ 206.57	$ -	$ 1.45	$ 64.29	$ 71.58
Largest 10%	$ 6.94	$ -	$ -	$ 2.08	$ 4.86
WAC 460-99C-050					
Small Businesses	$ 65.02	$ 0.16	$ 6.31	$ 5.95	$ 41.38
Largest 10%	$ 6.94	$ -	$ 0.28	$ 2.78	$ 3.89
WAC 460-99C-090					
Small Businesses	$ 113.82	$ -	$ 1.22	$ 4.27	$ 84.06
Largest 10%	$ 16.54	$ -	$ 0.28	$ 8.13	$ 0.28
WAC 460-99C-100					
Small Businesses	$ 22.92	$ -	$ 1.32	$ 11.50	$ 4.61
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-110					
Small Businesses	$ 17.81	$ -	$ 1.74	$ 8.35	$ 4.33
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-120					
Small Businesses	$ 19.73	$ -	$ 2.39	$ 11.17	$ 5.16
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-130					
Small Businesses	$ 43.02	$ -	$ -	$ 2.86	$ 6.94
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-140					
Small Businesses	$ 170.23	$ -	$ 3.08	$ 6.81	$ 118.24
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-150					
Small Businesses	$ 35.07	$ -	$ 0.88	$ 16.90	$ 2.94
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-180					
Small Businesses	$ 242.31	$ -	$ 7.58	$ 35.07	$ 143.43
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-190					
Small Businesses	$ 46.93	$ -	$ 1.72	$ 2.94	$ 16.39
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-99C-200					
Small Businesses	$ 16.40	$ -	$ 1.47	$ 8.82	$ 4.90
Largest 10%	$ -	$ -	$ -	$ 0.91	$ -

Average Cost Increase Per Employee - Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Administration**
WAC 460-99C-210					
Small Businesses	$ 23.04	$ -	$ -	$ 14.71	$ 8.33
Largest 10%	$ -	$ -	$ -	$ 0.91	$ -
WAC 460-99C-220					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ 0.18	$ -
WAC 460-99C-230					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ 0.18	$ -
WAC 460-99C-240					
Small Businesses	$ 65.56	$ -	$ 1.47	$ 11.54	$ 35.73
Largest 10%	$ -	$ -	$ -	$ 1.82	$ -
WAC 460-99C-250					
Small Businesses	$ 8.55	$ -	$ 1.47	$ 2.94	$ 5.40
Largest 10%	$ -	$ -	$ -	$ -	$ 4.55

The following chart compares the average cost increase associated with the draft rule regarding filing fees for both the largest ten percent of businesses required to comply and small businesses.

Increased Cost Per Employee		
WAC 460-99C-260 Filing fees		
	Initial Filings	**Renewal Filings**
Small Businesses	$ 181.86	$ 25.45
Largest 10%	$ 1.00	$ 0.17

Comparison of lost sales or revenue: In their survey responses, the largest ten percent of businesses did not indicate that they would lose any sales or revenue as a result of the draft rules. In contrast, five small businesses indicated that they would lose sales or revenue, although only two small businesses provided data regarding the amount they expected to lose in revenue because of the draft rules. These two small businesses estimated that they would lose an average of $5,833 in revenue per employee.

Comparison of addition or elimination of jobs: Approximately seventeen percent of survey respondents indicated that the rule changes would cause them to add jobs. This figure represented six small businesses and no businesses that were in the ten percent of the largest businesses. Approximately six percent of respondents indicated that the rule changes would cause them to eliminate jobs. These responses represented two small businesses. None of the ten percent of the largest business[es] indicated that jobs would be eliminated because of the rule changes.

Steps taken by the department under RCW 19.85.-030(2) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.

Investor Protection Purpose: In drafting the crowdfunding rules, the securities division attempted to balance its mission to protect the investing public and promote confidence in the capital markets with the business concerns of startup companies seeking to raise capital using the crowdfunding exemption. The crowdfunding rules may increase certain costs; however, the securities division believes the costs are justified by the need to ensure protection for the investing public.

As a result of feedback received from affected businesses, the securities division made certain changes to the initial draft of the rules that had been circulated to interested persons. These changes, described below, were made in order to reduce the costs of compliance for small businesses. The securities division also considered outreach actions that might address concerns raised during the rule making and possibly reduce costs to businesses. Other than as described below, the securities division does not believe that it can reduce costs further and provide appropriate protection to the investing public in Washington.

Reducing, modifying, or eliminating substantive regulatory requirements: The survey responses indicated that the filing requirements rule at WAC 460-99C-040 had the highest likelihood of all the draft rules of increasing costs for businesses. Therefore, the securities division examined whether there were any filing requirements that could be eliminated. The securities division received several comments regarding the requirement that issuers provide a legal opinion letter with their application for the crowdfunding exemption. A legal opinion letter must be prepared by an attorney and provides an opinion on whether the securities to be issued in the offering will be legally and validly issued, fully paid and nonassessable and binding on the issuer. The commenters indicated that a legal opinion letter would be costly, burdensome, and unnecessary. In an effort to reduce costs to issuers, the securities division eliminated the requirement for a legal opinion letter.

The securities division also received comments regarding WAC 460-99C-030, which limits the availability of the crowdfunding exemption to certain types of issuers and offer-

ings. Commenters suggested that the exemption should allow business to raise funds through debt securities or convertible securities. After evaluating the comments received, the securities division decided to expressly allow offerings of convertible preferred stock to use the crowdfunding exemption. This change will provide issuers with more options for structuring their offerings.

The securities division also received feedback in the survey regarding the requirement in WAC 460-99C-250 to file advertisements with the securities division prior to use. Commenters expressed that this requirement would limit the ability of issuers to act quickly and could impact the ability to raise funds. The securities division believes that it is essential that issuers file advertisements so that they do not make misleading statements to the public and inadvertently violate RCW 21.20.010. The securities division has existing chapter 460-28A WAC concerning advertisements in registered offerings. In order to ease the filing burden on crowdfunding issuers, the securities division imported some language from WAC 460-28A-025 into WAC 460-99C-250 regarding types of advertisements that do not need to be filed with the division. These include "tombstone" advertisements, dividend notices, proxy statements, and reports to shareholders, including periodic financial reports.

Simplifying, reducing or eliminating record keeping and reporting requirements: The securities division received several comments regarding the quarterly reports requirement in WAC 460-99C-180. The Washington Jobs Act mandates that crowdfunding issuers provide quarterly reports to investors that contain information about executive compensation and a brief management analysis of the issuer's business operations and financial condition. In the draft rules, the securities division had specified that each quarterly report should also contain a quarterly financial statement prepared in accordance with U.S. GAAP. The purpose of this was to provide information on the financial condition of the company. However, the securities division received feedback which indicated that providing financial statements with the quarterly report would increase costs for investors. Many small companies do not have the expertise to prepare financials in GAAP format, and would need to hire professional accounting services to assist them. In an effort to reduce costs for issuers, the securities revised the quarterly reports rule WAC 460-99C-180 to remove the requirement for quarterly financial statements. Instead, the securities division will require that the issuer provide its annual financial statement to investors once a year in the quarterly report following the end of the issuer's fiscal year.

Based on feedback received in the survey, the securities division also reexamined the cancellation provisions at WAC 460-99C-120. Commenters indicated that the provisions would create expenses and administrative difficulties for issuers. In response, the securities division simplified the cancellation requirements by eliminating the requirement that investors reaffirm their investment within seven days of receiving a notice of a material change in the issuer. Investors still have the right to cancel at any time up until the minimum offering amount is raised. However, the revised rule removes the risk of passive cancellation of investments.

Other mitigation techniques: The securities division will develop a FAQ publication for distribution when the rules are adopted. The securities division intends to provide guidance through the FAQ to address questions and ease concerns raised during the rule-making process.

The securities division intends to address the following topics in the FAQ:

- The securities division will provide information regarding the timeframe for the review and approval of the Washington Crowdfunding Form. The securities division endeavors to review the Washington Crowdfunding Form and any amendments thereto within three weeks of filing. If the securities division does not approve a filing, it will issue a comment letter. The comment letter process provides issuers with the opportunity to address any deficiencies raised.
- The securities division will clarify the procedure for filing of advertisements with the securities division. Advertisements must be filed with the securities division at least seven days prior to use. The securities division will review advertisements for content to ensure that issuers are not making misleading statements to the public. Issuers may disseminate their advertisements after seven days have passed, unless the securities division has disallowed the dissemination of the advertisement by written notice.
- The securities division will clarify that nothing in the securities division's crowdfunding rules prevents a portal from charging a fee for services the portal provides in connection with crowdfunding.
- The securities division will clarify that local association development organizations, port districts, and broker-dealers are not required to act as portals for crowdfunding offerings, nor is a crowdfunding issuer required to use the services of a portal. In addition, the securities division will clarify that nothing prohibits crowdfunding issuers from receiving assistance from attorneys, consultants, or other professionals in connection with their offerings.
- The securities division will address the extent to which portals providing crowdfunding assistance will be exempt from broker-dealer registration. Portals providing the services permitted under RCW 21.20.883 and WAC 460-99C-210 in connection with crowdfunding offerings exempt under RCW 21.20.880(1) will be exempt from the state broker-dealer registration requirements at RCW 21.20.040(1). However, portals would not necessarily be exempt from federal broker-dealer registration requirements.
- The securities division will provide guidance regarding when an issuer is required to amend the Washington Crowdfunding Form pursuant to WAC 460-99C-090. Amendments are required when there has been a material change that would render the information in the Washington Crowdfunding Form inaccurate or incomplete. In order to understand the information that may be considered material, issuers may wish to consult existing resources such as Regulation S-K to the Securities Act of 1933 and the securities division's publication "The Role of Disclosure."

- The securities division will address the concerns of broker-dealers whose customers may choose to invest in crowdfunding or who may seek to liquidate holdings to invest in crowdfunding. Broker-dealers with these concerns may want to consider providing written information to customers regarding crowdfunding offerings and the extent or limits of the broker-dealer's liability.
- The securities division will clarify that it has the right to revoke the crowdfunding exemption at any time if the securities division has concerns that a crowdfunding issuer is committing fraud.

In addition to the assistance provided in the anticipated FAQ, the securities division may conduct informational sessions or develop an informational web site to provide portals and issuers with information about the crowdfunding exemption and securities laws generally. In addition, the securities division will provide the public the ability to search the securities division's online licensing database to determine who has filed an application for the crowdfunding exemption.

How the department will involve small business in rule development.

Since the beginning of the rule-making process, the securities division has involved interested persons in the development of the crowdfunding rules.

On March 13, 2014, the securities division filed a preproposal statement of inquiry (CR-101) concerning the rule making. The securities division distributed the CR-101 notice to its interested person's list for securities registration matters and to individuals who had specifically expressed interest in the crowdfunding rule making. This group of recipients included many small businesses and those that advise small businesses.

The CR-101 notice invited interested persons to participate in the rule-making process by submitting comments to the securities division. The securities division took the feedback received into account when preparing the initial draft of the rules. Once a draft was prepared, it was distributed on or about June 9, 2014, to the interested person's list, port districts, local associate development organizations, and broker-dealers registered in Washington.

The securities division next prepared a survey to determine the economic impact of the crowdfunding rules. The survey, along with a copy of the draft rules and draft Washington Crowdfunding Form, was sent to a survey pool consisting of persons interested in crowdfunding; issuers who had made a registration filing with the securities division in the last five years for an offering of less than $1 million; issuers located in Washington who had made an exemption notice filing with the securities division for an offering of less than $1 million within the last year; all port districts and local associate development organizations located in Washington; all broker-dealers registered and located in Washington; and ten percent of broker-dealers registered in Washington but located out-of-state. Most of the survey respondents were small businesses. Based on the information received from the survey, the securities division made changes to its initial draft of the rules in an effort to reduce costs for small businesses.

The securities division also met with small business owners and attorneys in Washington who expressed interest in the development of the crowdfunding exemption and the rules to be adopted thereunder. The securities division took the feedback received at the meetings into consideration when drafting the crowdfunding rules. The securities division will continue to seek the feedback of interested parties as the rule-making process continues.

A list of the industries that will be required to comply with the rule.

Companies electing to conduct a securities offering pursuant to the new crowdfunding exemption at RCW 21.20.880 will be required to comply with the rules in chapter 460-99C WAC. Portals (local associate development organizations, port districts, and broker-dealers registered in Washington) who elect to assist issuers with crowdfunding offerings under the exemption will likewise be required to comply with the rules in chapter 460-99C WAC.

A copy of the statement may be obtained by contacting Faith Anderson, DFI, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, phone (360) 902-8760, fax (360) 704-6480, e-mail faith.anderson@dfi.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

August 14, 2014
Scott Jarvis
Director

Chapter 460-99C WAC

CROWDFUNDING

NEW SECTION

WAC 460-99C-010 Application. The rules in this chapter apply to the exemption from registration set forth in RCW 21.20.880 for intrastate offerings of securities exempt under section 3 (a)(11) of the federal Securities Act of 1933 and Securities and Exchange Commission Rule 147, 17 C.F.R. 230.147 (crowdfunding exemption). The rules are intended to assist Washington start-up companies in accessing capital in small securities offerings through equity crowdfunding (crowdfunding offering). Issuers may work in collaboration with organizations that qualify as portals to develop business plans, complete disclosure documents, to seek out other technical assistance, and to submit filings in connection with a public securities offering. The exemption is intended to reduce the costs and burdens of raising equity capital for small businesses without sacrificing investor protection, and to maximize the amount of offering proceeds available to the issuer for investment in the business. Issuers eligible for this exemption shall use the Washington Crowdfunding Form as the disclosure document for the offering.

NEW SECTION

WAC 460-99C-020 Definitions. (1) "Escrow agent" means a bank, trust company, savings bank, national banking association, building and loan association, mortgage banker, credit union, insurance company, an escrow agent that is registered under chapter 18.44 RCW, or any other independent escrow agent acceptable to the director. The entity acting as

the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis.

(2) "Local associate development organization" means a Washington associate development organization as defined in RCW 43.330.010.

(3) "Port district" means a port district formed under chapter 53.04 RCW.

(4) "Portal" means:

(a) A port district;

(b) A local associate development organization; or

(c) A broker-dealer registered with the division.

(5) "Promoter" means:

(a) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, takes initiative in founding and organizing the business or enterprise of an issuer; or

(b) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, ten percent or more of any class of securities of the issuer or ten percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this subsection if such person does not otherwise take part in founding and organizing the enterprise.

NEW SECTION

WAC 460-99C-030 Availability. (1) The crowdfunding exemption in RCW 21.20.880 is intended to allow start-up companies to raise capital in small securities offerings to Washington residents. The rules in this chapter provide for the use of a simplified offering document designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the simplified Washington Crowdfunding Form and will, therefore, be unable to utilize this exemption. The director finds that the Washington Crowdfunding Form is generally unsuitable for the following issuers and programs and that, therefore, they will not be allowed to utilize the crowdfunding exemption unless written permission is obtained from the director based upon a showing that adequate disclosure can be made to investors using the Washington Crowdfunding Form:

(a) Holding companies, companies whose principal purpose is owning stock in, or supervising the management of, other companies;

(b) Investment companies subject to the Investment Company Act of 1940, including private equity funds;

(c) Portfolio companies, such as real estate investment trusts;

(d) Development stage companies that either have no specific business plan or purpose or have indicated that their business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person;

(e) Companies with complex capital structures;

(f) Blind pools;

(g) Commodity pools;

(h) Companies engaging in petroleum exploration or production or mining or other extractive industries;

(i) Equipment leasing programs; and

(j) Real estate programs.

(2) The crowdfunding exemption is available only to a corporation or centrally managed limited liability company or limited partnership that is resident and doing business within Washington at the time of any offer or sale of securities.

(3) The aggregate purchase price of all securities offered by an issuer in an offering made pursuant to the crowdfunding exemption in RCW 21.20.880 may not exceed one million dollars.

(4) The crowdfunding exemption is available only to equity offerings by the issuer of the securities and is not available to any affiliate of that issuer or to any other person for resale of the issuer's securities. The exemption is not available to debt offerings.

(5) For the purposes of this section, "equity" includes convertible preferred stock that is authorized and issued pursuant to charter documents that provide holders of the convertible preferred stock with the following protections:

(a) A provision restricting the payment of dividends on common stock or other outstanding securities of the issuer unless comparable dividends are paid on all convertible preferred stock based on the number of common shares into which they are convertible;

(b) A liquidation preference that provides that the holders of the convertible preferred stock are entitled to receive in preference to the holders of any outstanding common stock an amount that is at least equal to the amount at which the convertible preferred stock was purchased from the company plus any accrued but unpaid dividends;

(c) A conversion feature that allows holders of the convertible preferred stock to convert their shares into common stock of the company at any time at the conversion rate of at least one common share per share of convertible preferred stock. The preferred stock may either be participating or non-participating preferred stock;

(d) An appropriate antidilution provision providing for an adjustment of the number of shares into which such stock is convertible upon any stock split, stock dividend, or similar event. Such charter documents must also provide for a similar adjustment upon the issuance of additional common stock, preferred stock, or convertible debt by the issuer for consideration less than either the consideration paid to the company for the convertible preferred stock or the current market price for the common stock;

(e) Voting rights that provide that holders of convertible preferred stock shall be entitled to that number of votes on all matters presented to stockholders equal to the number of shares of common stock then issuable upon conversion of such shares;

(f) Voting rights that provide that as long as at least fifty percent of the convertible preferred stock issued remains outstanding, the approval by at least fifty percent of the voting interests in the outstanding shares of convertible preferred stock is required in connection with:

(i) The creation of any senior or pari passu security to the convertible preferred stock;

(ii) The repurchase of securities;

(iii) Any increase or decrease in the number of authorized securities;

(iv) The adoption or amendment of any incentive compensation plan;

(v) Any adverse change to the rights, preferences, and privileges of the convertible preferred stock;

(vi) Any redemption, repurchase, or other acquisition for value of any of the company's equity securities, other than from present or former consultants, directors, or employees pursuant to the terms of a stock option plan of the company;

(vii) Any material change in the company's line of business;

(viii) The merger, consolidation, or reorganization of the company with and into another company or entity, or of any other company or entity with and into the company;

(ix) The acquisition of a substantial portion of the assets or business of another company or entity or any other acquisition of material assets;

(x) A sale of all or substantially all of the company's assets;

(xi) Dissolution or liquidation of the company; and

(xii) Any other action materially adversely affecting the interests of the holders of the convertible preferred stock.

NEW SECTION

WAC 460-99C-040 Filing requirements. In addition to filing a properly completed Washington Crowdfunding Form, issuers seeking to rely on the crowdfunding exemption in RCW 21.20.880 shall file the following with the division:

(1) The filing fee as prescribed in WAC 460-99C-260;

(2) The issuer's articles of incorporation or other charter documents pursuant to which the issuer is organized in this state and all amendments thereto;

(3) The issuer's by-laws or operating agreement, and all amendments thereto;

(4) A copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued or by managing members setting forth terms and or capital ownership interest to be issued;

(5) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles in the United States. If the date of the most recent fiscal year end is more than ninety days prior to the date of filing, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations prepared in accordance with generally accepted accounting principles in the United States for the issuer's most recent fiscal quarter;

(6) A copy of any agreements between the issuer and any portal;

(7) A copy of the escrow agreement between the issuer and an escrow agent located in the state of Washington in which offering proceeds will be deposited;

(8) A copy of any subscription agreement for the purchase of securities in this offering;

(9) A specimen or copy of the security to be offered, including required legends, if the issuer will issue physical certificates;

(10) A copy of all advertising and other materials directed to or to be furnished to investors in this offering; and

(11) Any other document reasonably requested by the director.

NEW SECTION

WAC 460-99C-050 Information requirements. The issuer shall furnish to prospective investors, at a reasonable time prior to the sale of securities in reliance on the crowdfunding exemption in RCW 21.20.880, the most recent Washington Crowdfunding Form declared exempt by the director, including all required exhibits thereto.

NEW SECTION

WAC 460-99C-060 Declaration of exempt offering. An offering made in reliance on the crowdfunding exemption in RCW 21.20.880 shall not commence until the director has declared the offering exempt. Neither the fact that an offering has been declared exempt under RCW 21.20.880 nor the fact that a Washington Crowdfunding Form has been filed constitutes a finding by the director that any document filed under these rules is true, complete, and not misleading. Neither any such fact nor the fact that a crowdfunding exemption is available means that the director has passed in any way upon the merits of or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

NEW SECTION

WAC 460-99C-070 Duration of exempt offering. A crowdfunding offering under RCW 21.20.880 may be declared exempt for a maximum of twelve months. An exempt offering may be renewed for one additional twelve-month period in accordance with WAC 460-99C-100.

NEW SECTION

WAC 460-99C-080 Pending offering—Notice of termination. The director may in his or her discretion send notice to the issuer in any pending crowdfunding offering under RCW 21.20.880 in which no action has been taken for nine months immediately prior to the sending of such notice, advising the issuer that the pending filing will be terminated thirty days from the date of sending unless on or before the termination date the issuer makes application in writing to the director showing good cause why it should be continued as a pending offering. If such application is not made or good cause not shown, the director may terminate the pending offering.

NEW SECTION

WAC 460-99C-090 Amendments to Washington Crowdfunding Form—Material changes. In an offering made in reliance on the crowdfunding exemption in RCW 21.20.880, if at any time while the offering is ongoing there

is a material change that would affect the accuracy of the information contained in the Washington Crowdfunding Form after the offering is declared exempt by the director, the issuer shall amend the form. In no event shall the Washington Crowdfunding Form be revised less often than every twelve months. All amendments must first be filed with the division and be declared exempt prior to their use.

NEW SECTION

WAC 460-99C-100 Renewal filing requirements. (1) A crowdfunding offering declared exempt under RCW 21.20.880 may be renewed by filing a renewal notice no later than thirty days prior to the expiration of the original exempt offering period declared by the director.

(2) A renewal notice shall consist of the following:

(a) A report of sales as of the most recent practicable date;

(b) A copy of the issuer's updated Washington Crowdfunding Form;

(c) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles in the United States. If the date of the most recent fiscal year end is more than ninety days prior to the date of renewal, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations prepared in accordance with generally accepted accounting principles in the United States for the issuer's most recent fiscal quarter; and

(d) The filing fee prescribed in WAC 460-99C-260.

(3) A crowdfunding offering shall not be considered renewed until the director has declared the renewal offering exempt.

NEW SECTION

WAC 460-99C-110 Minimum target offering amount. (1) The issuer shall specify a minimum target offering amount and deadline to raise the minimum target offering amount in its Washington Crowdfunding Form. The issuer must demonstrate to the director that the minimum target offering amount, together with other sources of financing, is sufficient to implement the business plan of the issuer. If the proceeds are insufficient, the director may require a revised minimum target offering amount.

(2) The deadline by which the issuer must raise its minimum target offering amount may be no longer than twelve months from the date the offering is declared exempt by the director.

NEW SECTION

WAC 460-99C-120 Investor right of cancellation. (1) In an offering conducted under RCW 21.20.880, an investor may cancel an investment commitment for any reason until such time as the target minimum offering amount has been raised.

(2) If there is a material change to the terms of the offering or to the information provided by the issuer in the Washington Crowdfunding Form before the minimum target offering amount has been raised, the issuer must give or send to any investor who has made an investment commitment notice of the material change and notice that the investor may cancel an investment commitment for any reason until such time as the target minimum offering amount has been raised.

NEW SECTION

WAC 460-99C-130 Escrow agreement provisions. (1) The issuer must enter into an escrow agreement with an independent escrow agent, as defined in WAC 460-99C-020, located in the state of Washington that includes the following terms:

(a) All offering proceeds shall be maintained in an account controlled by the escrow agent;

(b) All offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the Washington Crowdfunding Form;

(c) If the proceeds do not meet the minimum requirements by the deadline set forth in the Washington Crowdfunding Form, the escrow agent must:

(i) Release and return the proceeds directly to the investors;

(ii) Pay to investors, on a pro rata basis, any interest earned on the proceeds; and

(iii) Not deduct any expenses, including fees of the escrow agent.

(d) No creditor or affiliate of the issuer, portals engaged by the issuer, or escrow agent will have any claim to the escrowed proceeds;

(e) The escrow agent agrees to maintain its independence from the issuer and its officers, directors, managing members, and affiliates.

(f) The director may inspect the records of the impound account maintained by the escrow agent at any reasonable time at the location of the records, and copy any record that is inspected.

(2) The escrow agreement must be signed by an officer of the issuer and an authorized representative of the escrow agent.

(3) The escrow agent may not be affiliated with the issuer or its officers, directors, managing members, or affiliates.

NEW SECTION

WAC 460-99C-140 Issuer compliance with investor limitations. Prior to accepting investor funds or an irrevocable commitment to invest, the issuer must obtain the following from each investor:

(1) Evidence of residency of the investor in the state of Washington;

(2) A copy of the Investor Certifications and Acknowledgements Form prescribed by the director that has been either manually or electronically signed by the investor.

NEW SECTION

WAC 460-99C-150 Aggregate investment limitations. (1) In each sale of securities in reliance on the crowdfunding exemption under RCW 21.20.880, the issuer must

reasonably believe that the aggregate amount of securities sold to any investor by one or more issuers offering or selling securities under the crowdfunding exemption during the twelve-month period preceding the date of the sale, together with the securities to be sold by the issuer to the investor, does not exceed the lesser of:

(a) Two thousand dollars or five percent of the annual income or net worth of the investor, whichever is greater, if either the annual income or the net worth of the investor is less than one hundred thousand dollars; or

(b) Ten percent of the annual income or net worth of the investor, as applicable, up to one hundred thousand dollars, if either the annual income or net worth of the investor is one hundred thousand dollars or more.

(2) For the purpose of determining the annual income of an investor under this section, the annual income of an investor shall be the investor's lowest annual net income out of the two most recently completed calendar or fiscal years, provided that the investor has a reasonable expectation of having at least that amount of net income in the current calendar or fiscal year.

(3) For the purpose of calculating the net worth of an investor under this section:

(a) The investor's primary residence shall not be included as an asset;

(b) Indebtedness that is secured by the investor's primary residence, up to the estimated fair market value of that primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(c) Indebtedness that is secured by the investor's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.

NEW SECTION

WAC 460-99C-160 Evidence of residency. (1) At or before the time an issuer accepts any funds or an irrevocable commitment to invest by any person in an offering conducted in reliance on the crowdfunding exemption under RCW 21.20.880, either the issuer or an agent representing the issuer must obtain evidence of the residency of the person in the state of Washington.

(2) For purposes of subsection (1) of this section, the following is a nonexclusive list of prima facie evidence of the residency of any person provided, however, that the issuer or its agent does not have knowledge that such person is not a resident of the state of Washington:

(a) A valid driver's license, chauffeur's license, or official personal identification card issued by the state of Washington;

(b) A current Washington voter registration;

(c) A concealed weapons permit;

(d) A homeowner's insurance policy or invoice showing the address of the insured property or residence;

(e) A home utility bill (such as gas, electricity, water, garbage, landline telephone, or cable) or hook-up work order dated within the past sixty days. A utility bill or work order is not acceptable if two unrelated people are listed;

(f) Mortgage documents;

(g) A property tax bill or statement dated within the past twelve months;

(h) The person's name and address in a current phone book made by a telephone book publisher;

(i) A moorage bill or contract showing the person lives on a boat in a marina in the state of Washington;

(j) A federal or state government agency-issued check;

(k) A tribal ID that contains the person's current residential address;

(l) A filed property deed or title for the person's current residence;

(m) An auto insurance policy;

(n) A Washington state business license;

(o) Business mail dated within the past sixty days. Mail must include the person's first and last name, and must be from state or federal revenue departments, the Social Security Administration, the U.S. Treasury, or the Internal Revenue Service. It may not be addressed "in care of," "for," or "parent of";

(p) Medical records paid by insurance or a medical bill;

(q) A medicaid card or department of social and health services medical coupon;

(r) A pay stub that contains the person's name, the person's current residence address, the employer's name, and the employer's phone number or address;

(s) A professional license;

(t) A selective service card showing a Washington state address;

(u) A professionally filed tax return or filed copy sent to the person by the Internal Revenue Service for the most recent tax filing year;

(v) A W-2 form for the previous year;

(w) A Washington state vehicle registration.

NEW SECTION

WAC 460-99C-170 Restrictions on resale. (1) Securities issued in reliance on the crowdfunding exemption in RCW 21.20.880 may not be transferred by the purchaser during a one-year period beginning on the date of purchase, unless the securities are transferred:

(a) To the issuer of the securities;

(b) To an accredited investor;

(c) Pursuant to an effective registration statement under the Securities Act of Washington, chapter 21.20 RCW; or

(d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances, in the discretion of the director.

(2) Securities issued under the crowdfunding exemption in RCW 21.20.880 are also restricted by the requirements for the federal exemption from registration for intrastate offerings under section 3(a)(11) of the federal Securities Act of 1933, 15 U.S.C. 77c(a)(11), and securities and exchange commission Rule 147, 17 C.F.R. 230.147, including restrictions on transfer of securities by the purchaser.

Note: Rule 147 generally provides that during the period in which securities that are part of an issue are being offered and sold by the issuer, and for a period of nine months from the date of last sale by the issuer of such securities, all resales of any part of the issue, by any person, shall be made only to persons residing within the state of Washington. Issuers are cautioned to carefully review and implement safeguards to ensure their compliance with the restrictions contained in Rule 147, as well as the restrictions contained in RCW 21.20.880.

NEW SECTION

WAC 460-99C-180 Quarterly reporting requirements. For as long as securities issued under the crowdfunding exemption in RCW 21.20.880 remain outstanding, the issuer shall provide a quarterly report to the issuer's shareholders by making such report publicly accessible, free of charge, at the issuer's internet web site address within forty-five days of the end of each fiscal quarter. The report must contain the following information:

(1) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, including stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them;

(2) The names of the issuer's owners of twenty percent or more of a class of outstanding securities, directors, officers, managing members and/or other persons occupying similar status or performing similar functions on behalf of the issuer;

(3) Financial statements for the issuer's most recent fiscal year end prepared in accordance with generally accepted accounting principles in the United States; and

(4) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

NEW SECTION

WAC 460-99C-190 Final sales report. Upon completion of an offering made in reliance on the crowdfunding exemption in RCW 21.20.880, an issuer shall file a final sales report in the form prescribed by the director no later than thirty days after the last sale in the offering with the director that includes the following information:

(1) The time period in which the offering was open;

(2) The number of shares or units sold in the offering;

(3) The number of investors that purchased shares or units in the offering; and

(4) The dollar amount sold in the offering.

NEW SECTION

WAC 460-99C-200 Integration. (1) All sales that are part of the same offering in reliance on these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

(2) The following factors should be considered in determining whether offers and sales should be integrated for purposes of the crowdfunding exemption under these rules:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

NEW SECTION

WAC 460-99C-210 Activities of portals. (1) A portal shall require, at a minimum, the following information from an issuer planning a crowdfunding offering under RCW 21.20.880 prior to offering services to the issuer or forwarding the issuer's materials to the director:

(a) A description of the issuer, including type of entity, location, and business plan, if any;

(b) The issuer's intended use of proceeds from the crowdfunding offering under RCW 21.20.880;

(c) Identities of officers, directors, managing members and ten percent beneficial owners, as applicable;

(d) A description of any outstanding securities; and

(e) A description of any litigation or legal proceedings involving the issuer, its officers, directors, managing members, or ten percent beneficial owners, as applicable.

(2) Upon receipt of the information set forth in subsection (1) of this section, the portal may offer services to the issuer that the portal deems appropriate or necessary to meet the criteria for the exemption. Such activities may include:

(a) Assistance with the development of a business plan;

(b) Ministerial assistance in completion of crowdfunding exemption filings under these rules;

(c) Referral to legal services;

(d) Referral to business consulting and accounting services to assist with compiling and reporting financial information required by these rules;

(e) Other technical assistance in preparation for a crowdfunding offering by the issuer; and

(f) Submission of exemption materials to the director.

(3) Portals are prohibited from engaging in the following activities:

(a) Providing investment advice or recommendations if the portal is not registered or exempt from registration as an investment adviser;

(b) Soliciting purchases, sales, or offers to buy securities offered in connection with its services unless the portal is a broker-dealer registered with the division;

(c) Compensating employees, agents, or other persons for the solicitation of purchases, sales, or offers in connection with its services unless the portal is a broker-dealer registered with the division;

(d) Holding, managing, possessing, handling investor funds or securities, or otherwise acting in the manner of an escrow agent on behalf of an issuer; or

(e) Engaging in conduct constituting that of an underwriter or any other activity that constitutes purchasing securities for the purpose of distribution.

NEW SECTION

WAC 460-99C-220 Bad actor disqualification. (1) The crowdfunding exemption under RCW 21.20.880 shall not be available if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner, or managing member of the issuer; any beneficial owner of twenty percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of making an exemption filing under RCW 21.20.880; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the offering of securities; or any director, executive officer or other officer participating in the offering of any such solicitor, general partner, or managing member of such solicitor:

(a) Has been convicted, within ten years before making an exemption filing under RCW 21.20.880 or five years, in the case of issuers, their predecessors, and affiliated issuers, of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the securities and exchange commission or a state securities commission (or an agency or officer of a state performing like functions); or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(b) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before making an exemption filing under RCW 21.20.880, that, at the time of filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the securities and exchange commission or a state securities commission (or an agency or officer of a state performing like functions); or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(c) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of making an exemption filing under RCW 21.20.880, bars the person from:

(A) Association with an entity regulated by such commission, authority, agency, or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before making an exemption filing under RCW 21.20.880;

(d) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Securities Act of Washington, chapter 21.20 RCW, or any other state's securities law, within five years prior to making an exemption filing for an offering under RCW 21.20.880;

(e) Is currently subject to any state administrative enforcement order or judgment entered by the Washington state administrator of securities or any other state's securities administrator within five years prior to making an exemption filing for an offering under RCW 21.20.880 or is subject to any state's administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to making an exemption filing for an offering under RCW 21.20.880;

(f) Is subject to an order of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o-4(c)) or section 203 (e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e) or (f)) that, at the time of making an exemption filing under RCW 21.20.880:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(g) Is subject to any order of the Securities and Exchange Commission entered within five years before making an exemption filing under RCW 21.20.880 that, at the time of filing, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17 (a)(1) of the Securities Act of 1933 (15 U.S.C. 77q (a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 C.F.R. 240.10b-5, section 15 (c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(h) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(i) Has filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the securities and exchange commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(j) Is subject to a United States Postal Service false representation order entered within five years before the making of an exemption filing under RCW 21.20.880, or is, at the time of such filing, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(2) For purposes of subsection (1) of this section, "final order" shall mean a written directive or declaratory statement issued by a federal or state agency described in subsection (1)(c) of this section under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

(3) Subsection (1) of this section shall not apply:

(a) Upon a showing of good cause and without prejudice to any other action by the director, if the director determines that it is not necessary under the circumstances that an exemption be denied;

(b) If, before the relevant filing, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the director or its staff) that disqualification under subsection (1) of this section should not arise as a consequence of such order, judgment, or decree; or

(c) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under subsection (1) of this section. An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(4) For purposes of subsection (1) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(a) In control of the issuer; or

(b) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such event.

NEW SECTION

WAC 460-99C-230 Disqualification based on reporting failures. An issuer that has sold securities in reliance on RCW 21.20.880 and has not complied with the quarterly reporting requirements set forth in WAC 460-99C-180 during the two years immediately preceding the filing of the Washington Crowdfunding Form is ineligible to offer securities in reliance on RCW 21.20.880.

NEW SECTION

WAC 460-99C-240 Books and records—Inspection rights. (1) An issuer that has filed or is required to file under the crowdfunding exemption must keep and maintain written or electronic records relating to offers and sales of securities made in reliance on the crowdfunding exemption for at least six years following the termination of the offering. These records shall include:

(a) The issuer's Washington Crowdfunding Form and all exhibits, together with all amendments thereto;

(b) Evidence of residency from each investor in the offering;

(c) A manually or electronically signed copy of the Investor Certifications and Acknowledgements Form for each investor in the offering;

(d) Final sales reports filed with the director; and

(e) Quarterly reports and all other communications with shareholders.

(2) The director may access, inspect, review, copy, and remove for inspection any records described in subsection (1) of this section.

NEW SECTION

WAC 460-99C-250 Advertising—Filing requirements. (1) All advertising directed to or to be furnished to investors in an offering under RCW 21.20.880 shall be filed with the director no later than seven days prior to publication or distribution.

(2) The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the administrator, unless specifically prohibited.

(a) So-called "tombstone" advertising, containing no more than the following information:

(i) Name and address of issuer;

(ii) Identity or title of security;

(iii) Per unit offering price, number of shares and amount of offering;

(iv) Brief, general description of business;

(v) Name and address of broker-dealer or underwriter, or address where offering circular or prospectus can be obtained; and

(vi) Date of issuance.

(b) Dividend notices, proxy statements and reports to shareholders, including periodic financial reports.

(c) Sales literature, advertising or market letters prepared in conformity with the applicable regulations and in compliance with the filing requirements of the SEC, FINRA, or an approved securities exchange.

NEW SECTION

WAC 460-99C-260 Filing fees. The following fees apply to crowdfunding filings:

(1) The fee for filing an initial Washington Crowdfunding Form with the director is six hundred dollars.

(2) The renewal filing fee is one hundred dollars.

WSR 14-17-074
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed August 18, 2014, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-083.

Title of Rule and Other Identifying Information: WAC 308-100-130 Serious traffic violations.

Hearing Location(s): Highways-Licenses Building, 1125 Washington Street S.E., Conference Room 413, Olympia, WA (check in at counter on first floor), on September 23, 2014, at 3:00 p.m.

Date of Intended Adoption: September 24, 2014.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by September 22, 2014.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by September 22, 2014, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revise and update WAC 308-100-130, the list of additional traffic violations that are considered "serious traffic violations" for purposes of chapter 46.25 RCW, regarding commercial driver's licenses and the operation of commercial motor vehicles.

Reasons Supporting Proposal: Legislation enacted since the rule was last updated has created new traffic violations that are similar to offenses currently on the list and pose an equal or greater threat to traffic safety. The department has also identified traffic violations that are of equal seriousness and similar to violations on the list that were previously omitted.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.010, 46.25.140.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule does not apply to businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

August 18, 2014
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-10-085, filed 5/6/09, effective 6/6/09)

WAC 308-100-130 Serious traffic violations. In addition to the violations enumerated in RCW 46.25.010(((~~(16)~~))), "Serious traffic violation" shall include:

(1) Negligent driving in the first or second degree, as defined by RCW 46.61.5249, ((~~or~~)) 46.61.525, or 46.61.526;

(2) Following too closely, as defined by RCW 46.61.145, or 46.61.635;

(3) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.365, 46.61.370, ((~~or~~)) 46.61.375, or 46.61.385;

(4) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;

(5) Speed too fast for conditions, as defined by RCW 46.61.400;

(6) Improper lane change or travel, as defined by RCW 46.61.070, 46.61.105, 46.61.140, 46.61.290, or 46.61.608; ((~~and~~))

(7) Improper or erratic lane changes, including:

(a) Improper overtaking on the right, as defined by RCW 46.61.115;

(b) Improper overtaking on the left, as defined by RCW 46.61.110, 46.61.120, or 46.61.130; and

(c) Improper driving to left of center of roadway, as defined by RCW 46.61.125;

(8) Reckless endangerment of emergency zone workers, as defined by RCW 46.61.212;

(9) Reckless endangerment of roadway workers, as defined by RCW 46.61.527; and

(10) A conviction of an administrative rule or local law, ordinance, rule, or resolution of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this section.

WSR 14-17-075
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed August 18, 2014, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-070.

Title of Rule and Other Identifying Information: WAC 308-106-030 Insurance identification card—Self-insurance—Certificate of deposit—Bond.

Hearing Location(s): Highways-Licenses Building, 1125 Washington Street S.E., Conference Room 413, Olympia,

WA (check in at counter on first floor), on September 25, 2014, at 3:00 p.m.

Date of Intended Adoption: September 26, 2014.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by September 24, 2014.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by September 24, 2014, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 308-106-030 to update information required on an insurance identification card issued to drivers covered by a certificate of deposit to conform with recent legislation transferring oversight of the deposit program from the state treasurer's office to the department of licensing.

Statutory Authority for Adoption: RCW 46.01.110 and 46.30.030.

Statute Being Implemented: RCW 46.30.030.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Cindy Cavanagh, Highways-Licenses Building, Olympia, Washington, (360) 902-7415.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

August 18, 2014
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 89-22-030, filed 10/26/89, effective 11/26/89)

WAC 308-106-030 Insurance identification card—Self-insurance—Certificate of deposit—Bond. A person or organization providing proof of compliance through self-insurance, as provided in RCW 46.29.630, certificate of deposit, as provided in RCW 46.29.550, or bond, shall provide an identification card to all covered drivers. The card shall contain the following information:

(a) For persons or organizations who are self-insured:

(i) The self-insurance number issued by the department ((~~of licensing~~));

(ii) The effective date of the certificate of self-insurance; and

(iii) A description of the year, make and/or model of the vehicles covered by the certificate of self-insurance and/or the name of the driver covered by the certificate of self-insurance. The word "fleet" may be used in place of the vehicle description. The person or organization may issue a supplemental listing of vehicles covered;

(b) For persons or organizations who are covered by a certificate of deposit:

(i) The certificate number issued by the ((~~state treasurer~~)) department; and

(ii) The name of the driver covered by the certificate of deposit;

(c) For persons or organizations covered by a liability bond:

(i) The name of the company issuing the bond;

(ii) The bond number; and

(iii) The name of the driver covered by the bond.

WSR 14-17-080
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 18, 2014, 1:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-059.

Title of Rule and Other Identifying Information: WAC 308-96A-096 Registration requirements.

Hearing Location(s): Highways-Licenses Building, 1125 Washington Street S.E., Conference Room 413, Olympia, WA (check in at counter on first floor), on September 30, 2014, at 3:00 p.m.

Date of Intended Adoption: October 1, 2014.

Submit Written Comments to: Brady Horenstein, P.O. Box 9030, Olympia, WA 98507-9030, e-mail bhorenstei@dol.wa.gov, fax (360) 570-7048, by September 29, 2014.

Assistance for Persons with Disabilities: Contact Brady Horenstein by September 29, 2014, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revise and update WAC 308-96A-096 to require that a natural person present an unexpired driver's license only upon initial vehicle registration.

Reasons Supporting Proposal: Legislation enacted since the rule was last updated changed the requirements in RCW 46.16A.050 for vehicle registration to require that a natural person present an unexpired driver's license only upon initial vehicle registration. This proposal will align WAC 308-96A-096 with this statutory change.

Statutory Authority for Adoption: RCW 46.01.110, 46.16A.220.

Statute Being Implemented: RCW 46.16A.050.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Brady Horenstein, Highways-Licenses Building, Olympia, Washington, (360) 902-3835; Implementation and Enforcement: Toni Wilson, Highways-Licenses Building, Olympia, Washington, (360) 902-3811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule making does not impose more than a minor cost on businesses in

the industry. Thus, a small business impact statement is not required under RCW 19.85.030 (1)(a).

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

August 18, 2014
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-17-033, filed 8/8/06, effective 9/8/06)

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

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

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

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

(d) ((~~For natural persons~~)) When initially registering the vehicle, each registered owner who is a natural person must meet one of the following requirements:

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

(ii) ((~~Certification~~)) Certify that he or she is:

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

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

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

(iii) Provide evidence that, in the department's view, satisfactorily demonstrates a valid and compelling reason for not being able to meet this requirement.

(2) For ((~~the~~)) purposes of this section, "present((~~s~~))" means:

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

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

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

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

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

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

(c) A co-owner is deceased.

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

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

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

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

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

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

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

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

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

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

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

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

(((~~(h)~~)) (5) A natural person who is a resident of Washington may not form a corporation, trust or other entity in another jurisdiction for the purpose of evading Washington vehicle registration.

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

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

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

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

WSR 14-17-083
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 13-07—Filed August 18, 2014, 4:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-048.

Title of Rule and Other Identifying Information: Dangerous waste regulations, chapter 173-303 WAC.

Hearing Location(s): Department of Ecology, Headquarters, 300 Desmond Drive S.E., Lacey, WA 98503, on September 24, 2014, at 2:00 p.m. Ecology will hold one public hearing on this rule proposal. The hearing will begin with a short presentation followed by a question and answer (Q&A) session. Testimony will start at the end of the Q&A session.

Webinar: Ecology is also offering the presentation, Q&A session, and public hearing through a webinar. A webinar is an online meeting forum that you can join from any computer using internet access. To participate and provide comments through the webinar, you also need to have a phone or a computer with phone modem capability. For more information about the webinar and instructions on how to join and participate through the webinar, visit http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRuleMaking.html.

Comments: During the public hearing ecology will accept comments at the hearing location and through the webinar.

Date of Intended Adoption: December 17, 2014.

Submit Written Comments to: Robert Rieck, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail dwrm@ecy.wa.gov, fax (360) 407-6715, by October 1, 2014.

Assistance for Persons with Disabilities: Contact Nancy Farman, (360) 407-0272, by September 17, 2014. Persons with hearing loss, call TTY 711. Persons with a speech disability, call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is proposing to amend chapter 173-303 WAC. This rule making would bring the state regulations current with federal requirements, and will update other state-initiated requirements, including the chemical test methods guidance. Please review the proposed rule language for all of the proposed changes, including minor clarifications and editorial and technical corrections.

Proposed Amendments Related to Federal Rules: One purpose of this rule proposal is to update the dangerous waste regulations to be current with the federal hazardous waste program. Ecology is proposing to adopt several federal hazardous waste rules into the state dangerous waste regulations, including a new rule simplifying waste management at university and college laboratories, changes to import/export rules, incorporating corrections to the United States Environmental Protection Agency (EPA) hazardous waste regulations, and a few other new, minor federal rules. See below for more details. The EPA federal register summaries of these rules (available in the rule preamble summary document) and the proposed rule language are available at http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRuleMaking.html.

Federal hazardous waste rules proposed for adoption include:

1) Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities. December 1, 2008 - 73 F.R. 72912.

2) Technical Corrections to the Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities. December 20, 2010 - 75 F.R. 79304.

3) Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes. January 8, 2010 - 75 F.R. 1236.

4) Hazardous Waste Technical Corrections and Clarifications Rule. March 18, 2010 - 75 F.R. 12989 and June 4, 2010 - 75 F.R. 31716.

5) Hazardous Waste Technical Corrections and Clarifications Rule. April 13, 2012 - 77 F.R. 22229.

6) Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Saccharin and Its Salts From the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances. December 17, 2010 - 75 F.R. 78918.

7) Hazardous Waste Manifest Printing Specifications Correction Rule. June 22, 2011 - 76 F.R. 36363.

8) Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes. June 13, 2011 - 76 F.R. 34147.

Other proposed state-initiated amendments: Ecology is proposing other state-initiated amendments not related to the federal rules listed above.

Significant changes are described below. The proposed rule language and a *Rule Preamble Summary* is available on ecology's web site at http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRuleMaking.html.

WAC 173-303-073 (2)(e)(v), a thirty day time limit is established for special waste held at solid waste transfer stations. This will reduce chances of pollution resulting from storage of special waste at transfer stations.

WAC 173-303-200, 173-303-400, 173-303-64690, 173-303-650, 173-303-660, 173-303-665 and 173-303-806, adds the requirement that facilities use an "independent qualified registered professional engineer" instead of a "qualified professional engineer" (or similar language) for regulatory certifications. These changes provide consistency throughout the regulations for the regulated community and promote quality assurance at treatment, storage and disposal facilities.

WAC 173-303-400, 173-303-645, 173-303-800 and 173-303-806, adopt rules allowing use of enforceable documents in lieu of RCRA post closure permits. This option provides an easier, more efficient regulatory process for facilities

entering post closure while maintaining appropriate agency oversight.

WAC 173-303-620, several areas of the financial assurance rule are being changed. Ecology is proposing to raise the minimum tangible net worth requirement from $20 million to $25 million to qualify for use of the financial test or corporate guarantee option. We are also increasing the minimum financial assurance amounts for liability coverage. Both of these changes are made to keep pace with inflation.

WAC 173-303-64620(5), this change adds rules for financial assurance at corrective action sites. This rule will codify existing EPA guidance and current ecology practice as it is used in agreed orders and consent decrees. No federal or state financial assurance rules currently exist for corrective action sites, and by creating these rules it will reduce negotiation time involved in establishing financial assurance.

WAC 173-303-905, this rule is being deleted because it is in conflict with the Public Records Act (chapter 42.56 RCW) and is unnecessary.

Revisions to the Chemical Test Methods Guidance: Ecology is also proposing changes to the chemical test methods guidance and is accepting comments on this document along with comments on the proposed rule. A copy of the proposed revisions to the guidance is available on the rule-development web site http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRuleMaking.html.

Reasons Supporting Proposal: This rule making is necessary to implement the federal hazardous waste program in Washington state. As EPA periodically updates their regulations, the state is required to amend the dangerous waste regulations to keep our rules current with the federal program and maintain authorization. By maintaining our authorization, the regulated community only has to follow state regulations and not the federal hazardous waste rules. These changes will result in easier compliance by the regulated community.

Statutory Authority for Adoption: Chapter 70.105 RCW.

Statute Being Implemented: Chapter 70.105 RCW.

Rule is necessary because of federal law, 40 C.F.R. Parts 260-279.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Rieck, Lacey, Washington, (360) 407-6751; Implementation and Enforcement: K. Seiler, Lacey, Washington, (360) 407-6702.

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

Small Business Economic Impact Statement

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement (SBEIS) does not contain full explanation of ecology's analysis. Additionally, it does not contain raw data or all summaries of data used in the analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request for the rule file. A full analysis of compliance costs is available in the associated cost-benefit analysis (CBA) for this rule, https://fortress.wa.gov/ecy/publications/SummaryPages/1404039.html.

Executive Summary: Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined that the proposed amendments to the dangerous waste regulations (chapter 173-303 WAC) could have a disproportionate impact on small business. A small business is defined as having fifty or fewer employees. Ecology included language in the proposed rule amendment to minimize disproportionate impacts when doing so would not contradict the intent of the underlying rules and laws.

The SBEIS is intended to be read with the associated CBA (Ecology publication #14-04-039), which contains more in-depth discussion of the analysis.

Due to the breadth and depth of the proposed rule amendments, we determined employment numbers for entities according to each proposed change. We used the statewide dangerous waste annual reporting program, TurboWaste, to determine which firms reported generating or handling the specific wastes mentioned in the various amendments. In turn, we used data from the Washington state employment security department, to determine data figures for the impacted firms.

This SBEIS suggests that two of the proposed rule amendments have the potential to impact small businesses. The proposed rule amendment that establishes a time limit for transfer stations to store special waste has the potential to impact small businesses. However, the proposed rule amendment, if adopted, has enough flexibility so that all transfer stations would have the ability to apply for an exemption to the time limit. The proposed rule amendments concerning financial assurance could, potentially, pose a disproportionate impact on small businesses. However, ecology considers these provisions essential to the goal and objectives of the underlying laws and rules.

Ecology involved small businesses in the development of the proposed rule by creating a web page describing the rule development process, creating a Power Point document that describes the proposed rule amendments, offering e-mail notices about the rule development via a listserv, holding public workshops, and soliciting comments on the draft rules. Similarly, ecology involved local governments, especially local health boards, by consulting with local authorities during development of the proposal.

Generally, we use the Washington state office of financial management's (OFM) 2007 Washington Input-Output Model (OFM-IO) to estimate the proposed rule's first round impact on jobs across the state. We estimated that the proposed rule amendments, if adopted, could result in an additional three hundred twelve jobs, statewide, over twenty years.

Section 1: Background: Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined that the proposed rule amendments to dangerous waste regulations (chapter 173-303 WAC) could have a disproportionate impact on small business.[1] As discussed below and the CBA, two proposed rule amendments could impact small businesses.

[1] A small business is defined as having fifty or fewer employees.

The SBEIS is intended to be read with the associated CBA (Ecology publication #14-04-039), which contains more in-depth discussion of the analysis.

Description of the proposed rule amendments: The package of amendments includes proposals to adopt federal rules that provide alternative mechanisms for dangerous waste management under RCRA, and proposals initiated by ecology to amend state-only rules. The new federal provisions include proposals related to:

- Academic labs
  - Allowing eligible college and universities with laboratories to choose alternative process for managing laboratory waste on-site.
- Saccharin
  - Removing saccharin and its salts from list of dangerous constituents, wastes, and substances.
- Carbamate land disposal restrictions (LDR)
  - Providing facilities that handle carbamate wastes an alternative standard to use when treating carbamate wastes to meet LDR treatment standards.

In addition to the federal rules, ecology proposed the following amendments that require analysis. Proposed amendments to the state-only requirements include:

- Special waste at transfer stations
  - Establishing a thirty day time limit for special waste accumulated at solid waste transfer stations.
- Revise chemical test methods publication
  - Clarifying appropriate test methods to designate halogenated organic compounds (HOC).
- Independent qualified registered professional engineer (IQRPE)
  - Clarifying that facilities must use an "independent qualified registered professional engineer" instead of a "qualified professional engineer" (or similar language) for certifications.
- Enforceable documents
  - Adopt federal rules that allow use of enforceable documents in lieu of RCRA post closure permits.
- Financial assurance
  - Third party cost estimates
    - Ensuring that related corporate entities are not considered third parties for cost estimating purposes.
  - Net present value
    - Clarifying cost estimates for closure and post-closure financial assurance must be in current dollars, and net present value adjustments are not allowed.
  - Financial test
    - Clarifying the financial test and the corporate guarantee are two separate but related options.
  - Tangible net worth
    - Raising the minimum tangible net worth requirement from $20 million to $25 million to qualify for use of the financial test or corporate guarantee option.
  - Agreed upon procedures
    - Clarifying financial test and corporate guarantee provisions to allow submission of an "agreed upon procedures" report to fulfill the special report requirement.
  - Increase minimum financial assurance amounts
    - Updating the minimum liability coverage amounts.
  - Financial assurance corrective action
    - Adding subsection for corrective action financial assurance.
- Public disclosure
  - Delete WAC 173-303-905. The section is in conflict with Public Records Act.

Reasons for the proposed amendments: The proposed amendments are necessary to maintain consistency with related regulations at the federal level. In addition, ecology determined the proposed amendments to the state-only requirements increase efficiency at an agency level which means better protection for people and the environment.

Section 2: Analysis of Compliance Costs for Washington Businesses: Establish time limit for special waste at transfer stations.

The costs associated with the establishment of a thirty day limit for special wastes at transfer stations would accrue to transfer stations. The proposed change could increase transportation costs for transfer stations that currently store special waste longer than thirty days. The exact cost would depend on the size of the transfer station, distance from a final destination such as a solid waste facility, and cost of fuel.[2]

[2] The size of the transfer station will determine the amount of special waste that transfer stations can store for any length of time.

At this time, we do not have access to information that will enable us to estimate the potential cost of the thirty day limit on transfer stations. Approximately one hundred forty-seven transfer stations operate in Washington. At least nine of the one hundred forty-seven transfer stations employ fewer than fifty people.

In 2013, eleven generators reported 16,930,118 pounds of special waste. Because of special exemptions related to transfer stations and special waste, we do not know how much of the 16,930,118 pounds of special waste went through the transfer stations. Further, we do not know if any of the transfer stations employing fewer than fifty people receive, handle, or store special waste for any length of time. Accordingly, it is difficult to determine how many of the transfer stations the proposed change would impact (how many actually store special waste) or to what extent the change will impact operations (how much the transfer stations store or how long the special waste is kept).

Despite the lack of information related to this change, we feel confident that ecology has incorporated enough flexibility into the proposed rule amendment to help transfer stations adapt to the proposed change. In particular, the proposed rule amendment enables transfer stations to apply for an exemption to the thirty day limit. As described in the CBA, transfer stations already apply to a local permitting authority to receive authorization to receive special waste. If adopted, the proposed rule amendment would enable transfer stations to seek an exemption to the time limit during the permitting or renewal process. Ecology does not anticipate that seeking an

exemption would create additional costs to any transfer station.

IQPRE: The requirement to hire an independent professional engineer for certification processes would impact treatment, storage and disposal facilities (TSDFs). There are thirteen operating TSDFs in the state. We used publicly available data to determine that none of the TSDFs currently employ fewer than fifty people. Given the existing regulations regarding location of potential facilities, permitting requirements, and other rules, ecology considers it highly unlikely that any new TSDFs might begin operation in Washington over the next twenty years.[3]

[3] We affirmed this conclusion by reviewing the annual number of TSDFs as reported to the TurboWaste database as well as to the department of revenue in Washington.

As none of the existing TSDFs employ fewer than fifty people, none is considered a small business. Accordingly, no analysis is required for this proposed amendment.

Financial assurance: The proposed rule amendments to increase minimum liability coverage amounts could increase the cost of compliance for TSDFs and dangerous waste recycling facilities. Generally, financial assurance minimum liability requirements apply to operating treatment, storage, and disposal facilities and dangerous waste recycling facilities. Of the facilities required to demonstrate financial assurance, as many as four facilities might qualify as a small business with fewer than fifty employees.

Currently, twenty-two facilities must demonstrate minimum liability coverage. Of those, four facilities use the financial test or corporate guarantee option and eighteen facilities use liability insurance. The proposed rule amendments would not impact facilities that use the financial test or corporate guarantee option. Ecology anticipates that those facilities that use an insurance policy to demonstrate liability coverage could experience an increase in compliance costs due to the increase in minimum liability amounts.

Because the financial assurance requirements only apply to active treatment, storage, and disposal facilities and dangerous waste recycling facilities, ecology does not anticipate that any new facilities would require financial assurance. That is, given the current regulatory environment, it is unlikely that any new TSDFs would locate in Washington. Additionally, the current recycling market appears to be stable and ecology does not currently anticipate any new dangerous waste recyclers will enter the market. Ecology also feels confident that the firms that use a financial test or corporate guarantee would continue to do so over the time horizon in this analysis. It is possible that a currently active TSDF site or recycler could transition to closure or post-closure status in the next twenty years, which would reduce compliance costs. Since the transition to closure and post-closure program is generally a negotiated process, we do not feel confident forecasting when, if at all, a facility might transition to closure/post-closure status.

Presumably, increasing the face value of an insurance policy used to provide minimum liability coverage could increase the cost of using insurance. The cost of insurance depends on the specific wastes handled at a location, location of the facility, the proximity and condition of the surrounding buildings, the financial standing of the insured, and the insurance company. Unfortunately, ecology does not have access to all of the policy documents needed to determine the term, details, and premiums that the facilities pay for insurance to meet financial assurance. Accordingly, we contacted several local brokers, financial assurance officers in other states, consulted marketing information from leading providers of environmental insurance, and consulted three studies concerning environmental insurance (Yount and Meyer, 2005a, 2005b, 2006).

Ecology considers it reasonable to assume that increasing the minimum financial assurance amounts for sudden accidents occurrence could increase premiums by $5,000 annually and increasing the amount of financial assurance for combined sudden and nonsudden accidents could cost $10,000. Ecology is seeking, and encourages, further comment and input to improve or verify these values during the public comment period.

Of the eighteen facilities that use insurance to meet their obligation, four provide policies in excess of the current minimums. Of the remaining facilities, ecology anticipates that as many as fourteen might need to purchase additional sudden accidental coverage at an estimated cost of $5,000. Ecology estimates that seven facilities that require nonsudden coverage would choose to self insure, and thus incur a zero incremental cost instead of $10,000. Accordingly, we estimate that the proposed rule amendment could increase compliance costs for the impacted facilities by $70,000 annually.

In addition to information about insurance premiums, we also considered the price of alternative mechanisms that a facility in need of financial assurance might consider instead of insurance. Of the available options to provide financial assurance, insurance is likely the least expensive. From discussions with past and present facilities in the financial assurance program and regulators at EPA and in other states, ecology also understands that the cost of surety bonds is frequently similar to those for insurance. For businesses that do not elect to use insurance, surety bonds would be a likely second choice.

The remaining options available under the regulations are obtaining a letter of credit from a bank or creating a trust fund with a bank or other acceptable trustee. Both of these options would likely be far more expensive than either an insurance policy or a surety bond. Therefore, we do not anticipate any business will elect to use either of these options.

In sum [summary], ecology estimates that, if adopted, the proposed rule amendment could increase costs to facilities using liability insurance to provide financial assurance by $70,000 annually over the next twenty years. The net present value of $70,000 annually at a discount rate of 1.32 percent for twenty years is $1,223,403, which represents the total cost that could accrue to Washington facilities if the proposed rule amendment is adopted.

Combined costs: Table 1 below provides a review of the costs we anticipate could occur.

Table 1: Probable Costs

Proposed Rule Amendments	Annual Costs	NPV (1.32%, 20 years)
Transfer stations	$Unknown	$Unknown
IQPRE	$104,000	$1,817,627
Financial assurance	$70,000	$1,223,403
TOTAL	$174,000	$3,041,030

Section 3: Quantification of Cost Ratios: The proposed rule amendments do impact businesses across numerous industries. Our analysis suggests that one of the proposed rule amendments could impact small businesses. In particular, our analysis of the facilities that use liability insurance to satisfy minimum financial assurance amounts suggests that the proposed rule amendment could impact as many as five facilities. Our analysis suggests that the proposal to increase minimum liability amounts could impact fourteen faculties. The net present value over twenty years of the annualized costs for the financial assurance amendments is $1,223,402. Accordingly, the cost per facility totals $87,386.

To calculate the cost ratios, we compare the net present value of the cost for a firm over twenty years to the number of employees at the ten percent of businesses that are the largest businesses required to comply with the rule amendments. We estimate that the proposed rule amendment could increase compliance costs by $5,000 annually for each facility. The net present value of $5,000 over twenty years at a discount rate of 1.32 percent is $87,386. The average number of employees at the largest companies is approximately 47,500. Accordingly, the cost per employee for the large businesses is $1.84 per employee. We estimate that as many as four facilities employ as few as twenty employees. As a result, the cost per employee would total $4,369.39.

The cost per employee calculations suggest that the proposed amendment related to increasing the minimum liability amount for financial assurance could have a disproportionate impact on small businesses.

Section 4: Action Taken to Reduce Small Business Impacts: As ecology determined in Section 3, above, one of the proposed rule amendments could impose a disproportionate impact on small businesses. Accordingly, ecology considered, as required by RCW 19.85.030 (2)(a)-(f), methods that might reduce the impact of proposed rule amendment on businesses. Ecology determined the following:

- Ecology incorporated an exemption process for transfer stations that need to store special waste more than thirty days. As described, the exemption process would not increase compliance costs, and provides the opportunity for transfer stations time to adjust the proposed rule amendment, if adopted.
- Ecology determined that is not possible to reduce the cost of the financial assurance minimum liability coverage provision to small businesses without contradicting the goals and objectives of the underlying statute. The purpose of the minimum liability provisions is to ensure that parties that accept waste for treatment, storage, and disposal or recycling maintain adequate financial protection in case of accidents that expose the public to dangerous materials. Providing cost assistance or other measures to ameliorate the impact of this proposed rule amendment would effectively transfer the cost of liability from the facility to the state, which would violate the Washington Constitution and contradict the intent of the statute.

In sum [summary], ecology made every effort to consider and implement all available options that could reduce the impact of the proposed rule amendments on small businesses, and made adjustments where possible.

Section 5: The Involvement of Small Businesses in the Development of the Proposed Amendments: Ecology has involved small businesses and local governments (as well as large businesses and other interested parties) during the rule-making process. Ecology:

- Held a public meeting during the rule development process to get feedback on issues and comments on the draft rule language. This included small businesses and government entities.
- Developed a web site to communicate with all interested persons, including small businesses, about rule-making developments.
- Informed stakeholders via the dangerous waste listserv and the ecology Shoptalk newsletter about the rule process.
- Sent rule information to all generators with EPA/state dangerous waste identification numbers, which includes small businesses, local governments, and representatives of these groups.

Section 6: The Standard Industry Classification (SIC) Codes of Impacted Industries: The SIC system has long been replaced by the North American Industry Classification System (NAICS). The proposed rule specifically applies to generators and facilities that handle hazardous and dangerous waste. The generators and TSD facilities span numerous sectors of the economy in Washington state. The majority of the TSD facilities self report their NAICS sector as 562211, Hazardous Waste Treatment and Disposal. The table below includes other NAICS sectors reported to ecology via TurboWaste or mentioned by the EPA in rule notices.

Table 2: NAICS Codes that Include Businesses Possibly Regulated by the Proposed Rule Amendments

3119	3256	4931	6115
3121	3259	5417	6116
3219	3274	54194	6221
3251	3364	5622	6222
3253	3366	6112	6223
3254	4249	6113	

Section 7: Impacts on Jobs: The Regulatory Fairness Act requires "[a]n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule" (RCW 19.85.040 (2)(d)). Ecology interprets this requirement as including the jobs impacts of all compliance

costs – not just those to which the SBEIS applies. In this section, therefore, we use the OFM-IO model for Washington state, to estimate the jobs impacts of all of the compliance costs and cost-savings likely to result from the proposed rule amendments, not just those that impact small businesses. In particular, while the SBEIS does not include compliance costs for using independent professional engineers (because the requirement only applies to TSDs and no TSDs are small businesses, making a comparison of relative compliance costs impossible), our jobs estimate does include these compliance costs to reflect the overall jobs-impact of the proposed rule amendments as a whole.

We used OFM's 2007 Washington OFM-IO model to estimate the proposed rule's first round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry are entered in the OFM-IO model as a decrease in spending and investment.

To the extent possible, we used NAICS codes reported by facilities to ecology via TurboWaste, to determine the sectors of the economy impacted by the proposed rule amendments. We then compared the NAICS codes from TurboWaste with the sectors defined in the OFM-IO model. We disaggregated the impacts of the rule amendments according to the sectors as defined in the OFM-IO model. For example, our review of the NAICS codes reported by generators to ecology for wastes that contain HOC revealed that facilities in the following sectors reporting waste streams that contain HOCs: Wholesale (29), other transportation (35), educational services (45), hospitals (47), and waste management (52).[4] Accordingly, we apportioned the total discounted cost savings for the chemical testing amendment across each of the sectors. Table 3 below lists the sectors and total estimated impact for each of the proposed rule amendments.

[4] The numbers in brackets refer to the sectors as defined in Table 2-1 of the Beyers and Lin (2012) document for OFM-IO analysis.

Table 3: Disaggregation of Costs and Cost Savings

	29-Wholesale	35-Other Transportation	45-Educational Services	47-Hospitals	52-Waste Management
Academic Lab			$8,817,572		
HOC Testing	$674,794	$674,794	$674,794	$674,794	$674,794
Enforceable Documents					$5,787,864
IQPRE					($1,817,627)
Financial Assurance					($1,223,403)
	$674,794	$674,794	$9,492,366	$674,794	$3,421,328

Using the net impact for each of the sectors above, we estimated that the proposed rule amendments, if adopted, could result in an additional three hundred twelve jobs, statewide over twenty years. As evident, the majority of the proposed rule amendments, if adopted, would impact treatment, storage, and disposal facilities (NAICS Code 562211: Hazardous Waste Treatment and Disposal).[5] However, the potential losses from the increase in compliance costs for the waste management sectors are offset by the potential cost savings in the wholesale, transportation sector, education services, and hospital sectors.

[5] NAICS Code 562211 falls under the broader Waste Management (52) sector in the Washington IO model.

Section 8: References:

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A copy of the statement may be obtained by contacting Robert Rieck, Department of Ecology, P.O. Box 47600, Lacey, WA 98504-7600, phone (360) 407-6751, fax (360) 407-6715, e-mail rori461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Robert Rieck, Department of Ecology, P.O. Box 47600, Lacey, WA 98504-7600, phone (360) 407-6751, fax (360) 407-6715, e-mail rori461@ecy.wa.gov.

August 18, 2014
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 00-11-040, filed 5/10/00, effective 6/10/00)

WAC 173-303-016 Identifying solid waste. (1) Purpose and applicability.

(a) The purpose of this section is to identify those materials that are and are not solid wastes.

(b)(i) The definition of solid waste contained in this section applies only to wastes that also are dangerous for purposes of the regulations implementing chapter 70.105 RCW. For example, it does not apply to materials (such as nondangerous scrap, paper, textiles, or rubber) that are not otherwise dangerous wastes and that are recycled.

(ii) This section identifies only some of the materials which are solid wastes and dangerous wastes under chapter 70.105 RCW. A material which is not defined as a solid waste in this section, or is not a dangerous waste identified or listed in this section, is still a solid waste and a dangerous waste for purposes of these sections if reason and authority exists under chapter 70.105 RCW and WAC 173-303-960. Within the constraints of chapter 70.105 RCW, this includes but is not limited to any material that: Is accumulated, used, reused, or handled in a manner that poses a threat to public health or the environment; or, due to the dangerous constituent(s) in it, when used or reused would pose a threat to public health or the environment.

(c) Certain materials are solid wastes but are excluded from the requirements of this chapter by WAC 173-303-071 and 173-303-073.

(2) The following terms are used and have the meanings as defined in WAC 173-303-040:

(a) Boiler
(b) By-product
(c) Incinerator
(d) Industrial furnace
(e) Reclaim
(f) Recover
(g) Recycle
(h) Used or reused (see reuse or use)
(i) Sludge
(j) Scrap metal
(k) Spent material
(l) Excluded scrap metal
(m) Processed scrap metal
(n) Home scrap metal
(o) Prompt scrap metal

(3) Definition of solid waste.

(a) A solid waste is any discarded material that is not excluded by WAC 173-303-017(2) or that is not excluded by variance granted under WAC 173-303-017(5).

(b) A discarded material is any material that is:

(i) Abandoned, as explained in subsection (4) of this section; or

(ii) Recycled, as explained in subsection (5) of this section; or

(iii) Considered inherently waste-like, as explained in subsection (6) of this section. Persons registering micronutrient or waste-derived fertilizers under chapter 15.54 RCW must submit information required by the department to indicate compliance with this chapter. The required minimum information is described in WAC 173-303-505; or

(iv) A military munition identified as a solid waste at WAC 173-303-578(2).

(4) Materials are solid waste if they are abandoned by being:

(a) Disposed of; or

(b) Burned or incinerated; or

(c) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(5) Materials are solid wastes if they are recycled—or accumulated, stored, or treated before recycling—as specified in (a) through (d) of this subsection.

(a) Used in a manner constituting disposal. Materials noted with a "*" in column 1 of Table 1 are solid wastes when they are:

(i)(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in WAC 173-303-9903 or which exhibit any of the criteria or characteristics listed in WAC 173-303-090 or 173-303-100 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(b) Burning for energy recovery. Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:

(i) Burned to recover energy;

(ii) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

However, commercial chemical products listed in WAC 173-303-9903 or which exhibit any of the criteria or characteristics listed in WAC 173-303-090 or 173-303-100 are not solid wastes if they are themselves fuels.

(c) Reclaimed. Materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed.

(d)(i) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

(ii) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the seventy-five percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under WAC 173-303-071 (3)(n) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

TABLE 1

	Use constituting disposal WAC 173-303-016 (5)(a)	Energy recovery/ fuel WAC 173-303-016 (5)(b)	Reclamation WAC 173-303-016 (5)(c)	Speculative accumulation WAC 173-303-016 (5)(d)
Spent materials	(*)	(*)	(*)	(*)
Commercial chemical products	(*)	(*)	—	—
By-products listed in WAC 173-303-9904	(*)	(*)	(*)	(*)
Sludges listed in WAC 173-303-9904	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic[1] or criteria[2]	(*)	(*)	—	(*)
Sludges exhibiting a characteristic[1] or criteria[2]	(*)	(*)	—	(*)
Scrap metal ((~~other than excluded scrap metal (see WAC 173-303-016 (2)(l))~~)) that is not excluded under WAC 173-303-071 (3)(ff)	(*)	(*)	(*)	(*)

Note: The terms "spent materials," "sludges," "by-products," "scrap metal" and "processed scrap metal" are defined in WAC 173-303-040.

[1] The characteristics of dangerous waste are described in WAC 173-303-090.

[2] The dangerous waste criteria are described in WAC 173-303-100.

(6) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(a) Dangerous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

(b) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a dangerous waste or are listed as a dangerous waste as defined in WAC 173-303-090 or 173-303-080 through 173-303-082, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in WAC 173-303-9905; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(c) The department will use the following criteria to add wastes to (a) of this subsection:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in WAC 173-303-9905 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health or the environment when recycled.

(7) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing chapter 70.105 RCW who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-040 Definitions. When used in this chapter, the following terms have the meanings given below.

"Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Active life" of a facility means the period from the initial receipt of dangerous waste at the facility until the department receives certification of final closure.

"Active portion" means that portion of a facility which is not a closed portion, and where dangerous waste recycling, reuse, reclamation, transfer, treatment, storage or disposal operations are being or have been conducted after:

The effective date of the waste's designation by 40 C.F.R. Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 C.F.R. Part 261. (See also "closed portion" and "inactive portion.")

"Active range" means a military range that is currently in service and is being regularly used for range activities.

"Acute hazardous waste" means dangerous waste sources (listed in WAC 173-303-9904) F020, F021, F022, F023, F026, or F027, and discarded chemical products (listed in WAC 173-303-9903) that are identified with a dangerous waste number beginning with a "P", including those wastes mixed with source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. The abbreviation "AHW" will be used in this chapter to refer to those dangerous and mixed wastes which are acute hazardous wastes. Note - the terms acute and acutely are used interchangeably.

"Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of dangerous waste from its point of generation to a storage or treatment tank(s), between dangerous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

"Batch" means any waste which is generated less frequently than once a month.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Berm" means the shoulder of a dike.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit will be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards in WAC 173-303-017(6).

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Carcinogenic" means a material known to contain a substance which has sufficient or limited evidence as a human or animal carcinogen as listed in both IARC and either IRIS or HEAST.

"Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Chemical agents and chemical munitions" are defined as in 50 U.S.C. section 1521 (j)(1).

"Cleanup-only facility" means a site, including any contiguous property owned or under the control of the owner or operator of the site, where the owner or operator is or will be treating, storing, or disposing of remediation waste, including dangerous remediation waste, and is not, has not and will not be treating, storing or disposing of dangerous waste that is not remediation waste. A cleanup-only facility is not a "facility" for purposes of corrective action under WAC 173-303-646.

"Closed portion" means that portion of a facility which an owner or operator has closed, in accordance with the approved facility closure plan and all applicable closure requirements.

"Closure" means:

• The requirements placed upon all recycling, used oil, and TSD facilities, plus some generators, and some transporters to ensure that all such facilities are closed in an acceptable manner (see also "post-closure"); and

• Once taken out of service, the proper cleaning up and/or decontaminating of a dangerous waste management unit or a recycling unit and any areas affected by releases from the unit.

"Commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient.

"Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and includes, but is not limited to, limes, gypsum, and manipulated animal manures and vegetable compost. The commercial fertilizer must be registered with the state or local agency regulating the fertilizer in the locale in which the fertilizer is being sold or applied.

"Compliance procedure" means any proceedings instituted pursuant to the Hazardous Waste Management Act, chapter 70.105 RCW, and Hazardous waste fees, chapter 70.105A RCW, or regulations issued under authority of state law, which seeks to require compliance, or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a notice of intention to terminate a permit pursuant to WAC 173-303-830(5), or an application in the state superior court for appropriate relief under the Hazardous Waste Management Act. A compliance procedure is considered to be pending from the time a notice of violation or of intent to terminate a permit is issued or judicial proceedings are begun, until the department notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

"Component" means either the tank or ancillary equipment of a tank system.

"Constituent" or "dangerous waste constituent" means a chemically distinct component of a dangerous waste stream or mixture.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of WAC 173-303-695.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of dangerous waste or dangerous waste constituents which could threaten human health or environment.

"Contract" means the written agreement signed by the department and the state operator.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives CRTs for recycling, repair, resale, or donation.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

• Receiving broken or intact CRTs; and

• Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

• Sorting or otherwise managing glass removed from CRT monitors.

"Dangerous waste constituents" means those constituents listed in WAC 173-303-9905 and any other constituents that have caused a waste to be a dangerous waste under this chapter.

"Dangerous waste management unit" is a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area. Examples of dangerous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Dangerous wastes" means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in this chapter, the words "dangerous waste" will refer to the full universe of wastes regulated by this chapter. The abbreviation "DW" will refer only to that part of the regulated universe which is not extremely hazardous waste. (See also "extremely hazardous waste," "hazardous waste," and "mixed waste" definitions.)

"Debris" means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 40 C.F.R. Part 268 Subpart D (incorporated by reference in WAC 173-303-140 (2)(a)); process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least seventy-five percent of their original volume. A mixture of debris that has not been treated to the standards provided by 40 C.F.R. 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

"Department" means the department of ecology.

"Dermal Rabbit LD_{50}" means the single dosage in milligrams per kilogram (mg/kg) body weight which, when dermally (skin) applied for 24 hours, within 14 days kills half or more of a group of ten rabbits each weighing between 2.0 and 3.0 kilograms.

"Designated facility" means:

• A dangerous waste treatment, storage, disposal, or recycling facility that:

– Has received a permit (or interim status) in accordance with the requirements of this chapter,

– Has received a permit (or interim status) from another state authorized in accordance with 40 C.F.R. Part 271,

– Has received a permit (or interim status) from EPA in accordance with 40 C.F.R. Part 270,

– Has a permit by rule under WAC 173-303-802(5), or is regulated under WAC 173-303-120 (4)(c) or 173-303-525 when the dangerous waste is to be recycled, and

– That has been designated on the manifest pursuant to WAC 173-303-180(1).

• "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with WAC 173-303-370 (5)(f).

• If a waste is destined to a facility in an authorized state that has not yet obtained authorization to regulate that particular waste as dangerous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

• The following are designated facilities only for receipt of state-only waste; they cannot receive federal hazardous waste from off-site: Facilities operating under WAC 173-303-500 (2)(c).

"Designation" is the process of determining whether a waste is regulated under the dangerous waste lists, WAC 173-303-080 through 173-303-082; or characteristics, WAC 173-303-090; or criteria, WAC 173-303-100. The procedures for designating wastes are in WAC 173-303-070. A waste that has been designated as a dangerous waste may be either DW or EHW.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in WAC 173-303-573 (9)(a), (b) and (c) and 173-303-573 (20)(a), (b) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other substances.

"Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Director" means the director of the department of ecology or his designee.

"Discharge" or "dangerous waste discharge" means the accidental or intentional release of hazardous substances, dangerous waste or dangerous waste constituents such that the substance, waste or a waste constituent may enter or be emitted into the environment.

"Disposal" means the discharging, discarding, or abandoning of dangerous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned. This includes the discharge of any dangerous wastes into or on any land, air, or water.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system to a publicly owned treatment works (POTW) for treatment.

"Draft permit" means a document prepared under WAC 173-303-840 indicating the department's tentative decision to issue or deny, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate or deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as discussed in WAC 173-303-830 is not a draft permit.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Elementary neutralization unit" means a device which:

Is used for neutralizing wastes which are dangerous wastes only because they exhibit the corrosivity characteristics defined in WAC 173-303-090 or are listed in WAC 173-303-081, or in 173-303-082 only for this reason; and

Meets the definition of tank, tank system, container, transport vehicle, or vessel.

"Enforceable document" means an order, consent decree, plan or other document that meets the requirements of 40 C.F.R. 271.16(e) and is issued by the director to apply alternative requirements for closure, post-closure, groundwater monitoring, corrective action or financial assurance under WAC 173-303-610 (1)(((~~(d)~~)) (e), 173-303-645 (1)(e), or 173-303-620 (((~~(8)~~)) (1)(d) or, as incorporated by reference at WAC 173-303-400, 40 C.F.R. 265.90(f), 265.110(d), or 265.140(d). Enforceable documents include, but are not limited to, closure plans and post-closure plans, permits issued under chapter 70.105 RCW, orders issued under chapter 70.105 RCW and orders and consent decrees issued under chapter 70.105D RCW.

"Environment" means any air, land, water, or groundwater.

"EPA/state identification number" or "EPA/state ID#" means the number assigned by EPA or by the department of ecology to each generator, transporter, and TSD facility.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of dangerous waste and that is in operation, or for which installation has commenced on or prior to February 3, 1989. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

A continuous on-site physical construction or installation program has begun; or

The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

"Existing TSD facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, for wastes designated by 40 C.F.R. Part 261, or August 9, 1982, for wastes designated only by this

chapter and not designated by 40 C.F.R. Part 261. A facility has commenced construction if the owner or operator has obtained permits and approvals necessary under federal, state, and local statutes, regulations, and ordinances and either:

A continuous on-site, physical construction program has begun; or

The owner or operator has entered into contractual obligation, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Extremely hazardous waste" means those dangerous and mixed wastes designated in WAC 173-303-100 as extremely hazardous. The abbreviation "EHW" will be used in this chapter to refer to those dangerous and mixed wastes which are extremely hazardous. (See also "dangerous waste" and "hazardous waste" definitions.)

"Facility" means:

• All contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them). Unless otherwise specified in this chapter, the terms "facility," "treatment, storage, disposal facility," "TSD facility," "dangerous waste facility" or "waste management facility" are used interchangeably.

• For purposes of implementing corrective action under WAC 173-303-64620 or 173-303-64630, "facility" also means all contiguous property under the control of an owner or operator seeking a permit under chapter 70.105 RCW or chapter 173-303 WAC and includes the definition of facility at RCW 70.105D.020((~~(4)~~)) (8).

"Facility mailing list" means the mailing list for a facility maintained by the department in accordance with WAC 173-303-840 (3)(e)(I)(D).

"Final closure" means the closure of all dangerous waste management units at the facility in accordance with all applicable closure requirements so that dangerous waste management activities under WAC 173-303-400 and 173-303-600 through 173-303-670 are no longer conducted at the facility. Areas only subject to generator standards WAC 173-303-170 through 173-303-230 need not be included in final closure.

"Fish LC50" means the concentration that will kill fifty percent or more of the exposed fish in a specified time period. For book designation, LC50 data must be derived from an exposure period greater than or equal to twenty-four hours. A hierarchy of species LC50 data should be used that includes (in decreasing order of preference) salmonids, fathead minnows (Pimephales promelas), and other fish species. For the ninety-six-hour static acute fish toxicity test, described in WAC 173-303-110 (3)(b)(i), coho salmon (Oncorhynchus kisutch), rainbow trout (Oncorhynchus mykiss), or brook trout (Salvelinus fontinalis) must be used.

"Food chain crops" means tobacco, crops grown for human consumption, and crops grown to feed animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Fugitive emissions" means the emission of contaminants from sources other than the control system exit point. Material handling, storage piles, doors, windows and vents are typical sources of fugitive emissions.

"Generator" means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

"Genetic properties" means those properties which cause or significantly contribute to mutagenic, teratogenic, or carcinogenic effects in man or wildlife.

"Groundwater" means water which fills voids below the land surface and in the earth's crust.

"Halogenated organic compounds" (HOC) means any organic compounds which, as part of their composition, include one or more atoms of fluorine, chlorine, bromine, or iodine which is/are bonded directly to a carbon atom. This definition does not apply to the federal land disposal restrictions of 40 C.F.R. Part 268 which are incorporated by reference at WAC 173-303-140 (2)(a). Note: Additional information on HOCs may be found in *Chemical Testing Methods for*

Designating Dangerous Waste, Ecology Publication #97-407.

"Hazardous debris" means debris that contains a hazardous waste listed in WAC 173-303-9903 or 173-303-9904, or that exhibits a characteristic of hazardous waste identified in WAC 173-303-090.

"Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

"Hazardous wastes" means those solid wastes designated by 40 C.F.R. Part 261, and regulated as hazardous and/or mixed waste by the United States EPA. This term will never be abbreviated in this chapter to avoid confusion with the abbreviations "DW" and "EHW." (See also "dangerous waste" and "extremely hazardous waste" definitions.)

"Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

"Ignitable waste" means a dangerous waste that exhibits the characteristic of ignitability described in WAC 173-303-090(5).

"Inactive portion" means that portion of a facility which has not recycled, treated, stored, or disposed dangerous waste after:

The effective date of the waste's designation, for wastes designated under 40 C.F.R. Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 C.F.R. Part 261.

"Inactive range" means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

"Incinerator" means any enclosed device that:

Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a dangerous waste that is unsuitable for:

• Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or

• Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, fumes, mists, or gases, or flammable fumes or gases.

(See appendix V of 40 C.F.R. Parts 264 and 265 for examples.)

"Independent qualified registered professional engineer" means a person who is licensed by the state of Washington, or a state which has reciprocity with the state of Washington as defined in RCW 18.43.100, and who is not an employee of the owner or operator of the facility for which construction or modification certification is required. A qualified professional engineer is an engineer with expertise in the specific area for which a certification is given.

"Industrial-furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy: Cement kilns; lime kilns; aggregate kilns; phosphate kilns; blast furnaces; smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces); titanium dioxide chloride process oxidation reactors; coke ovens; methane reforming furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; pulping liquor recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and halogen acid furnaces (HAFs) for the production of acid from halogenated dangerous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for dangerous waste burned as fuel, dangerous waste fed to the furnace has a minimum halogen content of 20% as-generated. The department may decide to add devices to this list on the basis of one or more of the following factors:

The device is designed and used primarily to accomplish recovery of material products;

The device burns or reduces secondary materials as ingredients in an industrial process to make a material product;

The device burns or reduces secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

The device burns or reduces raw materials to make a material product;

The device is in common industrial use to produce a material product; and

Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

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

"Inhalation Rat LC_{50}" means a concentration in milligrams of substance per liter of air (mg/L) which, when administered to the respiratory tract for one hour or more, kills within fourteen days half or more of a group of ten rats each weighing between 200 and 300 grams.

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and

related practical experience, is qualified to supervise the installation of tank systems.

"Interim status permit" means a temporary permit given to TSD facilities which qualify under WAC 173-303-805.

"Knowledge" means sufficient information about a waste to reliably substitute for direct testing of the waste. To be sufficient and reliable, the "knowledge" used must provide information necessary to manage the waste in accordance with the requirements of this chapter.

Note: "Knowledge" may be used by itself or in combination with testing to designate a waste pursuant to WAC 173-303-070 (3)(c), or to obtain a detailed chemical, physical, and/or biological analysis of a waste as required in WAC 173-303-300(2).

"Lamp," also referred to as "universal waste lamp" means any type of high or low pressure bulb or tube portion of an electric lighting device that generates light through the discharge of electricity either directly or indirectly as radiant energy. Universal waste lamps include, but are not limited to, fluorescent, mercury vapor, metal halide, high-pressure sodium and neon. As a reference, it may be assumed that four, four-foot, one-inch diameter unbroken fluorescent tubes are equal to 2.2 pounds in weight.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Landfill" means a disposal facility, or part of a facility, where dangerous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Land treatment" means the practice of applying dangerous waste onto or incorporating dangerous waste into the soil surface so that it will degrade or decompose. If the waste will remain after the facility is closed, this practice is disposal.

"Large quantity handler of universal waste" means a universal waste handler (as defined in this section) who accumulates 11,000 pounds or more total of universal waste (batteries, mercury-containing equipment, and lamps calculated collectively) or who accumulates more than 2,200 pounds of lamps at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 11,000 pounds or more total of universal waste and/or 2,200 pounds of lamps is accumulated.

"Leachable inorganic waste" means solid dangerous waste (that is, passes the Paint Filter Test Method 9095B as described in "*Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods*" EPA Publication SW-846 as incorporated by reference in WAC 173-303-110 (3)(a)) that is not an organic/carbonaceous waste and exhibits the toxicity characteristic (dangerous waste numbers D004 to D011, only) under WAC 173-303-090(8).

"Leachate" means any liquid, including any components suspended in the liquid, that has percolated through or drained from dangerous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of dangerous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of dangerous waste into the secondary containment structure.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Liner" means a continuous layer of man-made or natural materials which restrict the escape of dangerous waste, dangerous waste constituents, or leachate through the sides, bottom, or berms of a surface impoundment, waste pile, or landfill.

"Major facility" means a facility or activity classified by the department as major.

"Manifest" means the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A, originated and signed by the generator or offeror in accordance with the requirements of WAC 173-303-180 (Manifest), and the applicable requirements of WAC 173-303-170 through 173-303-692.

"Manifest tracking number" means the alphanumeric identification number (a unique three letter suffix preceded by nine numerical digits), that is preprinted in Item 4 of the Manifest by a registered source.

"Manufacturing process unit" means a unit which is an integral and inseparable portion of a manufacturing operation, processing a raw material into a manufacturing intermediate or finished product, reclaiming spent materials or reconditioning components.

"Marine terminal operator" means a person engaged in the business of furnishing wharfage, dock, pier, warehouse, covered and/or open storage spaces, cranes, forklifts, bulk loading and/or unloading structures and landings in connection with a highway or rail carrier and a water carrier. A marine terminal operator includes, but is not limited to, terminals owned by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen and stevedores who operate port terminal facilities.

"Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function. Examples of mercury-containing equipment include thermostats, thermometers, manometers, and electrical switches.

"Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorous, potash, calcium, magnesium, or

sulfur. Micronutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

"Military" means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: Confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include nonnuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

"Miscellaneous unit" means a dangerous waste management unit where dangerous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 C.F.R. Part 146, containment building, corrective action management unit, temporary unit, staging pile, or unit eligible for a research, development, and demonstration permit under WAC 173-303-809.

"Mixed waste" means a dangerous, extremely hazardous, or acutely hazardous waste that contains both a nonradioactive hazardous component and, as defined by 10 C.F.R. 20.1003, source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of dangerous waste and for which installation has commenced after February 3, 1989; except, however, for purposes of WAC 173-303-640 (4)(g)(ii) and 40 C.F.R. 265.193 (g)(2) as adopted by reference in WAC 173-303-400(3), a new tank system is one for which construction commences after February 3, 1989. (See also "existing tank system.")

"New TSD facility" means a facility which began operation or for which construction commenced after November 19, 1980, for wastes designated by 40 C.F.R. Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 C.F.R. Part 261.

"NIOSH registry" means the registry of toxic effects of chemical substances which is published by the National Institute for Occupational Safety and Health.

"Nonsudden accident" or "nonsudden accidental occurrence" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

"Off-specification used oil fuel" means used oil fuel that exceeds any specification level described in Table 1 in WAC 173-303-515.

"Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right of way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right of way which they control and to which the public does not have access, are also considered on-site property.

"Operator" means the person responsible for the overall operation of a facility. (See also "state operator.")

"Oral Rat LD_{50}" means the single dosage in milligrams per kilogram (mg/kg) body weight, when orally administered, which, within fourteen days, kills half a group of ten or more white rats each weighing between 200 and 300 grams.

"Organic/carbonaceous waste" means a dangerous waste that contains combined concentrations of greater than ten percent organic/carbonaceous constituents in the waste; organic/carbonaceous constituents are those substances that contain carbon-hydrogen, carbon-halogen, or carbon-carbon chemical bonding.

"Partial closure" means the closure of a dangerous waste management unit in accordance with the applicable closure requirements of WAC 173-303-400 and 173-303-600 through 173-303-695 at a facility that contains other active dangerous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other dangerous waste management unit, while other units of the same facility continue to operate.

((~~"Performance track member facility" means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the program. The National Environmental Performance Track Program is a voluntary, facility based program for top environmental performers. Facility members~~

~~must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.~~))

"Permit" means an authorization which allows a person to perform dangerous waste transfer, storage, treatment, or disposal operations, and which typically will include specific conditions for such facility operations. Permits must be issued by one of the following:

The department, pursuant to this chapter;

United States EPA, pursuant to 40 C.F.R. Part 270; or

Another state authorized by EPA, pursuant to 40 C.F.R. Part 271.

"Permit-by-rule" means a provision of this chapter stating that a facility or activity is deemed to have a dangerous waste permit if it meets the requirements of the provision.

"Persistence" means the quality of a material that retains more than half of its initial activity after one year (365 days) in either a dark anaerobic or dark aerobic environment at ambient conditions. Persistent compounds are either halogenated organic compounds (HOC) or polycyclic aromatic hydrocarbons (PAH) as defined in this section.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

"Personnel or facility personnel" means all persons who work at, or oversee the operations of, a dangerous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of WAC 173-303-400 or 173-303-280 through 173-303-395 and 173-303-600 through 173-303-695.

"Pesticide" means but is not limited to: Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life, or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the department of agriculture may declare to be a pest; any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; any substance or mixture of substances intended to be used as spray adjuvant; and, any other substance intended for such use as may be named by the department of agriculture by regulation. Herbicides, fungicides, insecticides, and rodenticides are pesticides for the purposes of this chapter.

"Pile" means any noncontainerized accumulation of solid, nonflowing dangerous waste that is used for treatment or storage.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any confined and discrete conveyance from which pollutants are or may be discharged. This term includes, but is not limited to, pipes, ditches, channels, tunnels, wells, cracks, containers, rolling stock, concentrated animal feeding operations, or watercraft, but does not include return flows from irrigated agriculture.

"Polycyclic aromatic hydrocarbons" (PAH) means those hydrocarbon molecules composed of two or more fused benzene rings. For purposes of this chapter, the PAHs of concern for designation are: Acenaphthene, acenaphthylene, fluorene, anthracene, fluoranthene, phenanthrene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, pyrene, chrysene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-c,d)pyrene, benzo(g,h,i)perylene, dibenzo [(a,e), (a,h), (a,i), and (a,1)] pyrenes, and dibenzo(a,j) acridine.

"Post-closure" means the requirements placed upon disposal facilities (e.g., landfills, impoundments closed as disposal facilities, etc.) after closure to ensure their environmental safety for a number of years after closure. (See also "closure.")

"Processed scrap metal" is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (that is, sorted), and fines, drosses and related materials that have been agglomerated. Note: Shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (WAC 173-303-071 (3)(gg)).

"Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

"Publicly owned treatment works" or "POTW" means any device or system, owned by the state or a municipality, which is used in the treatment, recycling, or reclamation of municipal sewage or liquid industrial wastes. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport. Sufficient training and experience may be demonstrated by state registration, professional certifications, or completion of accredited university courses.

"Reactive waste" means a dangerous waste that exhibits the characteristic of reactivity described in WAC 173-303-090(7).

"Reclaim" means to process a material in order to recover useable products, or to regenerate the material. Reclamation is the process of reclaiming.

"Recover" means extract a useable material from a solid or dangerous waste through a physical, chemical, biological, or thermal process. Recovery is the process of recovering.

"Recycle" means to use, reuse, or reclaim a material.

"Recycling unit" is a contiguous area of land, structures and equipment where materials designated as dangerous waste or used oil are placed or processed in order to recover

useable products or regenerate the original materials. For the purposes of this definition, "placement" does not mean "storage" when conducted within the provisions of WAC 173-303-120(4). A container, tank, or processing equipment alone does not constitute a unit; the unit includes containers, tanks or other processing equipment, their ancillary equipment and secondary containment system, and the land upon which they are placed.

"Registration number" means the number assigned by the department of ecology to a transporter who owns or leases and operates a ten-day transfer facility within Washington state.

"Regulated unit" means any new or existing surface impoundment, landfill, land treatment area or waste pile that receives any dangerous waste after:

July 26, 1982, for wastes regulated by 40 C.F.R. Part 261;

October 31, 1984 for wastes designated only by this chapter and not regulated by 40 C.F.R. Part 261; or

The date six months after a waste is newly identified by amendments to 40 C.F.R. Part 261 or this chapter which cause the waste to be regulated.

"Release" means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous wastes, or dangerous constituents as defined at WAC 173-303-64610(4), into the environment and includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous wastes or dangerous constituents and includes the definition of release at RCW 70.105D.020((~~(20)~~)) (32).

"Remediation waste" means all solid and dangerous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of dangerous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

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

"Reuse or use" means to employ a material either:

As an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

In a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

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

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

"Satellite accumulation area" means a location at or near any point of generation where hazardous waste is initially accumulated in containers (during routine operations) prior to consolidation at a designated ninety-day accumulation area or storage area. The area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes into the satellite containers.

"Schedule of compliance" means a schedule of remedial measures in a permit including an enforceable sequence of interim requirements leading to compliance with this chapter.

"Scrap metal" means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. This term does not include the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small quantity handler of universal waste" means a universal waste handler (as defined in this section) who does not accumulate 11,000 pounds or more total of universal waste (batteries, mercury-containing equipment, and lamps, calculated collectively) and/or who does not accumulate more than 2,200 pounds of lamps at any time.

"Solid acid waste" means a dangerous waste that exhibits the characteristic of low pH under the corrosivity tests of WAC 173-303-090 (6)(a)(iii).

"Solid waste management unit" or "SWMU" means any discernible location at a facility, as defined for the purposes of corrective action, where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at a facility at which solid wastes, including spills, have been routinely and systematically released. Such units include regulated units as defined by chapter 173-303 WAC.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. *Sorb* means to either adsorb or absorb, or both.

"Special incinerator ash" means ash residues resulting from the operation of incineration or energy recovery facilities managing municipal solid waste from residential, commercial and industrial establishments, if the ash residues are designated as dangerous waste only by this chapter and not designated as hazardous waste by 40 C.F.R. Part 261.

"Special waste" means any state-only dangerous waste that is solid only (nonliquid, nonaqueous, nongaseous), that is: Corrosive waste (WAC 173-303-090 (6)(b)(ii)), toxic

waste that has Category D toxicity (WAC 173-303-100(5)), PCB waste (WAC 173-303-9904 under State Sources), or persistent waste that is not EHW (WAC 173-303-100(6)). Any solid waste that is regulated by the United States EPA as hazardous waste cannot be a special waste.

"Spent material" means any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

"Stabilization" and "solidification" means a technique that limits the solubility and mobility of dangerous waste constituents. Solidification immobilizes a waste through physical means and stabilization immobilizes the waste by bonding or chemically reacting with the stabilizing material.

"Staging pile" means an accumulation of solid, nonflowing, remediation waste that is not a containment building or a corrective action management unit and that is used for temporary storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities. Staging piles must be designated by the department according to the requirements of WAC 173-303-64690.

"State-only dangerous waste" means a waste designated only by this chapter, chapter 173-303 WAC, and is not regulated as a hazardous waste under 40 C.F.R. Part 261.

"State operator" means the person responsible for the overall operation of the state's extremely hazardous waste facility on the Hanford Reservation.

"Storage" means the holding of dangerous waste for a temporary period. "Accumulation" of dangerous waste, by the generator on the site of generation, is not storage as long as the generator complies with the applicable requirements of WAC 173-303-200 and 173-303-201.

"Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect dangerous waste for transport to dangerous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"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 an accumulation of liquid wastes or wastes containing free liquids. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Tank" means a stationary device designed to contain an accumulation of dangerous waste, and which is constructed primarily of nonearthen materials to provide structural support.

"Tank system" means a dangerous waste storage or treatment tank and its associated ancillary equipment and containment system.

"Temporary unit" means a tank or container that is not an accumulation unit under WAC 173-303-200 and that is used for temporary treatment or storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"*TEQ*" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of dangerous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the dangerous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of WAC 173-303-573 (9)(b)(ii) or (20)(b)(ii).

"TLm_{96}" means the same as "Aquatic LC_{50}."

"Totally enclosed treatment facility" means a facility for treating dangerous waste which is directly connected to a production process and which prevents the release of dangerous waste or dangerous waste constituents into the environment during treatment.

"Toxic" means having the properties to cause or to significantly contribute to death, injury, or illness of man or wildlife.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, buildings, piers, and other similar areas where shipments of dangerous waste are held, consolidated, or transferred within a period of ten days or less during the normal course of transportation.

"Transport vehicle" means a motor vehicle, water vessel, or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, steamship, etc.) is a separate transport vehicle.

"Transportation" means the movement of dangerous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of dangerous waste.

"Travel time" means the period of time necessary for a dangerous waste constituent released to the soil (either by accident or intent) to enter any on-site or off-site aquifer or water supply system.

"Treatability study" means a study in which a dangerous waste is subjected to a treatment process to determine: Whether the waste is amenable to the treatment process; what pretreatment (if any) is required; the optimal process conditions needed to achieve the desired treatment; the efficiency of a treatment process for a specific waste or wastes; or the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions contained in WAC 173-303-071 (3)(r) and (s), are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of dangerous waste.

"Treatment" means the physical, chemical, or biological processing of dangerous waste to make such wastes nondan-

gerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which dangerous wastes are degraded, transformed or immobilized.

"Triple rinsing" means the cleaning of containers in accordance with the requirements of WAC 173-303-160 (2)(b), containers.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

"Underground source of drinking water" (USDW) means an aquifer or its portion:

• Which supplies any public water system or contains a sufficient quantity of groundwater to supply a public water system; and currently supplies drinking water for human consumption or contains fewer than 10,000 mg/l total dissolved solids; and

• Which is not an exempted aquifer.

"USDW" means underground source of drinking water.

"Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

"Unexploded ordnance (UXO)" means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating dangerous waste without posing a threat of release of dangerous waste to the environment.

"Universal waste" means any of the following dangerous wastes that are subject to the universal waste requirements of WAC 173-303-573:

Batteries as described in WAC 173-303-573(2);

Mercury-containing equipment as described in WAC 173-303-573(3); and

Lamps as described in WAC 173-303-573(5).

"Universal waste handler":

Means:

A generator (as defined in this section) of universal waste; or

The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

Does not mean:

A person who treats (except under the provisions of WAC 173-303-573 (9)(a), (b), or (c) or (20)(a), (b), or (c)) disposes of, or recycles universal waste; or

A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geological formation nearest the natural ground surface that is capable of yielding groundwater to wells or springs. It includes lower aquifers that are hydraulically interconnected with this aquifer within the facility property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolid products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

"Wastewater treatment unit" means a device that:

Is part of a wastewater treatment facility which is subject to regulation under either:

Section 402 or section 307(b) of the Federal Clean Water Act; or

Chapter 90.48 RCW, State Water Pollution Control Act, provided that the waste treated at the facility is a state-only dangerous waste; and

Handles dangerous waste in the following manner:

Receives and treats or stores an influent wastewater; or

Generates and accumulates or treats or stores a wastewater treatment sludge; and

Meets the definition of tank or tank system in this section.

"Water or rail (bulk shipment)" means the bulk transportation of dangerous waste which is loaded or carried on board a vessel or railcar without containers or labels.

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a dangerous waste release, can be readily cleaned up prior to the release of dangerous waste or dangerous constituents to groundwater or surface water.

Any terms used in this chapter which have not been defined in this section have either the same meaning as set forth in Title 40 C.F.R. Parts 260, 264, 270, and 124 or else have their standard, technical meaning.

As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the

singular include the plural, and words in the plural include the singular.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-045 References to EPA's hazardous waste and permit regulations. (1) Any references in this chapter to any parts, subparts, or sections from EPA's hazardous waste regulations, including 40 C.F.R. Parts 260 through 280 and Part 124, are in reference to those rules as they existed on ((~~July 1, 2007~~)) June 30, 2013. Copies of the appropriate referenced federal requirements are available upon request from the department.

(2) The following sections and any cross-reference to these sections are not incorporated or adopted by reference because they are provisions that EPA cannot delegate to states:

(a) 40 C.F.R. Parts 260.1 (b)(4)-(6).

(b) 40 C.F.R. Parts 264.1 (d) and (f); 265.1 (c)(4); 264.149-150 and 265.149-150; 264.301(l); and 265.430.

(c) 40 C.F.R. Parts 268.5 and 268.6; 268 Subpart B; 268.42(b) and 268.44 (a) through (g).

(d) 40 C.F.R. Parts 270.1 (c)(1)(i); 270.3; 270.60(b); and 270.64.

(e) 40 C.F.R. Parts 124.1 (b)-(e); 124.4; 124.5(e); 124.9; 124.10 (a)(1)(iv); 124.12(e); 124.14(d); 124.15 (b)(2); 124.16; 124.17(b); 124.18; 124.19; and 124.21.

(3) The following sections and any cross-references to these citations are not incorporated or adopted by reference: 40 C.F.R. Parts 260.20-260.22.

(4) Where EPA's regulations are incorporated by reference:

(a) "Regional administrator" means "the department."

(b) "Administrator" means "director."

(c) "Director" means "department."

(d) "40 C.F.R. 260.11" means "WAC 173-303-110(3)."

(e) These substitutions should be made as appropriate. They should not be made where noted otherwise in this chapter. They should not be made where another EPA region is referred to, where a provision cannot be delegated to the state, or where the director referred to is the director of another agency.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-070 Designation of dangerous waste. (1) Purpose and applicability.

(a) This section describes the procedures for determining whether or not a solid waste is DW or EHW.

(b) The procedures in this section are applicable to any person who generates a solid waste, as defined in WAC 173-303-016, (including recyclable materials) that is not exempted or excluded by this chapter or by the department. Any person who ((~~must determine whether or not their~~)) generates a solid waste ((~~is designated must follow~~)) must determine if that waste is a dangerous waste by following the procedures set forth in subsection (3) of this section. Any person who determines by these procedures that their waste is designated DW or EHW is subject to all applicable requirements of this chapter.

(c) The requirements for the small quantity generator exemption are found in subsection (8) of this section.

(2)(a) Except as provided at WAC 173-303-070 (2)(c), once a material has been determined to be a dangerous waste, then any solid waste generated from the recycling, treatment, storage, or disposal of that dangerous waste is a dangerous waste unless and until:

(i) The generator has been able to accurately describe the variability or uniformity of the waste over time, and has been able to obtain demonstration samples which are representative of the waste's variability or uniformity; and

(ii)(A) It does not exhibit any of the characteristics of WAC 173-303-090; however, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of WAC 173-303-140 (2)(a), even if they no longer exhibit a characteristic at the point of land disposal; and

(B) If it was a listed waste under WAC 173-303-080 through 173-303-083, it also has been exempted pursuant to WAC 173-303-910(3); or

(iii) If originally designated only through WAC 173-303-100, it does not meet any of the criteria of WAC 173-303-100.

Such solid waste will include but not be limited to any sludge, spill residue, ash emission control dust, leachate, or precipitation runoff. Precipitation runoff will not be considered a dangerous waste if it can be shown that the runoff has not been contaminated with the dangerous waste, or that the runoff is adequately addressed under existing state laws (e.g. chapter 90.48 RCW), or that the runoff does not exhibit any of the criteria or characteristics described in WAC 173-303-100.

(b) Materials that are reclaimed from solid wastes and that are used beneficially (as provided in WAC 173-303-016 and 173-303-017) are not solid wastes and hence are not dangerous wastes under this section unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(c)(i) A dangerous waste that is listed in WAC 173-303-081(1) or 173-303-082(1) solely because it exhibits one or more characteristics of ignitability as defined under WAC 173-303-090(5), corrosivity as defined under WAC 173-303-090(6), or reactivity as defined under WAC 173-303-090(7) is not a dangerous waste, if the waste no longer exhibits any characteristic of dangerous waste identified in WAC 173-303-090 or any criteria identified in WAC 173-303-100.

(ii) The exclusion described in (c)(i) of this subsection also pertains to:

(A) Any solid waste generated from treating, storing, or disposing of a dangerous waste listed in WAC 173-303-081(1) or 173-303-082(1) solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under (a) and (b) of this section.

(B) Wastes excluded under this section are subject to 40 C.F.R. Part 268, which is incorporated by reference at WAC

173-303-140 (2)(a) (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(3) Designation procedures.

(a) To determine whether or not a solid waste is designated as a dangerous waste a person must:

(i) First, determine if the waste is a listed discarded chemical product, WAC 173-303-081;

(ii) Second, determine if the waste is a listed dangerous waste source, WAC 173-303-082;

(iii) Third, if the waste is not listed in WAC 173-303-081 or 173-303-082, or for the purposes of compliance with the federal land disposal restrictions as adopted by reference in WAC 173-303-140, determine if the waste exhibits any dangerous waste characteristics, WAC 173-303-090; and

(iv) Fourth, if the waste is not listed in WAC 173-303-081 or 173-303-082, and does not exhibit a characteristic in WAC 173-303-090, determine if the waste meets any dangerous waste criteria, WAC 173-303-100.

(b) A person must check each section, in the order set forth, until they determine whether the waste is designated as a dangerous waste. Once the waste is determined to be a dangerous waste, further designation is not required except as required by subsection (4) or (5) of this section. If a person has checked the waste against each section and the waste is not designated, then the waste is not subject to the requirements of chapter 173-303 WAC.

Any person who wishes to seek an exemption for a waste which has been designated DW or EHW must comply with the requirements of WAC 173-303-072.

(c) For the purpose of determining if a solid waste is a dangerous waste as identified in WAC 173-303-080 through 173-303-100, a person must either:

(i) Test the waste according to the methods, or an approved equivalent method, set forth in WAC 173-303-110; or

(ii) Apply knowledge of the waste in light of the materials or the process used, when:

(A) Such knowledge can be demonstrated to be sufficient for determining whether or not it designated and/or designated properly; and

(B) All data and records supporting this determination in accordance with WAC 173-303-210(3) are retained on-site.

(4) Testing required. Notwithstanding any other provisions of this chapter, the department may require any person to test a waste according to the methods, or an approved equivalent method, set forth in WAC 173-303-110 to determine whether or not the waste is designated under the dangerous waste lists, characteristics, or criteria, WAC 173-303-080 through 173-303-100. Such testing may be required if the department has reason to believe that the waste would be designated DW or EHW by the dangerous waste lists, characteristics, or criteria, or if the department has reason to believe that the waste is designated improperly (e.g., the waste has been designated DW but should actually be designated EHW). If a person, pursuant to the requirements of this subsection, determines that the waste is a dangerous waste or that its designation must be changed, then they are subject to the applicable requirements of this chapter 173-303 WAC. The department will base a requirement to test a waste on evidence that includes, but is not limited to:

(a) Test information indicating that the person's waste may be DW or EHW;

(b) Evidence that the person's waste is very similar to another persons' already designated DW or EHW;

(c) Evidence that the persons' waste has historically been a DW or EHW;

(d) Evidence or information about a person's manufacturing materials or processes which indicate that the wastes may be DW or EHW; or

(e) Evidence that the knowledge or test results a person has regarding a waste is not sufficient for determining whether or not it designated and/or designated properly.

(5) Additional designation required. A generator must manage dangerous waste under the most stringent management standards that apply. The following subsections describe how waste that has been designated as DW under the dangerous waste lists, WAC 173-303-080 through 173-303-082, or characteristics, WAC 173-303-090, or in the case of (c) of this subsection, under the lists, characteristics, or criteria, must be further designated under the dangerous waste criteria, WAC 173-303-100. This further designation under the criteria is necessary because it may change how the waste must be managed. Additional designation is required when:

(a) The waste is designated as DW with a QEL of 220 pounds and the generator otherwise qualifies as a small quantity generator. In this case, a generator must determine if their DW is also designated as a toxic EHW, WAC 173-303-100, with a QEL of 2.2 pounds; or

(b) The waste is designated as DW and the waste is to be discharged to a POTW operating under WAC 173-303-802(4) (Permits by rule). In this case, a generator must determine if the waste is also an EHW under WAC 173-303-100; or

(c) The waste is designated as a state-only DW and the waste is to be:

(i) Burned for energy recovery, as used oil, under the provisions of WAC 173-303-515; or

(ii) Land disposed within the state. In this case, a generator must determine if the waste is also an EHW under WAC 173-303-100.

(6) Dangerous waste numbers. When a person is reporting or keeping records on a dangerous waste, they must use all the dangerous waste numbers which they know are assignable to the waste from the dangerous waste lists, characteristics, or criteria. For example, if the waste is ignitable *and* contains more than 5 mg/l leachable lead when tested for the toxicity characteristic, they must use the dangerous waste numbers of D001 and D008. This will not be construed as requiring a person to designate their waste beyond those designation requirements set forth in subsections (2), (3), (4), and (5) of this section.

(7) Quantity exclusion limits; aggregated waste quantities.

(a) Quantity exclusion limits. In each of the designation sections describing the lists, characteristics, and criteria, quantity exclusion limits (QEL) are identified. The QEL are used to distinguish when a dangerous waste is only subject to the small quantity generator provisions, and when a dangerous waste is subject to the full requirements of this chapter. Any solid waste which is not excluded or exempted and

which is listed by or exhibits the characteristics or meets the criteria of this chapter is a dangerous waste. Small quantity generators who produce dangerous waste below the QEL are subject to the requirements described in subsection (8) of this section.

(b) Aggregated waste quantities. A person may be generating, accumulating, or storing more than one kind of dangerous waste. In such cases, they must consider the aggregate quantity of their wastes when determining whether or not their waste amounts exceed the specific limits for waste accumulation or the specific quantity exclusion limits (QEL) for waste generation. Waste quantities must be aggregated for all wastes with common QEL's. Example: If a person generates 100 pounds of an ignitable waste and 130 pounds of a persistent waste, then both wastes are regulated because their aggregate waste quantity (230 pounds) exceeds their common QEL of 220 pounds. On the other hand, if a person generates one pound of a toxic EHW and 218 pounds of a corrosive waste, their quantities would not be aggregated because they do not share a common QEL (2.2 pounds and 220 pounds, respective QEL's). (Note: In order to remain a small quantity generator, the total quantity of dangerous waste generated in one month, all DW and EHW regardless of their QELs, must not equal or exceed 220 pounds. Not more than 2.2 pounds of a waste with a 2.2 pound QEL may be part of that total.)

(c) When making the quantity determinations of this subsection and WAC 173-303-170 through 173-303-230, generators must include all dangerous wastes they generate, except dangerous waste that:

(i) Is exempt from regulation under WAC 173-303-071; or

(ii) Is recycled under WAC 173-303-120 (2)(a), (3)(c), (e), (h) or (5); or

(iii) Is managed in accordance with WAC 173-303-802(5) immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in WAC 173-303-040; or

(iv) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under WAC 173-303-120 (4)(a); or

(v) Is spent lead-acid batteries managed under the requirements of WAC 173-303-120 (3)(f) and 173-303-520; or

(vi) Is universal waste managed under WAC 173-303-077 and 173-303-573; or

(vii) Is a dangerous waste that is an unused commercial chemical product (listed in WAC 173-303-9903 or exhibiting one or more characteristics or criteria listed in WAC 173-303-090 or 173-303-100) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to WAC 173-303-235(14). For purposes of this provision, the term eligible academic entity shall have the meaning as defined in WAC 173-303-235(1).

(d) In determining the quantity of dangerous waste generated, a generator need not include:

(i) Dangerous waste when it is removed from on-site storage; or

(ii) Reserve; or

(iii) Spent materials that are generated, reclaimed, and subsequently reused on-site, as long as such spent materials have been counted once (Note: If after treatment or reclamation a residue is generated with a different waste code(s), that residue must be counted); or

(iv) The container holding/containing the dangerous waste as described under WAC 173-303-160(1).

(8) Small quantity generators.

(a) A person is a small quantity generator and subject to the requirements of this subsection if:

(i) Their waste is dangerous waste under subsection (3) of this section, and the quantity of waste generated per month (or the aggregated quantity if more than one kind of waste is generated) does not equal or exceed the quantity exclusion limit (QEL) for such waste (or wastes) as described in WAC 173-303-070(7); and

(ii) The quantity accumulated or stored does not exceed 2200 pounds for wastes with a 220 pound QEL and 2.2 pounds for waste with a 2.2 pound QEL. (Exception: The accumulation limit for the acute hazardous wastes described in WAC 173-303-081 (2)(iv) and 173-303-082 (2)(b) is 220 lbs); and

(iii) The total quantity of dangerous waste generated in one month, all DW and EHW regardless of their QELs, does not equal or exceed 220 pounds. If a person generates any dangerous wastes that exceed the QEL or accumulates or stores waste that exceeds the accumulation limits, then all dangerous waste generated, accumulated, or stored by that person is subject to the requirements of this chapter. A small quantity generator who generates in excess of the quantity exclusion limits or, accumulates, or stores waste in excess of the accumulation limits becomes subject to the full requirements of this chapter and cannot again be a small quantity generator until after all dangerous waste on-site at the time he or she became fully regulated have been removed, treated, or disposed.

Example. If a person generates four pounds of an acute hazardous waste discarded chemical product (QEL is 2.2 pounds) and 200 pounds of an ignitable waste (QEL is 220 pounds), then both wastes are fully regulated, and the person is not a small quantity generator for either waste.

(Comment: If a generator generates acute hazardous waste in a calendar month in quantities greater than the QELs, all quantities of that acute hazardous waste are subject to full regulation under this chapter. "Full regulation" means the regulations applicable to generators of ((~~greater than~~)) 2200 pounds or greater of dangerous wastes in a calendar month.)

(b) Small quantity generators will not be subject to the requirements of this chapter if they:

(i) Designate their waste in accordance with WAC 173-303-070; and

(ii) Manage their waste in a way that does not pose a potential threat to human health or the environment; and

(iii) Either treat or dispose of their dangerous waste in an on-site facility, or ensure delivery to an off-site facility, either of which, if located in the United States, is:

(A) Permitted (including permit-by-rule, interim status, or final status) under WAC 173-303-800 through 173-303-840;

(B) Authorized to manage dangerous waste by another state with a hazardous waste program approved under 40 C.F.R. Part 271, or by EPA under 40 C.F.R. Part 270;

(C) Permitted to manage moderate-risk waste under chapter 173-350 WAC (Solid waste handling standards), operated in accordance with state and local regulations, and consistent with the applicable local hazardous waste plan that has been approved by the department;

(D) A facility that beneficially uses or reuses, or legitimately recycles or reclaims the dangerous waste, or that treats the waste prior to such recycling activities;

(E) Permitted, licensed, or registered to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to 40 C.F.R. Part 258 or chapter 173-351 WAC;

(F) Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 C.F.R. 257.5 through 257.30;

(G) A publicly owned treatment works (POTW): Provided, That small quantity generator(s) comply with the provisions of the domestic sewage exclusion found in WAC 173-303-071 (3)(a); or

(H) For universal waste managed under WAC 173-303-573, a universal waste handler or destination facility subject to the requirements of WAC 173-303-573; and

(iv) Submit an annual report in accordance with WAC 173-303-220 if they have obtained an EPA/state identification number pursuant to WAC 173-303-060.

(c) If a small quantity generator's wastes are mixed with used oil, the mixture is subject to WAC 173-303-510 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

(d) If a small quantity generator's used oil is to be recycled by being burned for energy recovery or re-refined, the used oil is subject to WAC 173-303-515.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-071 Excluded categories of waste. (1) Purpose. Certain categories of waste have been excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, because they generally are not dangerous waste, are regulated under other state and federal programs, or are recycled in ways which do not threaten public health or the environment. WAC 173-303-071 describes these excluded categories of waste.

(2) Excluding wastes. Any persons who generate a common class of wastes and who seek to categorically exclude such class of wastes from the requirements of this chapter must comply with the applicable requirements of WAC 173-303-072. No waste class will be excluded if any of the wastes in the class are regulated as hazardous waste under 40 C.F.R. Part 261.

(3) Exclusions. The following categories of waste are excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, 173-303-145, and 173-303-960, and as otherwise specified:

(a)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works (POTW) for treatment provided:

(A) The generator or owner/operator has obtained a state waste discharge permit issued by the department, a temporary permit obtained pursuant to RCW 90.48.200, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165;

(B) The waste discharge is specifically authorized in a state waste discharge permit, pretreatment permit or written discharge authorization, or in the case of a temporary permit the waste is accurately described in the permit application;

(C) The waste discharge is not prohibited under 40 C.F.R. Part 403.5; and

(D) The waste prior to mixing with domestic sewage must not exhibit dangerous waste characteristics for ignitability, corrosivity, reactivity, or toxicity as defined in WAC 173-303-090, and must not meet the dangerous waste criteria for toxic dangerous waste or persistent dangerous waste under WAC 173-303-100, unless the waste is treatable in the publicly owned treatment works (POTW) where it will be received. This exclusion does not apply to the generation, treatment, storage, recycling, or other management of dangerous wastes prior to discharge into the sanitary sewage system;

(b) Industrial wastewater discharges that are point-source discharges subject to regulation under Section 402 of the Clean Water Act. This exclusion does not apply to the collection, storage, or treatment of industrial waste-waters prior to discharge, nor to sludges that are generated during industrial wastewater treatment. Owners or operators of certain wastewater treatment facilities managing dangerous wastes may qualify for a permit-by-rule pursuant to WAC 173-303-802(5);

(c) Household wastes, including household waste that has been collected, transported, stored, or disposed. Wastes that are residues from or are generated by the management of household wastes (e.g., leachate, ash from burning of refuse-derived fuel) are not excluded by this provision. "Household wastes" means any waste material (including, but not limited to, garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste will not be deemed to be treating, storing, disposing of, or otherwise managing dangerous wastes for the purposes of regulation under this chapter, if such facility:

(i) Receives and burns only:

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(B) Solid waste from commercial or industrial sources that does not contain dangerous waste; and

(ii) Such facility does not accept dangerous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspec-

tion procedures to assure that dangerous wastes are not received at or burned in such facility;

(d) Agricultural crops and animal manures which are returned to the soil as fertilizers;

(e) Asphaltic materials designated only for the presence of PAHs by WAC 173-303-100(6). For the purposes of this exclusion, asphaltic materials means materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of oil and sand, gravel, ash or similar substances;

(f) Roofing tars and shingles, except that these wastes are not excluded if mixed with wastes listed in WAC 173-303-081 or 173-303-082, or if they exhibit any of the characteristics specified in WAC 173-303-090;

(g) Treated wood waste and wood products including:

(i) Arsenical-treated wood that fails the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D004 through D017 only) or that fails any state criteria, if the waste is generated by persons who utilize the arsenical-treated wood for the materials' intended end use. Intended end use means the wood products must have been used in typical treated wood applications (for example, fence posts, decking, poles, and timbers).

(ii) Wood treated with other preservatives provided such treated wood and wood waste (for example, sawdust and shavings) are, within one hundred eighty days after becoming waste:

(A) Disposed of at a landfill that is permitted in accordance with chapter 173-350 WAC, Solid waste handling standards, or chapter 173-351 WAC, criteria for municipal solid waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-9903 and 173-303-9904 nor a TCLP waste under WAC 173-303-090(8); or

(B) Sent to a facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or

(C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845. In addition, creosote-treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to burn creosote treated wood.

(h) Irrigation return flows;

(i) Reserve;

(j) Mining overburden returned to the mining site;

(k) Polychlorinated biphenyl (PCB) wastes:

(i) PCB wastes whose disposal is regulated by EPA under 40 C.F.R. 761.60 (Toxic Substances Control Act) and that are dangerous either because:

(A) They fail the test for toxicity characteristic (WAC 173-303-090(8), Dangerous waste codes D018 through D043 only); or

(B) Because they are designated only by this chapter and not designated by 40 C.F.R. Part 261, are exempt from regulation under this chapter except for WAC 173-303-505 through 173-303-525, 173-303-960, those sections specified in subsection (3) of this section, and 40 C.F.R. Part 266;

(ii) Wastes that would be designated as dangerous waste under this chapter solely because they are listed as WPCB under WAC 173-303-9904 when such wastes are stored and disposed in a manner equivalent to the requirements of 40 C.F.R. Part 761 Subpart D for PCB concentrations of 50 ppm or greater.

(l) Samples:

(i) Except as provided in (l)(ii) of this subsection, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter, when:

(A) The sample is being transported to a lab for testing or being transported to the sample collector after testing; or

(B) The sample is being stored by the sample collector before transport, by the laboratory before testing, or by the laboratory after testing prior to return to the sample collector; or

(C) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action).

(ii) In order to qualify for the exemptions in (l)(i) of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(A) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) Comply with the following requirements if the sample collector determines that DOT or USPS, or other shipping requirements do not apply:

(I) Assure that the following information accompanies the sample:

(AA) The sample collector's name, mailing address, and telephone number;

(BB) The laboratory's name, mailing address, and telephone number;

(CC) The quantity of the sample;

(DD) The date of shipment;

(EE) A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(iii) This exemption does not apply if the laboratory determines that the waste is dangerous but the laboratory is no longer meeting any of the conditions stated in (l)(i) of this subsection;

(m) Reserve;

(n) Dangerous waste generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit until it exits the unit in which it was generated. This exclusion does not apply to surface impoundments, nor does it apply if the dangerous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials;

(o) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (NAICS codes 331111 and 332111), except that these wastes

are not excluded if they exhibit one or more of the dangerous waste criteria (WAC 173-303-100) or characteristics (WAC 173-303-090);

(p) Wastes from burning any of the materials exempted from regulation by WAC 173-303-120 (2)(a)(vii) and (viii). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria;

(q) As of January 1, 1987, secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed;

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal; and

(v) A generator complies with the requirements of chapter 173-303 WAC for any residues (e.g., sludges, filters, etc.) produced from the collection, reclamation, and reuse of the secondary materials.

(r) Treatability study samples.

(i) Except as provided in (r)(ii) of this subsection, persons who generate or collect samples for the purpose of conducting treatability studies as defined in WAC 173-303-040 are not subject to the requirements of WAC 173-303-180, 173-303-190, and 173-303-200 (1)(a), nor are such samples included in the quantity determinations of WAC 173-303-070 (7) and (8) and 173-303-201 when:

(A) The sample is being collected and prepared for transportation by the generator or sample collector; or

(B) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(C) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study; or

(D) The sample or waste residue is being transported back to the original generator from the laboratory or testing facility.

(ii) The exemption in (r)(i) of this subsection is applicable to samples of dangerous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(A) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with nonacute dangerous waste, 1000 kg of nonacute dangerous waste other than contaminated media, 1 kg of acutely hazardous waste, 2500 kg of media contaminated with acutely hazardous waste for each process being evaluated for each generated waste stream; and

(B) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with nonacute dangerous waste or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of dangerous waste, and 1 kg of acutely hazardous waste; and

(C) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of (r)(ii)(C)(I) or (II) of this subsection are met.

(I) The transportation of each sample shipment complies with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(AA) The name, mailing address, and telephone number of the originator of the sample;

(BB) The name, address, and telephone number of the laboratory or testing facility that will perform the treatability study;

(CC) The quantity of the sample;

(DD) The date of shipment; and

(EE) A description of the sample, including its dangerous waste number.

(D) The sample is shipped, within ninety days of being generated or of being taken from a stream of previously generated waste, to a laboratory or testing facility which is exempt under (s) of this subsection or has an appropriate final facility permit or interim status; and

(E) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

(AA) The amount of waste shipped under this exemption;

(BB) The name, address, and EPA/state identification number of the laboratory or testing facility that received the waste;

(CC) The date the shipment was made; and

(DD) Whether or not unused samples and residues were returned to the generator.

(F) The generator reports the information required under (r)(ii)(E)(III) of this subsection in its annual report.

(iii) The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in (r)(ii)(A) and (B) of this subsection and (s)(iv) of this subsection, for up to an additional 5000 kg of media contaminated with nonacute dangerous waste, 500 kg of nonacute dangerous waste, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste or for up to an additional 10,000 kg of wastes regulated only by this chapter and not regulated by 40 C.F.R. Part 261, to conduct further treatability study evaluation:

(A) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, (e.g., batch versus contin-

uous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(B) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(C) The additional quantities and time frames allowed in (r)(iii)(A) and (B) of this subsection are subject to all the provisions in (r)(i) and (r)(ii)(C) through (F) of this subsection. The generator or sample collector must apply to the department where the sample is collected and provide in writing the following information:

(I) The reason the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

(II) Documentation accounting for all samples of dangerous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the department considers necessary.

(s) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to chapter 70.105 RCW) are not subject to the requirements of this chapter, except WAC 173-303-050, 173-303-145, and 173-303-960 provided that the conditions of (s)(i) through (xiii) of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to (s)(i) through (xiii) of this subsection. Where a group of MTUs are located at the same site, the limitations specified in (s)(i) through (xiii) of this subsection apply to the entire group of MTUs collectively as if the group were one MTU.

(i) No less than forty-five days before conducting treatability studies the laboratory or testing facility notifies the department in writing that it intends to conduct treatability studies under this subsection.

(ii) The laboratory or testing facility conducting the treatability study has an EPA/state identification number.

(iii) No more than a total of 10,000 kg of "as received" media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" dangerous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(iv) The quantity of "as received" dangerous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of nonacute dangerous wastes other than contaminated media, and 1 kg of acutely hazardous waste. This quantity limitation does not include treatment materials (including nondangerous solid waste) added to "as received" dangerous waste.

(v) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(vi) The treatability study does not involve the placement of dangerous waste on the land or open burning of dangerous waste.

(vii) The laboratory or testing facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(A) The name, address, and EPA/state identification number of the generator or sample collector of each waste sample;

(B) The date the shipment was received;

(C) The quantity of waste accepted;

(D) The quantity of "as received" waste in storage each day;

(E) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(F) The date the treatability study was concluded;

(G) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated TSD facility, the name of the TSD facility and its EPA/state identification number.

(viii) The laboratory or testing facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(ix) The laboratory or testing facility prepares and submits a report to the department by March 15 of each year that

estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(A) The name, address, and EPA/state identification number of the laboratory or testing facility conducting the treatability studies;

(B) The types (by process) of treatability studies conducted;

(C) The names and addresses of persons for whom studies have been conducted (including their EPA/state identification numbers);

(D) The total quantity of waste in storage each day;

(E) The quantity and types of waste subjected to treatability studies;

(F) When each treatability study was conducted;

(G) The final disposition of residues and unused sample from each treatability study.

(x) The laboratory or testing facility determines whether any unused sample or residues generated by the treatability study are dangerous waste under WAC 173-303-070 and if so, are subject to the requirements of this chapter, unless the residues and unused samples are returned to the sample originator under the exemption in (r) of this subsection.

(xi) The laboratory or testing facility notifies the department by letter when it is no longer planning to conduct any treatability studies at the site.

(xii) The date the sample was received, or if the treatability study has been completed, the date of the treatability study, is marked and clearly visible for inspection on each container.

(xiii) While being held on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public.

Note: If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate.

(t) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D018 through D043 only) and are subject to the corrective action regulations under 40 C.F.R. Part 280.

(u) Special incinerator ash (as defined in WAC 173-303-040).

(v) Wood ash that would designate solely for corrosivity by WAC 173-303-090 (6)(a)(iii). For the purpose of this exclusion, wood ash means ash residue and emission control dust generated from the combustion of untreated wood, wood treated solely with creosote, and untreated wood fiber materials including, but not limited to, wood chips, saw dust, tree stumps, paper, cardboard, residuals from waste fiber recycling, deinking rejects, and associated wastewater treatment solids. This exclusion allows for the use of auxiliary fuels including, but not limited to, oils, gas, coal, and other fossil fuels in the combustion process.

(w)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (w)(i) and (ii) of this subsection, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W which is incorporated by reference at WAC 173-303-400 (3)(a), regardless of whether the plant generates a total of less than 220 pounds/month of dangerous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the department a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(F) Additional reports.

(I) Upon determination by the department that the storage of wood preserving wastewaters and spent wood preserving solutions in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store wood preserving wastewaters and spent wood preserving solutions. This authority applies to tanks and secondary containment systems used to store wood preserving wastewaters and spent wood preserving solutions in tanks and containers. The department's determination of a threat to public health or the environment may be based upon observations of factors that would contribute to spills or releases of wood preserving wastewaters and spent wood preserving solutions or the generation of hazardous by-products. Such observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of

joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(II) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(III) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (w)(iii)(F)(I) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the wood preserving wastewaters and spent wood preserving solutions until such repairs or improvements are completed and approved by the department.

(x) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(y) Used oil filters that are recycled in accordance with WAC 173-303-120, as used oil and scrap metal.

(z) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(aa)(i) Wastes that fail the test for the toxicity characteristic in WAC 173-303-090 because chromium is present or are listed in WAC 173-303-081 or 173-303-082 due to the presence of chromium. The waste must not designate for any other characteristic under WAC 173-303-090, for any of the criteria specified in WAC 173-303-100, and must not be listed in WAC 173-303-081 or 173-303-082 due to the presence of any constituent from WAC 173-303-9905 other than chromium. The waste generator must be able to demonstrate that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process that uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in nonoxidizing environments.

(ii) Specific wastes which meet the standard in (aa)(i)(A), (B), and (C) of this subsection (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO2 pigment using chromium-bearing ores by the chloride process.

(bb)(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in WAC 173-303-040 - blast furnaces, smelting, melting and refining furnaces, and other devices the department may add to the list - of the definition for "industrial furnace"), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of dangerous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
(2)Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(ii) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D unit receiving the waste shipments; the dangerous waste number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of dangerous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment." These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics (WAC 173-303-090) or criteria (WAC 173-303-100).

(cc)(i) Oil-bearing hazardous secondary materials (that is, sludges, by-products, or spent materials) that are generated at a petroleum refinery (NAICS code 324110) and are inserted into the petroleum refining process (NAICS code 324110 - Including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (that is, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph: Provided((,)) that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in (cc)(ii) of this subsection, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (that is, from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under WAC 173-303-081 and 173-303-082, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in (cc)(i) of this subsection. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (NAICS codes 211111, 211112, 213111, 213112, 541360, 237120, 238910, 324110, 486110, 486910, 486210, 221210, 488210, 488999, 424710, 454311, 454312, 424720, 425120). Recovered oil does not include oil-bearing hazardous wastes listed in WAC 173-303-081 and 173-303-082; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in WAC 173-303-040.

(dd) Dangerous waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are dangerous only because they exhibit the toxicity characteristic (TC) specified in WAC 173-303-090(8) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(ee) Biological treatment sludge from the treatment of one of the following wastes listed in WAC 173-303-9904 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K157) unless it exhibits one or more of the characteristics or criteria of dangerous waste.

(ff) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(gg) Shredded circuit boards being recycled: Provided, That they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(hh) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (NAICS code 324110) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in WAC 173-303-090(5) and/or toxicity for benzene (WAC 173-303-090(8), waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process.

An "associated organic chemical manufacturing facility" is a facility where the primary NAICS code is 325110, 325120, 325188, 325192, 325193, or 325199, but where operations may also include NAICS codes 325211, 325212, 325110, 325132, 325192; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (that is, sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(ii) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in WAC 173-303-016(5).

(jj) Catalyst inert support media separated from one of the following wastes listed in WAC 173-303-9904 Specific Sources - Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria.

(kk) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed: Provided, That:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in (kk)(i) of this subsection were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic or criteria of dangerous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169 - K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: If the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system): Provided, That the impoundment has a double liner, and: Provided further, That the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

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

(i) The requirements of a permit that has been 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);

(ii) The requirements of a permit that has been 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

(iii) In the case of a U.S. Army Corps of Engineers civil works project, the administrative equivalent of the permits referred to in (ll)(i) and (ii) 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 337.3.

(mm) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 C.F.R. 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(nn)(i) Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes.

(A) Controlled substances as defined and regulated by chapter 69.50 RCW (Schedule I through V);

(B) Legend drugs as defined and regulated by chapter 69.41 RCW; and

(C) Over-the-counter drugs as defined and regulated by chapter 69.60 RCW.

(ii) Controlled substances, legend drugs, and over-the-counter drugs that are held in the custody of law enforcement agencies or possessed by any licensee as defined and regulated by chapter 69.50 RCW or Title 18 RCW and authorized to possess drugs within the state of Washington are excluded, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British thermal units/hour, a combustion zone temperature greater than 1500 degrees Fahrenheit, or a facility permitted to incinerate municipal solid waste.

(iii) For the purposes of this exclusion the term "drugs" means:

(A) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(B) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) Substances (other than food) intended to affect the structure or any function of the body of man or other animals, as defined in RCW 18.64.011(3). (Note: RCW 18.64.011 (3)(d) is intentionally not included in the definition of drugs for this exclusion.)

(iv) When possessed by any licensee the term drugs used in this exclusion means finished drug products.

(oo) Cathode ray tubes (CRTs) and glass removed from CRTs:

(i) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(A) Storage. CRTs must be either:

(I) Stored in a building with a roof, floor, and walls; or

(II) Placed in a container (that is, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(B) Labeling. Each container in which the CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) - contains leaded glass" or "leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(C) Transportation. CRTs must be transported in a container meeting the requirements of (oo)(i)(A)(II) and (B) of this subsection.

(D) Speculative accumulation and use constituting disposal. CRTs are subject to the limitations on speculative accumulation as defined in WAC 173-303-016 (5)(d). If they are used in a manner constituting disposal, they must comply with the applicable requirements of WAC 173-303-505 instead of the requirements of this section.

(E) Exports. In addition to the applicable conditions specified in (oo)(i)(A) through (D) of this subsection, exporters of CRTs must comply with the following requirements:

(I) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve-month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

• Name, mailing address, telephone number and EPA/state ID number (if applicable) of the exporter of the CRTs.

• The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

• The estimated total quantity of CRTs specified in kilograms.

• All points of entry to and departure from each foreign country through which the CRTs will pass.

• A description of the means by which each shipment of the CRTs will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

• The name and address of the recycler and any alternate recycler.

• A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

• The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(II) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., N.W., Washington, D.C. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of intent to export CRTs."

(III) Upon request by EPA, the exporter must furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(IV) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of (oo)(i)(E)(I) of this subsection. Where a claim of confidentiality is asserted with respect to any notification information required by (oo)(i)(E)(I) of this subsection, EPA may find the notification not complete until any such claim is resolved in accordance with 40 C.F.R. 260.2.

(V) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an "Acknowledgment of Consent" to export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(VI) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in (oo)(i)(E)(I)(first bullet) of this subsection and decreases in the quantity indicated pursuant to (oo)(i)(E)(I)(third bullet) of this subsection. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to (oo)(i)(E)(I)(fourth bullet) and (i)(E)(I)(eighth bullet) of this section) and the exporter of CRTs receives from EPA a copy of the "Acknowledgment of Consent" to export CRTs reflecting the receiving country's consent to the changes.

(VII) A copy of the "Acknowledgment of Consent" to export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(VIII) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of

CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with (oo)(i)(E)(VI) of this subsection and obtain another "Acknowledgment of Consent" to export CRTs.

(IX) Exporters must keep copies of notifications and "Acknowledgments of Consent" to export CRTs for a period of five years following receipt of the "Acknowledgment."

(ii) Requirements for used CRT processing: CRTs undergoing CRT processing as defined in WAC 173-303-040 are not solid wastes if they meet the following requirements:

(A) Storage. CRTs undergoing processing are subject to the requirement of (oo)(i)(D) of this subsection.

(B) Processing.

(I) All activities specified in the second and third bullets of the definition of "CRT processing" in WAC 173-303-040 must be performed within a building with a roof, floor, and walls; and

(II) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(iii) Processed CRT glass sent to CRT glass making or lead smelting: Glass from CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in WAC 173-303-016 (5)(d).

(iv) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of WAC 173-303-505.

(v) Notification and recordkeeping for cathode ray tubes (CRTs) exported for reuse.

(A) Persons who export CRTs for reuse must send a one-time notification to the U.S. EPA Regional Administrator. The notification must include a statement that the notifier plans to export CRTs for reuse, the notifier's name, address, and EPA/state ID number (if applicable) and the name and phone number of a contact person.

(B) Persons who export CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least five years from the date the CRTs were exported.

(pp) Zinc fertilizers made from hazardous wastes provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Maximum Allowable Total Concentration Constituent in Fertilizer, per Unit (1%) of Zinc (ppm)	
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of (pp)(ii) of this subsection. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this subsection (3)(pp).

(qq) Debris. Provided the debris does not exhibit a characteristic identified in WAC 173-303-090, the following materials are not subject to regulation under this chapter:

(i) Hazardous debris that has been treated using one of the required extraction or destruction technologies specified in Table 1 of 40 C.F.R. section 268.45, which is incorporated by reference at WAC 173-303-140 (2)(a); persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(ii) Debris that the department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

AMENDATORY SECTION (Amending WSR 95-22-008, filed 10/19/95, effective 11/19/95)

WAC 173-303-072 Procedures and bases for exempting and excluding wastes. (1) Purpose and applicability.

(a) The purpose of this section is to describe the procedures that will be followed by generators and the department when wastes are considered for exemption or exclusion from the requirements of this chapter. Any person(s) whose waste is exempted or excluded will not be subject to the requirements of this chapter unless the department revokes the exemption or exclusion.

(b) Any person seeking a waste exemption must submit a petition to the department according to the procedures of WAC 173-303-910(3). A petition for exemption will be assessed against the applicable bases for exemption described in subsections (3)((,)) and (4)((, ~~and (5)~~)) of this section.

(c) Any persons seeking to categorically exclude a class of wastes must submit a petition to the department according to the procedures of WAC 173-303-910(4). A petition for exclusion will be assessed against the applicable bases for exclusion described in subsection (6) of this section.

(2) Department procedures. When considering, granting, or denying a petition for exemption or exclusion, the department will follow the appropriate procedures described in WAC 173-303-910(1).

(3) Bases for exempting wastes. To successfully petition the department to exempt a waste, the petitioner must demonstrate to the satisfaction of the department that:

(a) He has been able to accurately describe the variability or uniformity of his waste over time, and has been able to obtain demonstration samples which are representative of his waste's variability or uniformity; and, either

(b) The representative demonstration samples of his waste are not designated DW or EHW by the dangerous waste criteria, WAC 173-303-100; or

(c) It can be shown, from information developed by the petitioner through consultation with the department, that his waste does not otherwise pose a threat to public health or the environment. However, this basis for exemption is not applicable to wastes that exhibit any of the characteristics specified in WAC 173-303-090, except 173-303-090 (6)(a)(iii).

(4) Additional bases for exempting listed wastes. In addition to the demonstrations required by subsections (3)(a) and (b) of this section, for wastes listed in WAC 173-303-081 or 173-303-082 the petitioner must also demonstrate to the satisfaction of the department that his waste is not capable of posing a substantial present or potential threat to public health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. The following factors will be considered by the department when assessing such a demonstration:

(a) Whether or not the listed waste contains the constituent or constituents which caused it to be listed. (For the purposes of this subsection, the constituents referred to will include any of the dangerous waste constituents listed in WAC 173-303-9905);

(b) The nature of the threat posed by the waste constituent(s);

(c) The concentration of the constituent(s) in the waste;

(d) The potential of the constituent(s) or any degradation product of the constituent(s) to migrate from the waste into the environment under the types of improper management considered in (h) of this subsection;

(e) The persistence of the constituent(s) or any degradation product of the constituent(s);

(f) The potential for the constituent(s) or any degradation product of the constituent(s) to degrade into nonharmful constituents and the rate of degradation;

(g) The degree to which the constituent(s) or degradation product of the constituent(s) bioaccumulates in ecosystems;

(h) The plausible types of improper management to which the waste could be subjected;

(i) The quantities of the waste generated at individual generation sites or on a statewide basis. Under this factor, the department will also consider whether or not the waste is listed under WAC 173-303-081 as a discarded chemical product and occurs in a relatively pure form. Any waste discarded chemical product which exceeds the quantity exclusion limit specified in WAC 173-303-081(2) for that waste will not be exempted;

(j) The nature and severity of the public health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent(s);

(k) Actions taken by other governmental agencies or regulatory programs based on the health or environmental threat posed by the waste or waste constituent(s); and

(l) Such other factors as may be appropriate.

(5) Reserve.

(6) Bases for categorically excluding classes of wastes. This subsection does not apply to any waste class that includes hazardous waste regulated under 40 C.F.R. Part 261. To successfully petition the department to categorically exclude a class of wastes, petitioners must demonstrate to the satisfaction of the department that the petition or petitions for exclusion:

(a) Accurately describe the class of wastes for which categorical exclusion is sought and show that the class of wastes does not include any wastes which would be regulated as hazardous waste under 40 C.F.R. Part 261;

(b) Describe the variability or uniformity of the class of wastes over time and in relation to the individual wastes that comprise the class of waste;

(c) Discuss the generators and their individual wastes that belong to the class of wastes and, to the extent practical, any generators or individual wastes that, although belonging to the class of wastes, are not represented by the petition or petitions; and

(d) For each individual waste within the class of wastes, provide the demonstration described by subsection (3) of this section, except that where it is determined by consultation with the department to be impractical to provide the demonstration for each individual waste, the petitioner or petitioners will provide the demonstration for samples of the individual wastes determined by consultation with the department to be representative of the class of wastes.

AMENDATORY SECTION (Amending WSR 00-11-040, filed 5/10/00, effective 6/10/00)

WAC 173-303-073 Conditional exclusion of special wastes. (1) Purpose and applicability. Special wastes pose a relatively low hazard to human health and the environment. The department believes that special wastes can be safely managed with a level of protection that is intermediate between dangerous and nondangerous solid wastes. This section establishes a conditional exclusion for the management of special wastes. The definition for special waste is found in WAC 173-303-040.

(2) Exclusion. Special wastes are excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050; 173-303-060; 173-303-140 (4)(c); 173-303-145; 173-303-960; and 173-303-510 excluding subsections (4)(a), (4)(b)(iii), (5), (6)(c), and (6)(d). In addition, special waste must be treated as dangerous waste for purposes of pollution prevention planning as required in chapters 173-307

and 173-305 WAC. Special wastes will not be considered as dangerous waste, provided they are managed in accordance with the standards in this subsection and provided they are disposed, legitimately recycled, or treated on-site consistent with the requirements of WAC 173-303-170 (3)(c).

(a) Generators may not accumulate special waste on-site for more than one hundred eighty days from the date the quantity of waste exceeds two thousand two hundred pounds. The generator must keep a written record showing the dates when accumulation of the wastes began;

(b) During accumulation, special waste must be stored in a manner to prevent releases to the environment. This includes, but is not limited to, storing wastes in compatible containers, on impermeable surfaces, or in secondary containment structures, etc.;

(c) Facilities that receive special waste for recycling must meet the requirements of (b) of this subsection and store special wastes for no more than one hundred eighty days.

(d) All workers handling special wastes must be informed of the waste's potential hazard, either through worker training, health and safety plans, or notification of workers on a case-by-case basis;

(e) Special wastes must be transported directly from their site of generation to any offsite recycling, treatment, or disposal destination. The wastes must not pass through any intermediate solid waste processing facility, such as a transfer station, unless:

(i) The transfer station operator has made specific provisions for managing special waste by physical segregation, packing, or other means to ensure that workers and the public are not exposed to the waste stream at the transfer station;

(ii) The provisions are reflected in the facilities operating plans;

(iii) The plans have been approved by the transfer station's solid waste permitting authority; ((~~and~~))

(iv) The transfer station operator has informed workers of the wastes' potential hazard according to (d) of this subsection; and

(v) The waste is stored no more than thirty days at the transfer station, unless a longer storage time is approved by the solid waste permitting authority.

(f) A document must accompany special waste during transit which identifies the type and amount of special waste, its place of origin, the identity of the generator, and the facility to which it is directed. An example form is provided in WAC 173-303-9906. The generator and the receiving facility must maintain a record of the facilities receipt of the special waste for at least five years;

(g) If a special waste being offered for transportation meets the definition of hazardous materials under 49 C.F.R. Parts 171 through 180, then the generator must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with applicable Department of Transportation regulations in 49 C.F.R. Parts 172 through 180;

(h) Disposal of special waste must be in landfill units which:

(i) Are permitted in accordance with chapter 173-351 WAC, provided that an engineered liner with leachate collection is used to meet the alternative design requirements of ((~~arid landfill design requirements,~~)) WAC 173-351-300 (((~~(2)(b)~~))), or are permitted under WAC 173-303-800 through 173-303-840 or if out-of-state under 40 C.F.R. Part 258 or Part 270; and

(ii) Are not currently undergoing corrective action under WAC 173-351-440(((~~(6)~~))) (7), 40 C.F.R. 258.56, or a similar requirement in state regulations approved by the United States EPA pursuant to 42 U.S.C. 6945 (c)(1)(B).

(3) Reserve.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-090 Dangerous waste characteristics. (1) Purpose. The purpose of this section is to set forth characteristics which a solid waste might exhibit and which would cause that waste to be a dangerous waste.

(2) Representative samples. The department will consider a sample obtained using any of the applicable sampling methods described in WAC 173-303-110(2), sampling and testing methods, to be a representative sample.

(3) Equivalent test methods. The testing methods specified in this section are the only acceptable methods, unless the department approves an equivalent test method in accordance with WAC 173-303-910(2).

(4) Quantity exclusion limit. A solid waste is a dangerous waste if it exhibits one or more of the dangerous waste characteristics described in subsections (5), (6), (7), and (8) of this section. If a person's solid waste exhibits one or more of these characteristics, then he or she is a dangerous waste generator (and may not be considered a small quantity generator as provided in WAC 173-303-070(8)) if the quantity of their waste exceeds 220 lbs. (100 kg) per month or per batch.

(5) Characteristic of ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C (140 degrees F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D93-06, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D3278-96 (2004)e1 as incorporated by reference at WAC 173-303-110 (3)(h)(v) and (vi);

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard;

(iii) It is an ignitable compressed gas.

(A) The term "compressed gas" applies to any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70 degrees F or, regardless of the pressure at 70 degrees F, having an absolute pressure exceeding 104 p.s.i. at 130 degrees F; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100 degrees F as determined by ASTM Test D-323.

(B) A compressed gas must be characterized as ignitable if any one of the following occurs:

(I) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits must be determined at atmospheric temperature and pressure. The method of sampling and test procedure must be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation (see Note 2).

(II) Using the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or the flame flashes back and burns at the valve with any degree of valve opening.

(III) Using the Bureau of Explosives' Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(IV) Using the Bureau of Explosives' Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum; or,

(iv) It is an oxidizer. An oxidizer for the purpose of this subsection is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) It is a forbidden explosive as defined in 49 C.F.R. 173.54, or a Class 1 explosive, Division 1.1, Division 1.2, Division 1.3, and Division 1.5, as defined in 49 C.F.R. 173.50, in which case it must be classed as an explosive;

(B) The material is forbidden to be offered for transportation according to 49 C.F.R. 172.101 and 49 C.F.R. 173.21;

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide; or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 C.F.R. 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 C.F.R. 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in Sec. 173.151 of 49 C.F.R., and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

(b) A solid waste that exhibits the characteristic of ignitability must be designated DW, and assigned the dangerous waste number of D001.

(6) Characteristic of corrosivity.

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has any one or more of the following properties:

(i) It is aqueous and has a pH less than or equal to 2, or greater than or equal to 12.5, as determined by a pH meter using Method 9040C in "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*," EPA Publication SW-846, as incorporated by reference in WAC 173-303-110 (3)(a);

(ii) It is liquid and corrodes steel (SAE 1020) at a rate greater than 0.250 inch (6.35 mm) per year at a test temperature of 55 degrees C (130 degrees F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM0169-2000 as standardized in "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*," (Method 1110A) EPA Publication SW-846, as incorporated by reference in WAC 173-303-110 (3)(a); or

(iii) It is solid or semisolid which, upon testing using Method 9045D in "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*" (SW 846), results in a pH less than or equal to 2, or greater than or equal to 12.5.

(b) A solid waste that exhibits the characteristic of corrosivity because:

(i) It has either of the properties described in (a)(i) or (ii) of this subsection will be designated DW, and assigned the dangerous waste number of D002;

(ii) It only has the property described in (a)(iii) of this subsection will be designated DW, and assigned the dangerous waste number of WSC2.

(7) Characteristic of reactivity.

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating;

(ii) It reacts violently with water;

(iii) It forms potentially explosive mixtures with water;

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5 can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement;

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or

(viii) It is a forbidden explosive as defined in 49 C.F.R. 173.54, or a Class 1 explosive, Division 1.1, Division 1.2,

Division 1.3, and Division 1.5, as defined in 49 C.F.R. 173.50 and 173.53.

(b) A solid waste that exhibits the characteristic of reactivity must be designated DW, and assigned the dangerous waste number of D003.

(8) Toxicity characteristic.

(a) A solid waste exhibits the characteristic of toxicity if, using the *Toxicity Characteristic Leaching Procedure* (TCLP), test Method 1311 in "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*," EPA Publication SW-846, as incorporated by reference in WAC 173-303-110 (3)(a), the extract from a representative sample of the waste contains any of the contaminants listed in the toxicity characteristic list in (c) of this subsection, at concentrations equal to or greater than the respective value given in the list. When the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this subsection.

(b) A solid waste that exhibits the toxicity characteristic has the dangerous waste number specified in the list which corresponds to the toxic contaminant causing it to be dangerous.

(c) Toxicity characteristic list. Any waste that contains contaminants which occur at concentrations at or above the DW threshold must be designated DW.

TOXICITY CHARACTERISTICS LIST:

Maximum Concentration of Contaminants for the Toxicity Characteristic

Dangerous Waste Number	Contaminant	(Chemical Abstracts Services #)	DW (mg/L)
D004	Arsenic	(7440-38-2)	5.0
D005	Barium	(7440-39-3)	100.0
D018	Benzene	(71-43-2)	0.5
D006	Cadmium	(7440-43-9)	1.0
D019	Carbon tetrachloride	(56-23-5)	0.5
D020	Chlordane	(57-74-9)	0.03
D021	Chlorobenzene	(108-90-7)	100.0
D022	Chloroform	(67-66-3)	6.0
D007	Chromium	(7440-47-3)	5.0
D023	o-Cresol	(95-48-7) /1/	200.0
D024	m-Cresol	(108-39-4) /1/	200.0
D025	p-Cresol	(106-44-5) /1/	200.0
D026	Cresol	/1/	200.0
D016	2,4-D	(94-75-7)	10.0
D027	1,4-Dichlorobenzene	(106-46-7)	7.5
D028	1,2-Dichloroethane	(107-06-2)	0.5
D029	1,1-Dichloroethylene	(75-35-4)	0.7
D030	2,4-Dinitrotoluene	(121-14-2) /2/	0.13
D012	Endrin	(72-20-8)	0.02
D031	Heptachlor (and its epoxide)	(76-44-8)	0.008
D032	Hexachlorobenzene	(118-74-1) /2/	0.13
D033	Hexachlorobutadiene	(87-68-3)	0.5
D034	Hexachloroethane	(67-72-1)	3.0
D008	Lead	(7439-92-1)	5.0
D013	Lindane	(58-89-9)	0.4
D009	Mercury	(7439-97-6)	0.2
D014	Methoxychlor	(72-43-5)	10.0
D035	Methyl ethyl ketone	(78-93-3)	200.0
D036	Nitrobenzene	(98-95-3)	2.0
D037	Pentachlorophenol	(87-86-5)	100.0
D038	Pyridine	(110-86-1) /2/	5.0
D010	Selenium	(7782-49-2)	1.0
D011	Silver	(7440-22-4)	5.0
D039	Tetrachloroethylene	(127-18-4)	0.7
D015	Toxaphene	(8001-35-2)	0.5
D040	Trichloroethylene	(79-01-6)	0.5
D041	2,4,5-Trichlorophenol	(95-95-4)	400.0
D042	2,4,6-Trichlorophenol	(88-06-2)	2.0
D017	2,4,5-TP (Silvex)	(93-72-1)	1.0
D043	Vinyl chloride	(75-01-4)	0.2

/1/ If 0-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used.

/2/ At the time the TC rule was adopted, the quantitation limit was greater than the calculated regulatory level. The quantitation limit therefore became the regulatory level.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-100 Dangerous waste criteria. (1) Purpose. The purpose of this section is to describe methods for determining if a solid waste is a dangerous waste by the criteria set forth in this section. The dangerous waste criteria consist of:

(a) Toxic dangerous wastes; and

(b) Persistent dangerous wastes.

(2) References. The following toxicity data sources are adopted by reference:

(a) The National Institute for Occupational Safety and Health's (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(b) The United States Environmental Protection Agency, Ecotoxicology Database (ECOTOX), Mid-Continent Ecology Division, 6201 Congdon Boulevard, Duluth, MN 55804.

(c) The United States National Library of Medicine Toxicology Data Network, Hazardous Substance Database (HSDB), 8600 Rockville Pike, Bethesda, MD 20894.

(3) A person must use data that are available to him or her, and, when such data are inadequate for the purposes of

this section, must refer to the references identified in WAC 173-303-100(2) to determine:

(a) Toxicity data or toxic category for each known constituent in the waste;

(b) Whether or not each known constituent of the waste is a halogenated organic compound or a polycyclic aromatic hydrocarbon as defined in WAC 173-303-040.

(4) Quantity exclusion limit. A solid waste is a dangerous waste if it meets one or more of the dangerous waste criteria described in subsections (5) and (6) of this section. If a person's solid waste meets one or more of these criteria then he or she is a dangerous waste generator (and may not be considered a small quantity generator as provided in WAC 173-303-070(8)) if the quantity of the waste exceeds the following quantity exclusion limits:

(a) For toxic dangerous wastes designated as EHW (WT01), the quantity exclusion limit is 2.2 lbs. per month.

(b) For all other wastes designating under this section the quantity exclusion limit is 220 lbs. (100 kg) per month or per batch.

(5) Toxicity criteria. Except as provided in WAC 173-303-070 (4) or (5), a person must determine if a solid waste meets the toxicity criteria under this section by following either the instructions for book designation, when his knowledge of the waste is sufficient, or by testing the waste using the biological testing methods adopted under WAC 173-303-110(3).

(a) Except as provided in WAC 173-303-070(4), if a person knows only some of the toxic constituents in the waste or only some of the constituent concentrations, and if the waste is undesignated for those known constituents or concentrations, then the waste is not designated for toxicity under this subsection.

(b) Book designation procedure. A person may determine if a waste meets the toxicity criteria by following the book designation instructions as follows:

(i) A person must determine the toxic category for each known constituent. The toxic category for each constituent may be determined from available data, for example, Registry for Toxic Effects of Chemical Substances (RTECS), Hazardous Substances Data Bank (HSDB), and Ecotoxicology database (ECOTOX). The toxic category should then be identified, using the table below. If data are available for more than one test endpoint (that is, fish, oral rat, inhalation rat, or dermal rabbit), the value with the highest toxicity must be used. Similarly, if toxicity data do not agree on the same toxic category within the same test endpoint, the value with the highest toxicity must be used.[a] Finally, if toxicity data for a constituent cannot be found in reasonably available sources (for example, RTECS, HSDB or ECOTOX), the toxic category for that constituent need not be determined.

TOXIC CATEGORY TABLE

Toxic Category	Fish LC_{50}(mg/L)[b]	Oral Rat LD_{50}(mg/kg)	Inhalation Rat LC_{50}(mg/L)[c]	Dermal Rabbit LD_{50}(mg/kg)
X	<0.01	<0.5	<0.02	<2
A	0.01 - <0.1	0.5 - <5	0.02 - <0.2	2 - <20
B	0.1 - <1	5 - <50	0.2 - <2	20 - <200
C	1 - <10	50 - <500	2 - <20	200 - <2000
D	10 - 100	500 - 5000	20 - 200	2000 - 20,000

[a] These four test endpoints are defined in WAC 173-303-040.

[b] Fish LC_{50} data must be derived from an exposure period greater than or equal to twenty-four hours. A hierarchy of species LC_{50} data should be used that includes (in decreasing order of preference) salmonids, fathead minnows, and other fish species.

[c] Inhalation Rat LC_{50} data must be derived from an exposure period greater than or equal to one hour.

(ii) A person whose waste contains one or more toxic constituents must determine the equivalent concentration for the waste from the following formula:

$$\text{Equivalent Concentration (\%)} = \frac{\sum X\%}{1} + \frac{\sum A\%}{10} + \frac{\sum B\%}{100} + \frac{\sum C\%}{1000} + \frac{\sum D\%}{10{,}000}$$

where $\sum$(X,A,B,C, or D)% is the sum of all the concentration percentages for a particular toxic category.

Example 1. A person's waste contains: Aldrin (A Category) - .01%; Endrin (A Category) - 1%; Benzene (D Category) - 4%; Phenol (C Category) - 2%; Dinoseb (B Category) - 5%; Water (nontoxic) - 87%. The equivalent concentration (E.C.) would be:

$$\text{E.C. (\%)} = \frac{0\%}{1} + \frac{(0.01\% + 1.0\%)}{10} + \frac{5.0\%}{100} + \frac{2.0\%}{1000} + \frac{4.0\%}{10{,}000}$$

$$= 0\% + 0.101\% + 0.05\% + 0.002\% + 0.0004\% = 0.1534\%$$

So the equivalent concentration equals 0.1534%.

(iii) A person whose waste contains toxic constituents must determine its designation according to the value of the equivalent concentration:

(A) If the equivalent concentration is less than 0.001%, the waste is not a toxic dangerous waste; or

(B) If the equivalent concentration is equal to or greater than 0.001% and less than 1.0%, the person will designate the waste as DW and assign the dangerous waste number WT02; and

(C) If the equivalent concentration is equal to or less than 0.01%, the DW may also be a special waste; or

(D) If the equivalent concentration is equal to or greater than 1.0%, the person will designate the waste as EHW and assign the dangerous waste number WT01.

Example 1. Continued. The equivalent concentration of 0.1534% (from Example 1. above) is greater than 0.001% and less than 1.0%. The waste is DW and the dangerous waste number WT02 must be assigned.

(iv) Reserve.

(c) Designation from bioassay data. A person may determine if a waste meets the toxicity criteria by following the bioassay designation instructions of either:

(i) The DW bioassay. To determine if a waste is DW, a person must establish the toxicity category range of a waste by means of the 100 mg/L acute static fish test or the 5000

mg/kg oral rat test, as described in the biological testing methods (bioassay) adopted in WAC 173-303-110(3). If data from the test indicates that the waste is DW, then the person will assign the dangerous waste number WT02. Otherwise, the waste is not regulated as toxic dangerous waste. No further testing must be done except as provided in WAC 173-303-070 (4) and (5), or if the person chooses to determine whether the waste is EHW, or in the case of state-only solid dangerous waste, if the person chooses to determine whether the waste is special waste; or

(ii) The EHW and special waste bioassay. To determine if a waste is EHW, a person must establish the toxicity of a waste by means of the fish bioassay at 10 mg/L or the rat bioassay at 50 mg/Kg, as described in the biological testing methods (bioassay) adopted in WAC 173-303-110(3). (NOTE: A fish bioassay at 1 mg/L corresponds with the definition of EHW, which includes toxic categories X-B. However, the fish bioassay is not reproducible at these low levels.) If data from the test indicates that the waste is EHW, then the person will assign the dangerous waste number WT01. Otherwise, the waste will be designated DW, and the person will assign the dangerous waste number WT02. A person with state-only solid waste may choose to test a waste to determine if it is special waste. Testing levels for special waste must be at 10 mg/L for the fish bioassay or 500 mg/Kg for the oral rat bioassay. No further testing must be done except as provided in WAC 173-303-070 (4) and (5), or if the person chooses to test the waste in accordance with WAC 173-303-100 (5)(c)(i) to determine if the waste is not regulated as toxic dangerous waste.

(d) If the designation acquired from book designation and bioassay data do not agree, then bioassay data will be used to designate a waste. If a waste is designated as DW or EHW following the book designation procedure, a person may test the waste by means of the biological testing methods (bioassay) adopted under WAC 173-303-110(3), using either the static acute fish or the acute oral rat method, to demonstrate that the waste is not a dangerous waste or should be designated as DW and not EHW.

(e) A waste designated as DW by toxicity criteria must be assigned the dangerous waste number of WT02. A waste designated as EHW by toxicity criteria must be assigned the dangerous waste number of WT01.

(6) Persistence criteria. For the purposes of this section, persistent constituents are chemical compounds which are either halogenated organic compounds (HOC), or polycyclic aromatic hydrocarbons (PAH), as defined under WAC 173-303-040. Except as provided in WAC 173-303-070 (4) or (5), a person may determine the identity and concentration of persistent constituents by either applying knowledge of the waste or by testing the waste according to WAC 173-303-110 (3)(c) *Chemical Testing Methods for Designating Dangerous Waste* Publication #97-407.

(a) Except as provided in WAC 173-303-070(4), if a person knows only some of the persistent constituents in the waste, or only some of the constituent concentrations, and if the waste is undesignated for those known constituents or concentrations, then the waste is not designated for persistence under this subsection.

(b) When a waste contains one or more halogenated organic compounds (HOC) for which the concentrations are known, the total halogenated organic compound concentration must be determined by summing the concentration percentages for all of the halogenated organic compounds for which the concentration is known.

Example 2. A waste contains: Carbon tetrachloride - .009%; DDT - .012%; 1,1,1 - trichloroethylene - .020%. The total halogenated organic compound concentration would be:

Total HOC Concentration (%) = .009% + .012% +.020% =.041%

(c) A person whose waste contains polycyclic aromatic hydrocarbons (PAH) as defined in WAC 173-303-040, must determine the total PAH concentration by summing the concentration percentages of each of the polycyclic aromatic hydrocarbons for which they know the concentration.

Example 3. A person's waste contains: Chrysene - .08%; 3,4 - benzo(a)pyrene - 1.22%. The total polycyclic aromatic hydrocarbon concentration would be:

Total PAH Concentration (%) = .08% + 1.22% = 1.30%

(d) A person whose waste contains halogenated organic compounds and/or polycyclic aromatic hydrocarbons must determine its designation from the persistent dangerous waste table.

PERSISTENT DANGEROUS WASTE TABLE

If your waste contains...	At a total concentration level of...	Then your waste's designation, and waste # are...
Halogenated Organic Compounds (HOC)	0.01% to 1.0% greater than 1.0%	DW, WP02 EHW, WP01
Polycyclic Aromatic Hydrocarbons (PAH)	greater than 1.0%	EHW*, WP03

*No DW concentration level for PAH.

(7) Reserve.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-110 Sampling, testing methods, and analytes. (1) Purpose. This section sets forth the testing methods to be used to comply with the requirements of this chapter. Quality control procedures specified by the testing method or an approved equivalent method must be followed for the analytical result to be considered valid for designation. All methods and publications listed in this section are incorporated by reference.

(2) Representative samples.

(a) The methods and equipment used for obtaining representative samples of a waste will vary with the type and form of the waste. The department will consider samples collected using the sampling methods below or the most recent version of such methods for wastes with properties similar to the indicated materials, to be representative samples of the wastes:

(i) Crushed or powdered material - ASTM Standard D346-04e1;

(ii) Extremely viscous liquid - ASTM Standard D140-01 (2007);

(iii) Fly ash-like material - ASTM Standard D2234/D2234M-03e1;

(iv) Soil-like material - ASTM Standard D1452-80 (2000);

(v) Soil or rock-like material - ASTM Standard D420-98 (2003);

(vi) Containerized liquid wastes - "COLIWASA" described in SW-846, as incorporated by reference at WAC 173-303-110 (3)(a), or the equivalent representative sampling method described in ASTM D5743-97 (2003). Per this method, the selection of an appropriate device must be best suited for the characteristics of the waste being sampled; and

(vii) Liquid waste in pits, ponds, lagoons, and similar reservoirs - "Pond Sampler" described in SW-846, as incorporated by reference at WAC 173-303-110 (3)(a).

(b) Copies of these representative sampling methods are available from the department except for the ASTM standards which can be obtained by writing to:

ASTM
100 Barr Harbor Drive
West Conshohocken, PA 19428-2959

(3) Test procedures. Copies of the test procedures listed in this subsection can be obtained by writing to the appropriate address below:

For copies of Department of Ecology test methods:

Attn: Test Procedures
Hazardous Waste Section
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For copies of SW-846, including updates, and 40 C.F.R. Part 261:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
((~~(~~))202((~~)~~))-512-1800

For copies of ASTM methods:

ASTM
100 Barr Harbor Drive
West Conshohocken, PA 19428-2959

For copies of APTI methods:

APTI
National Technical Information Service
5285 Port Royal Road
Springfield, VA 22161

The document titles and included test procedures are as follows:

(a) *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication, SW-846* (Third Edition (November 1986) as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996), IIIA (dated April 1998), IIIB (dated July 2005), and ((~~Final~~)) Update ((~~IV~~)) IVA and IVB (dated February 2007)), which is incorporated by reference. The Third Edition of SW-846 ((~~and its Updates (document number 955-001-00000-1) are available from the Superintendent of Documents. Update IIIA is available through EPA's Methods Information Communication Exchange (MICE) Service. MICE can be contacted by phone at (703) 821-4690. Update IIIA can also be obtained by contacting the U.S. Environmental Protection Agency, Office of Solid Waste (5307W), OSW Methods Team, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Copies of the Third Edition and all of its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847~~)), as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA, and IVB, is available in portable document format (PDF) on EPA's Office of Resource Conservation and Recovery web page at: http://www.epa.gov/SW-846. An official printed copy of SW-846 and most of its updates can be purchased from the National Technical Information Service, U.S. Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312, 800-553-6847 or 703-605-6000 (outside the continental U.S.);

(b) *Biological Testing Methods*, Department of Ecology Publication #80-12, the latest revision, describing procedures for:

(i) Static acute fish toxicity test; and

(ii) Acute oral rat toxicity test;

(c) *Chemical Testing Methods for Designating Dangerous Waste*, Department of Ecology Publication #97-407, ((~~June 2009~~)) revised December 2014 describing methods for testing:

(i) Ignitability;

(ii) Corrosivity;

(iii) Reactivity;

(iv) Toxicity characteristic leaching procedure;

(v) Halogenated organic compounds; and

(vi) Polycyclic aromatic hydrocarbons.

(d) Reserve;

(e)(i) The determination of Polychlorinated Biphenyls in Transformer Fluids and Waste Oils, EPA-600/4-81-045; and

(ii) Analysis of Polychlorinated Biphenyls in Mineral Insulating Oils by Gas Chromatography, ASTM Standard D4059-00 (2005)e1.

(f) Appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in Chapter Two, "Choosing the Correct Procedure" found in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846*.

(g) The following publications for air emission standards (in addition to (a) of this subsection).

(i) ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography, ASTM Standard D1946-90 (2006).

(ii) ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), ASTM Standard D4809-06.

(iii) ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis, ASTM Standard E169-04.

(iv) ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis, ASTM Standard E168-06.

(v) ASTM Standard Practice for Packed Column Gas Chromatography, ASTM Standard E260-96 (2006).

(vi) ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography, ASTM Standard D5580-02.

(vii) ASTM Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, ASTM Standard D2879-97 (2002)e1.

(viii) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981.

(ix) ((~~"API Publication 2517, Third Edition," February 1989, "~~)) API Manual of Petroleum Measurement Standards (MPMS) chapter 19.2 (API MPMS 19.2), Evaporative Loss from External Floating-Roof Tanks((~~," available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005~~)) (formerly API Publications 2517 and 2519), Third Edition, American Petroleum Institute, Washington D.C., October 2012.

(h) The following publications:

(i) "NFPA 30((~~:~~)) Flammable and Combustible Liquids Code" (((~~2003~~)) 2012), available from the National Fire Protection Association, NFPA Headquarters, 1 Batterymarch Park, Quincy, MA 02169-7471.

(ii) U.S. EPA, "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised," October 1992, EPA Publication No. EPA-450/R-92-019, Environmental Protection Agency, Research Triangle Park, NC.

(iii) "ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926-94, Test Method C-Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(iv) Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Nonpolar Material) by Extraction and Gravimetry. Available from NTIS, PB99-121949, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(v) ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester, ASTM Standard D3278-96 (2004)e1, available from American Society for Testing and Materials.

(vi) ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester, ASTM Standard D93-06.

(vii) ((~~"API Publication 2517, Third Edition," February 1989, "~~)) API Manual of Petroleum Measurement Standards (MPMS) chapter 19.2 (API MPMS 19.2), Evaporative Loss from External Floating-Roof Tanks((~~," available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005~~)) (formerly API Publications 2517 and 2519), Third Edition, American Petroleum Institute, Washington D.C., October 2012.

(4) Substantial changes to the testing methods described above will be made only after the department has provided adequate opportunity for public review and comment on the proposed changes. The department may, at its discretion, schedule a public hearing on the proposed changes.

(5) Equivalent testing methods. Any person may request department approval for the use of an equivalent testing method by submitting a petition, prepared in accordance with WAC 173-303-910(2), to the department.

(6) Reporting analytical results. Ecology requires that all test methods report their analytical results for solid and soil samples on a dry weight basis. Reporting on a dry weight basis compensates for variability in water content and provides a consistent procedure for all analytical results provided to ecology for designation purposes.

(7) "Ground-Water Monitoring List" Appendix IX to 40 C.F.R. Part 264 is replaced with the version in Appendix 5 of *Chemical Testing Methods for Designating Dangerous Waste*, Department of Ecology Publication #97-407, ((~~March 2008~~)) revised December 2014. The Appendix "Ground-Water Monitoring List" in *Chemical Testing Methods* includes the columns "Suggested methods" and "PQL."

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-120 Recycled, reclaimed, and recovered wastes. (1) This section describes the requirements for persons who recycle materials that are solid wastes and dangerous. Except as provided in subsections (2) and (3) of this section, dangerous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsection (4) of this section. Dangerous wastes that are recycled will be known as "recyclable materials."

(2)(a) The following recyclable materials are solid wastes and sometimes are dangerous wastes. However, they are subject only to the requirements of (b) of this subsection, WAC 173-303-050, 173-303-145 and 173-303-960:

(i) Industrial ethyl alcohol that is reclaimed (except that, unless provided otherwise in an international agreement as specified in 40 C.F.R. 262.58: See export requirements at 40 C.F.R. 261.6 (3)(i)(A) and (B) that are incorporated by reference at WAC 173-303-230(1));

(ii) Reserve;

(iii) Reserved;

(iv) Scrap metal that is not excluded under WAC 173-303-071 (3)(ff);

(v) Fuels produced from the refining of oil-bearing dangerous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing dangerous wastes where such recovered oil is already excluded under WAC 173-303-071 (3)(cc));

(vi) Reserve;

(vii) Coke and coal tar from the iron and steel industry that contains dangerous waste from the iron and steel production process;

(viii)(A) Dangerous waste fuel produced from oil-bearing dangerous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such dangerous wastes, where such dangerous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the

resulting fuel meets the used oil specification under 40 C.F.R. 279.11 (which is incorporated by reference at WAC 173-303-515(4)) and so long as no other dangerous wastes are used to produce the dangerous waste fuel;

(B) Dangerous waste fuel produced from oil-bearing dangerous waste from petroleum refining production, and transportation practices, where such dangerous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 C.F.R. 279.11 (which is incorporated by reference at WAC 173-303-515(4)); and

(C) Oil reclaimed from oil-bearing dangerous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 C.F.R. 279.11 (which is incorporated by reference at WAC 173-303-515(4)).

(b) Any recyclable material listed in (a) of this subsection will be subject to the applicable requirements listed in subsection (4) of this section if the department determines, on a case-by-case basis, that:

(i) It is being accumulated, used, reused, or handled in a manner that poses a threat to public health or the environment; or

(ii) Due to the dangerous constituent(s) in it, any use or reuse would pose a threat to public health or the environment. Such recyclable material will be listed in WAC 173-303-016(6).

(3) The recyclable materials listed in (a) through (h) of this subsection are not subject to the requirements of this section but are subject to the requirements of WAC 173-303-070 through 173-303-110, 173-303-160, 173-303-500 through 173-303-525, and all applicable provisions of WAC 173-303-800 through 173-303-840. The recyclable materials listed in (b), (d), (f) and (g) of this subsection are also subject to WAC 173-303-140.

In addition to these requirements, owners and operators of facilities that receive recyclable materials from off-site are subject to WAC 173-303-610 (2) and (12) and to WAC 173-303-620 (1)(e).

(a) Recycling requirements for state-only dangerous wastes (see WAC 173-303-500);

(b) Recyclable materials used in a manner constituting disposal (see WAC 173-303-505);

(c) Spent CFC or HCFC refrigerants that are recycled on-site or sent to be reclaimed off-site (see WAC 173-303-506);

(d) Dangerous wastes burned ((~~for energy recovery~~)) (as defined in WAC 173-303-510 (1)(a)) in boilers and industrial furnaces that are not regulated under Subpart O of 40 C.F.R. Part 265 or WAC 173-303-670 (see WAC 173-303-510);

(e) Reserved;

(f) Spent lead-acid batteries that are being reclaimed (see WAC 173-303-520);

(g) Recyclable materials from which precious metals are reclaimed (see WAC 173-303-525); and

(h) Spent antifreeze that is recycled on-site or sent to be recycled off-site (see WAC 173-303-522).

(4) Those recycling processes not specifically discussed in subsections (2) and (3) of this section are generally subject to regulation only up to and including storage prior to recycling. For the purpose of this section, the department may determine on a case-by-case basis that recyclable materials received from off-site are not stored if they are moved into an active recycling process within a period of time not to exceed seventy-two hours after being received. In making such a determination, the department will consider factors including, but not limited to, the types and volumes of wastes being recycled, operational factors of the recycling process, and the compliance history of the owner or operator. An active recycling process refers to a dynamic recycling operation that occurs within a recycling unit such as a distillation or centrifuge unit. The phrase does not refer to passive storage-like activities that occur, for example, when tanks or containers are used for phase separation or for settling impurities. Passive storage-like activities are not eligible for the recycling exemption under this subsection.

The recycling process itself is generally exempt from permitting unless the department determines, on a case-by-case basis, that the recycling process poses a threat to public health or the environment.

Unless specified otherwise in subsections (2) and (3) of this section:

(a) Generators of recyclable materials are subject to all applicable requirements of this chapter including, but not limited to, WAC 173-303-170 through 173-303-230;

(b) Transporters of recyclable materials are subject to all applicable requirements of this chapter including, but not limited to, WAC 173-303-240 through 173-303-270;

(c) Owners or operators of facilities that receive recyclable materials from off-site and recycle these recyclable materials without storing them before they are recycled are subject to the following requirements:

(i) WAC 173-303-060,

(ii) WAC 173-303-120 (4)(e),

(iii) WAC 173-303-283 through 173-303-290,

(iv) WAC 173-303-310 through 173-303-395,

(v) WAC 173-303-610 (2) and (12),

(vi) WAC 173-303-620 (1)(e),

(vii) WAC 173-303-630 (2) through (10), and

(viii) WAC 173-303-640 (2) through (10) except that requirements to post-closure planning or care in WAC 173-303-640(8) will not apply to closure of recycling units. In lieu of the dates in WAC 173-303-640 (2) and (4), for existing tank systems regulated under this subsection, owners and operators must complete the assessment of the tank system's integrity by June 1, 1992, and must meet the secondary containment requirements of WAC 173-303-640(4) by January 12, 1993;

(ix) The owner or operator must obtain data, by screening-type analysis if necessary, confirming the designation of each waste stream, such that each dangerous waste received can be effectively recycled without jeopardizing human health or the environment. The owner or operator must verify the waste designation periodically, so that it is accurate and current, but at least once every six months or on a batch basis if shipments of a specific waste stream are less frequent. Cop-

ies of all analyses and data must be retained for at least five years and made available to the department upon request.

(d) Owners and operators of facilities that store recyclable materials before they are recycled are subject to the following requirements including, but not limited to:

(i) For all recyclers, the applicable provisions of:

(A) WAC 173-303-280 through 173-303-395,

(B) WAC 173-303-800 through 173-303-840,

(C) WAC 173-303-140 (2)(a),

(D) WAC 173-303-120 (4)(e);

(ii) For recyclers with interim status permits, the applicable storage provisions of WAC 173-303-400 including Subparts F through L of 40 C.F.R. Part 265;

(iii) For recyclers with final facility permits, the applicable storage provisions of:

(A) WAC 173-303-600 through 173-303-650, and

(B) WAC 173-303-660.

(e) Owners and operators of facilities subject to dangerous waste permitting requirements with dangerous waste management units that recycle hazardous wastes are subject to the requirements of WAC 173-303-690, 173-303-691 (Air emission standards for process vents and equipment leaks), and WAC 173-303-692 (Air emission standards for tanks, surface impoundments, and containers) for final status facilities, and 40 C.F.R. Part 265 Subparts AA, BB, and CC, incorporated by reference at WAC 173-303-400(3) for interim status facilities.

(5) Used oil that is recycled and is also a dangerous waste solely because it exhibits a dangerous waste characteristic or criteria is not subject to the requirements of this chapter except for 40 C.F.R. Part 279 which is incorporated by reference at WAC 173-303-515. Used oil that is recycled includes any used oil that is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil that is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(6) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in 40 C.F.R. 262.58 (a)(1)) for purpose of recovery is subject to the requirements of 40 C.F.R. part 262, subpart H, if it is subject to either the manifesting requirements at WAC 173-303-180 or to the universal waste management standards of WAC 173-303-573.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-140 Land disposal restrictions. (1) Purpose.

(a) The purpose of this section is to encourage the best management practices for dangerous wastes according to the priorities of RCW 70.105.150 which are, in order of priority:

(i) Reduction;

(ii) Recycling;

(iii) Physical, chemical, and biological treatment;

(iv) Incineration;

(v) Stabilization and solidification; and

(vi) Landfill.

(b) This section identifies dangerous wastes that are restricted from land disposal, describes requirements for restricted wastes, and defines the circumstances under which a prohibited waste may continue to be land disposed.

(c) For the purposes of this section, the term "landfill," as stated in the priorities of RCW 70.105.150, will be the same as the term "land disposal." Land disposal will be used in this section to identify the lowest waste management priority.

(2) Applicability.

The land disposal restrictions of this section apply to any person who owns or operates a dangerous waste treatment, storage, or disposal facility in Washington state and to any person who generates or transports dangerous waste.

(a) Land disposal restrictions for wastes designated in accordance with WAC 173-303-070 (3)(a)(i), (ii), and (iii) are the restrictions set forth by the Environmental Protection Agency in 40 C.F.R. Part 268 which are incorporated by reference into this regulation, as modified in (c) through (f) of this subsection, and the restrictions set forth in subsections (3) through (7) of this section. The words "regional administrator" (in 40 C.F.R.) will mean the "department," except for 40 C.F.R. Parts 268.5 and 268.6; 268 Subpart B; 268.42(b) and 268.44 (a) through (g). The authority for implementing these excluded C.F.R. sections remains with the U.S. Environmental Protection Agency. The word "EPA" (in 40 C.F.R.) means "Ecology" at 40 C.F.R. 268.44(m). The exemption and exception provisions of subsections (3) through (7) of this section are not applicable to the federal land disposal restrictions.

Where the federal regulations that have been incorporated by reference refer to 40 C.F.R. 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110.

(b) Land disposal restrictions for state-only dangerous waste are the restrictions set forth in subsections (3) through (7) of this section.

(c) Where 40 C.F.R. 268.7 (a)(1) is incorporated by reference, delete the sentence "Alternatively, the generator must send the waste to a RCRA-permitted dangerous waste treatment facility, where the waste treatment facility must comply with the requirements of 264.13 of this chapter and 268.7(b) of this section."

(d) Where 40 C.F.R. 268.7 (a)(2) is incorporated by reference:

(i) Delete the words "or if the generator chooses not to make the determination of whether his waste must be treated" from the first sentence; and

(ii) Delete the sentence "(Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state 'This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination'.)"

(e) Where 40 C.F.R. 268.7 (b)(6) is incorporated by reference, replace the words "for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number)" with the words "submit a certification

described in paragraph (b)(4) of this section, and a notice which includes the information listed in paragraph (b)(3) of this section (except for the manifest number) to the department for each shipment".

(f) Where 40 C.F.R. 268.9(d) is incorporated by reference, replace paragraph (d) with the following: Wastes that exhibit a characteristic are also subject to Section 268.7 requirements, except that once the waste is no longer dangerous, a one-time notification and certification must be placed in the generators or treaters files and sent to the department. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31.

(i) The notification must include the following information:

(A) Name and address of the RCRA Subtitle D facility receiving the waste shipment; and

(B) A description of the waste as initially generated, including the applicable dangerous waste code(s), treatability group(s), and underlying hazardous constituents (as defined in Sec. 268.2(i)), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.

(ii) The certification must be signed by an authorized representative and must state the language found in Section 268.7 (b)(4).

If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in Sec. 268.7 (b)(4)(iv) applies.

(3) Definitions.

When used in this section the following terms have the meaning provided in this subsection. All other terms have the meanings given under WAC 173-303-040.

(a) "Dangerous waste constituents" means those constituents listed in WAC 173-303-9905 and any other constituents which have caused a waste to be a dangerous waste under this chapter.

(b) "Land disposal" means placement in a facility or on the land with the intent of leaving the dangerous waste at closure, and includes, but is not limited to, placement for disposal purposes in a: Landfill; surface impoundment; waste pile; injection well; land treatment facility; salt dome or salt bed formation; underground cave or mine; concrete vault or bunker.

(c) "Organic/carbonaceous waste" means a dangerous waste that contains combined concentrations of greater than ten percent organic/carbonaceous constituents in the waste; organic/carbonaceous constituents are those substances that contain carbon-hydrogen, carbon-halogen, or carbon-carbon chemical bonding.

(d) "Solid acid waste" means a dangerous waste that exhibits the characteristic of low pH under the corrosivity test of WAC 173-303-090 (6)(a)(iii).

(e) "Stabilization" and "solidification" mean a technique that limits the solubility and mobility of dangerous waste constituents. Solidification immobilizes a waste through physical means and stabilization immobilizes the waste by bonding or chemically reacting with the stabilizing material.

(4) Land disposal restrictions and prohibitions. The land disposal requirements of this subsection apply to land disposal in Washington state.

(a) Disposal of extremely hazardous waste (EHW). No person may land dispose of EHW, except as provided in subsection (5) of this section, at any land disposal facility in the state. No person may land dispose of EHW at the facility established under RCW 70.105.050, except as provided by subsections (5), (6), and (7) of this section. A person is encouraged to reclaim, recycle, recover, treat, detoxify, neutralize, or otherwise process EHW to remove or reduce its harmful properties or characteristics, provided that such processing is performed in accordance with the requirements of this chapter.

(b) Disposal of liquid waste. Special requirements for bulk and containerized liquids.

(i) The placement of bulk or noncontainerized liquid dangerous waste or dangerous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(ii) Containers holding free liquids must not be placed in a landfill unless:

(A) All free-standing liquid:

(I) Has been removed by decanting, or other methods; or

(II) Has been mixed with sorbent or stabilized (solidified) so that free-standing liquid is no longer observed; or

(III) Has been otherwise eliminated; or

(B) The container is very small, such as an ampule; or

(C) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(D) The container is a labpack and is disposed of in accordance with WAC 173-303-161 and this chapter.

(iii) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following tests must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" EPA Publication SW-846 as incorporated by reference in WAC 173-303-110 (3)(a).

(iv) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: Materials listed or described in (b)(iv)(A) of this subsection; materials that pass one of the tests in (b)(iv)(B) of this subsection; or materials that are determined by the department to be nonbiodegradable through WAC 173-303-910.

(A) Nonbiodegradable sorbents.

(I) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon); or

(II) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(III) Mixtures of these nonbiodegradable materials.

(B) Tests for nonbiodegradable sorbents.

(I) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-96 (2002) - Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(II) The sorbent material is determined to be nonbiodegradable under OECD (Organization for Economic Cooperation and Development) test 301B: [CO_2 Evolution (Modified Sturm Test)].

(v) The placement of any liquid which is not a dangerous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the department, or the department determines, that:

(A) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in WAC 173-303-040).

(c) Disposal of solid acid waste. No person may land dispose solid acid waste, except as provided in subsections (5), (6), or (7) of this section. A person is encouraged to reclaim, recycle, recover, treat, detoxify, neutralize, or otherwise process these wastes to remove or reduce their harmful properties or characteristics, provided that such processing is performed in accordance with the requirements of this chapter.

(d) Disposal of organic/carbonaceous waste.

(i) No person may land dispose organic/carbonaceous waste, except as provided in subsections (5), (6), or (7) of this section. A person is encouraged to reclaim, recycle, recover, treat, detoxify, or otherwise process these wastes to remove or reduce their harmful properties or characteristics, provided that such processing is performed in accordance with the requirements of this chapter. Organic/carbonaceous wastes must be incinerated as a minimum management method according to the dangerous waste management priorities as defined in subsection (1)(a) of this section.

(ii) This prohibition against the land disposal of organic/carbonaceous waste does not apply to black mud generated from the caustic leach recovery of cryolite at primary aluminum smelting plants.

(iii) This prohibition against the land disposal of organic/carbonaceous waste does not apply to any person who certifies to the department that recycling, treatment and incineration facilities are not available within a radius of one thousand miles from Washington state's borders. Such certification must be sent to the department by certified mail or other means that establish proof of receipt (including applicable electronic means) and must include: The name, address and telephone number of the person certifying; a brief description of the organic/carbonaceous waste covered by the certification; a discussion of the efforts undertaken to identify available recycling, treatment and incineration facilities; and the signature of the person responsible for the certification and development of information used to support the certification. Records and information supporting the certification must be retained by the certifying person and must be made available to the department upon request.

A certification that has been properly submitted to the department will remain valid until the department determines that a recycling, treatment or incineration facility is available within a radius of one thousand miles from Washington state's borders and the person who submitted the certification is unable to demonstrate otherwise. A recycling, treatment or incineration facility will be considered by the department to be available if such facility: Is operating, and; can safely and legally recycle, treat or incinerate the organic/carbonaceous waste, and; has sufficient capacity to receive and handle significant amounts of the waste, and; agrees to accept the waste.

(5) Treatment in land disposal facilities. The land disposal restrictions in subsection (4) of this section do not apply to persons treating dangerous wastes in surface impoundments, waste piles, or land treatment facilities provided that such treatment is performed in accordance with the requirements of this subsection and this chapter.

(a) Surface impoundment treatment.

Liquid waste, extremely hazardous waste (EHW), solid acid waste, and organic/carbonaceous waste may be placed in surface impoundments for purposes of treatment provided the owner/operator can demonstrate that effective treatment of the dangerous waste constituents will occur and at closure the owner/operator complies with the prohibitions and restrictions of subsection (4) of this section.

(b) Waste pile treatment.

Liquid waste, extremely hazardous waste (EHW), solid acid waste, and organic/carbonaceous waste may be placed in waste piles for purposes of treatment provided the owner/operator can demonstrate that effective treatment of dangerous waste constituents will occur and that at closure the owner/operator will be in compliance with the prohibitions and restrictions of subsection (4) of this section.

(c) Land treatment.

Liquid waste, extremely hazardous waste (EHW), and organic/carbonaceous waste may be land treated provided that the owner/operator can demonstrate that effective treatment of dangerous waste constituents will occur, and at the end of the post-closure care period the owner/operator will be in compliance with subsection (4) of this section.

(6) Case-by-case exemptions to a land disposal prohibition. Any person may petition the department for an exemption from a prohibition in subsection (4) of this section for the land disposal of a dangerous waste. The procedures to submit a petition to the department are specified in WAC 173-303-910(6). The department may deny any petition if it determines that there is a potential for dangerous waste constituents to migrate from the land disposal facility where the waste is to be placed. The department will deny any petition when exemption would result in a substantial or imminent

threat to public health or the environment. The department will deny any petition when exemption would result in a violation of applicable state laws.

The department may grant an exemption from the prohibitions and restrictions of subsection (4) of this section based on the demonstrations specified in (a), (b) or (c) of this subsection.

(a) Land disposal exemption for treatment residuals. Any person may request an exemption from a land disposal prohibition in subsection (4) of this section for treatment residuals by demonstrating to the department that:

(i) The person has applied the best achievable management method to the original waste; and

(ii) Application of additional management methods to the treatment residuals would prevent the person from utilizing the best achievable management methods for the original dangerous waste; and

(iii) The land disposal of the treatment residuals does not pose a greater risk to the public health and the environment than land disposal of the original dangerous waste would pose.

(b) Economic hardship exemption. Any person may request an exemption from a prohibition in subsection (4) of this section for the land disposal of a dangerous waste by demonstrating to the department that alternative management of the dangerous waste will impose an unreasonable economic burden in relation to the threat of harm to public health and the environment. It will be solely within the discretion of the department to approve or deny the requests for exemptions based on economic hardship.

(c) Organic/carbonaceous waste exemption. Any person may request an exemption from the requirements in subsection (4) of this section by demonstrating to the department that:

(i) Alternative management methods for organic/carbonaceous waste are less protective of public health and the environment than stabilization or landfilling; or

(ii)(A) The organic/carbonaceous waste has a heat content less than 3,000 BTU/LB or contains greater than sixty-five percent water or other noncombustible moisture; and

(B) Incineration is the only management method available within a radius of one thousand miles from Washington state's border (i.e., recycling or treatment are not available).

(7) Emergency cleanup provision. The department may, on a case-by-case basis, grant an exception to the land disposal restrictions in subsection (4) of this section for an emergency cleanup where an imminent threat to public health and the environment exists. Any exception will require compliance with applicable state law and will require (consistent with the nature of the emergency and imminent threat) application of the waste management priorities of RCW 70.105.-150.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-170 Requirements for generators of dangerous waste. (1) A person is a dangerous waste generator if their solid waste is designated by the requirements of WAC 173-303-070 through 173-303-100.

(a) The generator is responsible for designating their waste as DW or EHW.

(b) The generator may request an exemption for their dangerous waste according to the procedures of WAC 173-303-072.

(2) A dangerous waste generator must notify the department and obtain an EPA/state identification number as required by WAC 173-303-060, and must comply with the requirements of WAC 173-303-170 through 173-303-230.

(3) Any generator who stores, treats, or disposes of dangerous waste on-site must perform their operations in accordance with the TSD facility requirements (as specified by WAC 173-303-600) with the following exceptions:

(a) Generators who accumulate dangerous wastes for less than ninety days as allowed under WAC 173-303-200 or for less than one hundred eighty days as allowed under WAC 173-303-201 and 173-303-202;

(b) Generators who treat dangerous waste on-site in accumulation tanks, containers, and containment buildings provided that the generator maintains a log showing the date and amount of waste treated and complies with:

(i) The applicable requirements of WAC 173-303-200, 173-303-201, and 173-303-202; and

(ii) WAC 173-303-283(3);

(c) Generators who treat special waste on-site provided:

(i) The accumulation standards of WAC 173-303-073 (2)(a) and (b) are met;

(ii) When treated in units other than tanks or containers, the unit is designed, constructed, and operated in a manner that prevents:

(A) A release of waste and waste constituents to the environment;

(B) Endangerment of health of employees or the public;

(C) Excessive noise;

(D) Negative aesthetic impact on the use of adjacent property.

(iii) The treatment unit must also be inspected routinely for deterioration that would lead to a release and repairs must be conducted promptly.

(4) The generator must comply with the special land disposal restrictions for certain dangerous wastes in WAC 173-303-140.

(5) Persons responding to an explosives or munitions emergency in accordance with WAC 173-303-400 (2)(c)(xiii)(A)(IV) or 173-303-600 (3)(p)(i)(D) or (3)(p)(iv), and WAC 173-303-800 (7)(c)(i)(D) or (7)(c)(i)(E) are not required to comply with the standards of WAC 173-303-170 through 173-303-230.

(6) Any person who exports or imports hazardous waste subject to the manifesting requirements of WAC 173-303-180 ((~~or to~~)), the universal waste management standards of WAC 173-303-573, or to the export requirements in the spent lead-acid battery management standards of WAC 173-303-520, or from the countries listed in 40 C.F.R. 262.58 (a)(1)

for recovery must comply with 40 C.F.R. 262 subpart H. 40 C.F.R. 262 subpart H is incorporated by reference at WAC 173-303-230(1).

(7) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of WAC 173-303-235 are not subject to (for purposes of this subsection, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in WAC 173-303-235(1)):

(a) The requirements of WAC 173-303-070(3) or 173-303-200(2), for large quantity generators and generators regulated under WAC 173-303-201, except as provided in WAC 173-303-235; and

(b) The conditions of WAC 173-303-070 (8)(b), for small quantity generators, except as provided in WAC 173-303-235.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-180 Manifest. A generator who transports, or offers for transport a dangerous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected dangerous waste load, must follow all applicable procedures described in this section.

(1) Form and contents of dangerous waste manifests. 40 C.F.R. Part 262 Appendix - Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions) is incorporated by reference. The manifest must be EPA Form 8700-22 and, if necessary, EPA Form 8700-22A. The manifest must be prepared in accordance with the instructions for these forms, as described in the uniform manifest Appendix of 40 C.F.R. Part 262.

(a) A generator must designate on the manifest one facility that is permitted to handle the waste described on the manifest.

(b) A generator may also designate on the manifest one alternate facility that is permitted to handle his or her waste in the event an emergency prevents delivery of the waste to a primary designated facility.

(c) If the transporter is unable to deliver the dangerous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(2) The manifest must consist of enough copies to provide the generator, each transporter, and the designated facility owner/operator with a copy for their records, and another copy to be returned to the generator.

(3) Manifest procedures.

(a) The generator must:

(i) Sign and date the manifest certification by hand;

(ii) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(iii) Retain one copy in accordance with WAC 173-303-210, Generator recordkeeping.

(b) The generator must give the remaining manifest copies to the transporter.

(c) ((~~If the transporter is unable to deliver the dangerous waste shipment to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste shipment.~~

~~(d)~~)) For shipments of dangerous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(((~~e~~))) (d) For rail shipments of dangerous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(i) The next nonrail transporter, if any; or

(ii) The designated facility if transported solely by rail; or

(iii) The last rail transporter to handle the waste in the United States if exported by rail.

(((~~f~~))) (e) For shipments of federally regulated hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(f) For rejected shipments of dangerous waste or container residues contained in nonempty containers that are returned to the generator by the designated facility (following the procedures of WAC 173-303-370 (5)(f)), the generator must:

(i) Sign either:

(A) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(B) Item 18c of the original manifest if the original manifest is used for the returned shipment.

(ii) Provide the transporter a copy of the manifest;

(iii) Within thirty days of delivery of the rejected shipment or container residues contained in nonempty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(iv) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

(4) Special requirements for shipments to the Washington EHW facility at Hanford.

(a) All generators planning to ship dangerous waste to the EHW facility at Hanford must notify the facility in writing and by sending a copy of the prepared manifest prior to shipment.

(b) The generator must not ship any dangerous waste without prior approval from the EHW facility. The state operator may exempt classes of waste from the requirements of WAC 173-303-180 (4)(a) and (b) where small quantities or multiple shipments of a previously approved waste are involved, or there exists an emergency and potential threat to public health and safety.

(5) The requirements of this section and WAC 173-303-190(2) do not apply to the transport of dangerous wastes on a public or private right of way within or along the border of contiguous property under the control of the same person,

even if such contiguous property is divided by a public or private right of way: Provided, That ecology has approved an alternative paper tracking system that serves the purpose of a manifest. Notwithstanding WAC 173-303-240(2), the generator or transporter must comply with the requirements for transporters set forth in WAC 173-303-270 and 173-303-145 in the event of a discharge of dangerous waste on a public or private right of way.

(6) Special instructions for state-only dangerous waste that designates only by the criteria under WAC 173-303-100 and is not regulated as a hazardous waste under 40 C.F.R. Part 261 or as a hazardous material under the 49 C.F.R. hazardous material regulations. For purposes of completing the uniform hazardous waste manifest, Item ((~~11~~)) 9b, and Item 28 if continuation sheet 8700-22A is used, or to describe a state-only dangerous waste on a shipping paper, the shipping description must include the following in sequence with no additional information interspersed:

(a) Material Not Regulated by DOT;

(b) Washington State Dangerous Waste Only followed by the appropriate criteria designation of the waste that is either toxic, persistent, solid corrosive or a combination of these entered in parentheses;

(c) Shipping description examples: Material Not Regulated by DOT (Washington State Dangerous Waste Only, Toxic); Material Not Regulated by DOT (Washington State Dangerous Waste Only, Toxic, Persistent); Material Not Regulated by DOT (Washington State Dangerous Waste Only, Solid Corrosive).

(7) Manifest tracking numbers, manifest printing, and obtaining manifests.

(a) 40 C.F.R. 262.21 (a) through (f) and (h) through (m) is incorporated by reference. EPA requirements for printing manifests for use or distribution are included in this section.

(b) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under paragraphs (c) and (e) of 40 C.F.R. 262.21. A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) Dangerous waste generator, transporter or TSDF; or

(iv) Dangerous waste broker or other preparer who prepares or arranges shipments of dangerous waste for transportation.

(c) A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(8) Waste minimization certification. A generator who initiates a shipment of dangerous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment"; or

(b) "I am a medium quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford." Note that a Washington state medium quantity generator regulated under WAC 173-303-202 is the type of generator referred to where the manifest states "(b) if I am a small quantity generator", due to the different term used by EPA.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-190 Preparing dangerous waste for transport. The generator must fulfill the following requirements before transporting off-site or offering for off-site transport any dangerous waste.

(1) Packaging. The generator must package all dangerous waste for transport in accordance with United States DOT regulations on packaging, 49 C.F.R. Parts 173, 178, and 179.

(2) Labeling. The generator must label each package in accordance with United States DOT regulations, 49 C.F.R. Part 172.

(3) Marking. The generator must:

(a) Mark each package of dangerous waste in accordance with the applicable United States DOT regulations on hazardous materials under 49 C.F.R. Part 172; and

(b) Mark each container of one hundred nineteen gallons or less of dangerous waste used in such transportation with the following, or equivalent words and information in accordance with 49 C.F.R. 172.304:

HAZARDOUS WASTE - State and federal law prohibits improper disposal. If found, contact the nearest police or public safety authority, and the Washington state department of ecology or the United States Environmental Protection Agency.

Generator's Name and Address

. . . . . .

. . . . . .

. . . . . .

Generator's EPA Identification Number

Manifest Tracking Number

. . . . . .

(4) Placarding. The generator must placard, or offer the initial transporter the appropriate placards according to United States DOT regulations for hazardous materials under 49 C.F.R. Part 172, Subpart F.

(5) State-only dangerous waste that is not regulated as a hazardous waste under 40 C.F.R. Part 261 or as a hazardous material under 49 C.F.R. must fulfill the following requirements before transport:

(a) Package in a nonleaking, nonsievable container or in a package that is equivalent to the manufacturing and testing specifications for packagings and containers of 49 C.F.R. Parts 173, 178 and 179.

(b) Mark each package containing one thousand gallons or less with the following:

(i) Washington State Dangerous Waste-State law prohibits improper disposal. If found, contact the nearest police or public safety authority, and the Washington State Department of Ecology. The generator's name and address and manifest number must also be included; and

(ii) The state shipping description as described in WAC 173-303-180((~~(7)~~)) (6).

(c) Use of any other markings for a state-only dangerous waste is prohibited.

(6) State-only dangerous waste that is also regulated as a hazardous material under 49 C.F.R. must be packaged, labeled and marked in accordance with WAC 173-303-190 (1), (2), (3) and (5)(b)(i).

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-200 Accumulating dangerous waste on-site. (1) A generator, not to include transporters as referenced in WAC 173-303-240(3), may accumulate dangerous waste on-site without a permit for ninety days or less after the date of generation, provided that:

(a) All such waste is shipped off-site to a designated facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845 or recycled or treated on-site in ninety days or less. The department may, on a case-by-case basis, grant a maximum thirty day extension to this ninety day period if dangerous wastes must remain on-site due to unforeseen, temporary and uncontrollable circumstances. A generator who accumulates dangerous waste for more than ninety days is an operator of a storage facility and is subject to the facility requirements of this chapter and the permit requirements of this chapter as a storage facility unless he has been granted an extension to the ninety day period allowed pursuant to this subsection;

(b) The waste is placed:

(i) In containers and the generator complies with WAC 173-303-630 (2), (3), (4), (5), (6), (8), (9), (10), and 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a). For container accumulation (including satellite areas as described in subsection (2) of this section), the department may require that the accumulation area include secondary containment in accordance with WAC 173-303-630(7), if the department determines that there is a potential threat to public health or the environment due to the nature of the wastes being accumulated, or due to a history of spills or releases from accumulated containers. In addition, any new container accumulation areas (but not including new satellite areas, unless required by the department) constructed or installed after September 30, 1986, must comply with the provisions of WAC 173-303-630(7); and/or

(ii) In tanks and the generator complies with 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a) and 173-303-640 (2) through (10), except WAC 173-303-640 (8)(c) and the second sentence of WAC 173-303-640 (8)(a). (Note: A generator, unless otherwise required to do so, does not have to prepare a closure plan, a cost estimate for closure, or provide financial responsibility for his tank system to satisfy the requirements of this section.) Such a generator is exempt from the requirements of WAC 173-303-620 and 173-303-610, except for WAC 173-303-610 (2) and (5); and/or

(iii) On drip pads and the generator complies with WAC 173-303-675 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(iv) In containment buildings and the generator complies with 40 C.F.R. Part 265 Subpart DD, which is incorporated by reference, and the generator has placed its independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101 in the facility's operating record no later than sixty days after the date of initial operation of the unit. Where subpart G and H are referenced in 40 C.F.R. 265.1102, replace them with WAC 173-303-610 and 173-303-620. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator must maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every ((~~90~~)) ninety days.

((~~In addition, such a generator is exempt from all the requirements in WAC 173-303-610 and 173-303-620, except for WAC 173-303-610(2) and 173-303-610(5).~~))

(c) The date upon which each period of accumulation begins is marked and clearly visible for inspection on each container;

(d) While being accumulated on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public (note((—)): If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate). The department may also require that a sign be posted at each entrance to the accumulation area, bearing the legend, "danger—unauthorized personnel keep out," or an equivalent legend, written in English, and legible from a distance of twenty-five feet or more; and

(e) The generator complies with the requirements for facility operators contained in:

(i) WAC 173-303-330 through 173-303-360 (personnel training, preparedness and prevention, contingency plan and emergency procedures, and emergencies) except for WAC 173-303-335 (Construction quality assurance program) and WAC 173-303-355 (SARA Title III coordination); and

(ii) WAC 173-303-320 (1), (2)(a), (b), (d), and (3) (general inspection); and

(f) The generator complies with all applicable requirements under 40 C.F.R. Part 268((~~.7(a)(5)~~)).

(g) In addition, such a generator is exempt from all the requirements in WAC 173-303-610 and 173-303-620, except for WAC 173-303-610 (2) and (5).

(2) Satellite accumulation.

(a) A generator may accumulate as much as fifty-five gallons of dangerous waste or one quart of acutely hazardous waste (as defined in WAC 173-303-040) in containers at or near any point of generation where waste initially accumulates (defined as a satellite accumulation area in WAC 173-303-040). The satellite area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes to a satellite container. Satellite accumulation is allowed without a permit provided the generator:

(i) Complies with WAC 173-303-630 (2), (4), (5) (a) and (b), (8)(a), and (9) (a) and (b); and

(ii) Complies with subsection (1)(d) of this section.

(b) When fifty-five gallons of dangerous waste or one quart of acutely hazardous waste (as defined in WAC 173-303-040) is accumulated ((~~per waste stream~~)), the container(s) must be marked immediately with the accumulation date and moved within three days to a designated storage or accumulation area.

(c) On a case-by-case basis the department may require the satellite area to be managed in accordance with all or some of the requirements under subsection (1) of this section, if the nature of the wastes being accumulated, a history of spills or releases from accumulated containers, or other factors are determined by the department to be a threat or potential threat to human health or the environment.

(3) For the purposes of this section, the ninety-day accumulation period begins on the date that:

(a) The generator first generates a dangerous waste; or

(b) The quantity (or aggregated quantity) of dangerous waste being accumulated by a small quantity generator first exceeds the accumulation limit for such waste (or wastes); or

(c) Fifty-five gallons of dangerous waste or one quart of acutely hazardous waste((~~, per waste stream,~~)) (as defined in WAC 173-303-040) is accumulated in a satellite accumulation area.

(4)(a) A generator who generates 2200 pounds or greater of dangerous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the dangerous waste code F006, may accumulate F006 waste on-site for more than ninety days, but not more than one hundred eighty days without a permit or without having interim status provided that:

(i) The generator has implemented pollution prevention practices that reduce the amount of any dangerous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(ii) The F006 waste is legitimately recycled through metals recovery;

(iii) No more than 44,000 pounds of F006 waste is accumulated on-site at any one time; and

(iv) The F006 waste is managed in accordance with the following:

(A) The F006 waste is placed:

(I) In containers and the generator complies with the applicable requirements of WAC 173-303-630 (2), (3), (4), (5), (6), (8), (9), (10), and 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a); and/or

(II) In tanks and the generator complies with the applicable requirements of 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a) and 173-303-640 (2) through (10), except WAC 173-303-640 (8)(c) and the second sentence of WAC 173-303-640 (8)(a); and/or

(III) In containment buildings and the generator complies with subpart DD of 40 C.F.R. part 265 which is incorporated by reference at WAC 173-303-400(3), and has placed its independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:

• A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one hundred eighty-day limit, and documentation that the generator is complying with the procedures; or

• Documentation that the unit is emptied at least once every one hundred eighty days.

(B) In addition, such a generator is exempt from all the requirements in subparts G and H of 40 C.F.R. part 265, except for 265.111 and 265.114 which are incorporated by reference at WAC 173-303-400(3).

(C) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Dangerous Waste"; and

(E) The generator complies with the requirements for owners or operators in WAC 173-303-330, 173-303-340, and 173-303-350, and with 40 C.F.R. 268.7 (a)(5) which is incorporated by reference at WAC 173-303-140 (2)(a).

(b) A generator who generates 2200 pounds or greater of dangerous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the dangerous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than ninety days, but not more than two hundred seventy days without a permit or without having interim status if the generator complies with the requirements of (a)(i) through (iv) of this subsection.

(c) A generator accumulating F006 in accordance with (a) and (b) of this subsection who accumulates F006 waste on-site for more than one hundred eighty days (or for more than two hundred seventy days if the generator must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more), or who accumulates more than 44,000 pounds of F006 waste on-site is an operator of a storage facility and is subject to the facility and permit requirements of this chapter unless the generator has been granted an extension to the one hundred eighty-day (or two hundred seventy-day if applicable) period or an exception to the 44,000 pound accumulation limit. Such extensions and exceptions may be granted by the department if F006 waste must remain on-site for longer than one hundred eighty days (or two hundred seventy days if applicable) or if more than 44,000 pounds of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days or an exception to the accumulation limit may be granted at the discretion of the department on a case-by-case basis.

(5) ((~~**National environmental performance track.** 40 C.F.R. Part 262.34 (j), (k), and (l) are incorporated by reference, except that:~~

~~(a) 262.34 (j)(3)(i) (container management) is replaced with the first sentence of WAC 173-303-200 (1)(b)(i) and 173-303-630(7) (secondary containment); and~~

~~(b) 262.34 (j)(3)(ii) (tank standards) is replaced with WAC 173-303-200 (1)(b)(ii); and~~

~~(c) 262.34 (j)(3)(iii) (drip pads) is replaced with WAC 173-303-200 (1)(b)(iii), except for (A) and (B); and~~

~~(d) 262.34 (j)(6) is replaced with WAC 173-303-200 (1)(c) and (d); and~~

~~(e) The first sentence of 262.34 (j)(7) is replaced with WAC 173-303-200 (1)(e) and (f). The second sentence is replaced with: In addition, the generator is exempt from all the requirements of WAC 173-303-610 and 173-303-620, except for WAC 173-303-610 (2) and (5). However, where drip pads are subject to closure requirements in WAC 173-303-675(6), the applicable portions of WAC 173-303-610 and 173-303-620 continue to apply.~~

~~(6)~~)) A generator who sends a shipment of dangerous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of WAC 173-303-370(5) may accumulate the returned waste on-site in accordance with subsection (1) of this section or WAC 173-303-201, depending on the amount of dangerous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(a) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(b) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-220 Generator reporting. The generator must submit the following reports to the department by the specified due date for each report, or within the time period allowed for each report.

(1) Annual reports.

(a) A generator or any person who has obtained an EPA/state identification number pursuant to WAC 173-303-060 must submit an annual report to the department, on the Dangerous Waste Annual Report according to the instructions on the form (copies are available from the department), no later than March 1 for the preceding calendar year.

(b) In addition, any generator who stores, treats, or disposes of dangerous waste on-site must comply with the annual reporting requirements of WAC 173-303-390, Facility reporting.

Reporting for exports of hazardous waste is required on the annual report form. In addition, a separate annual report requirement is set forth at 40 C.F.R. 262.56, which is incorporated by reference at WAC 173-303-230(1).

(2) Exception reports.

(a) A generator who does not receive a copy of the manifest with the handwritten signature of the owner/operator of the designated facility within thirty-five days of the date the waste was accepted by the initial transporter must contact the transporter(s) and/or facility to determine the status of the dangerous waste shipment.

(b) A generator must submit an exception report to the department if he has not received a copy of the manifest with the handwritten signature of the owner/operator of the designated facility within forty-five days of the date the waste was accepted by the initial transporter.

(c) The exception report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) A cover letter signed by the generator or his representative explaining the efforts taken to locate the waste and the results of those efforts.

(d) The department may require a generator to submit exception reports in less than forty-five days if it finds that the generator frequently or persistently endangers public health or the environment through improper waste shipment practices.

(e) For rejected shipments of dangerous waste or container residues contained in nonempty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of WAC 173-303-370 (5)(e)), the generator must comply with the requirements of (a) through (d) of this subsection, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of (a) through (d) of this subsection for a shipment forwarding such waste to an alternate facility by a designated facility:

(i) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility; and

(ii) The thirty-five to forty-five day time frames begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

Note: The submission to the department need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

(3) Additional reports. The director, as he deems necessary under chapter 70.105 RCW, may require a generator to furnish additional reports (including engineering reports, plans, and specifications) concerning the quantities and disposition of the generator's dangerous waste.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-230 Special conditions. (1) Exporting dangerous waste.

Federal export requirements, administered by EPA, are set forth at 40 C.F.R. 262 Subparts E and H and 40 C.F.R. 261.6 (a)(3)(i)(A) and (B), and specify the procedures applicable to generators and transporters of hazardous waste (as defined in WAC 173-303-040). These requirements are incorporated by reference. Copies of any forms or reports submitted to the administrator of United States EPA as required by 40 C.F.R. 262 Subpart E must also be submitted to the department.

(2) Importing dangerous waste. When importing dangerous waste from a foreign country into Washington state, the United States importer must comply with all the requirements of this chapter for generators, including the requirements of WAC 173-303-180((~~(1)~~)), except that:

(a) In place of the generator's name, address and EPA/state identification number, the name and address of the foreign generator and the importer's name, address and EPA/state identification number must be used; and

(b) In place of the generator's signature on the certification statement, the United States importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports dangerous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (for example, states, waste handlers, and/or commercial forms printers).

(d) In the international shipments block, the importer must check the import box and enter the point of entry (city and state) into the United States.

(e) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with WAC 173-303-370(3).

(3) Empty containers. For the purposes of this chapter, a person who stores, treats, disposes, transports, or offers for transport empty containers of dangerous waste that were for his own use will not be treated as a generator or as a facility owner/operator if the containers are empty as defined in WAC 173-303-160(2), and either:

(a) The rinsate is not a dangerous waste under this chapter; or

(b) He reuses the rinsate in a manner consistent with the original product or, if he is a farmer and the rinsate contains pesticide residues, he reuses or manages the rinsate in a manner consistent with the instructions on the pesticide label, provided that when the label instructions specify disposal or burial, such disposal or burial must be on the farmer's own (including rented, leased or tenanted) property.

(4) Tank cars. A person rinsing out dangerous waste tote tanks, truck or railroad tank cars must handle the rinsate according to this chapter, and according to chapter 90.48 RCW, Water pollution control.

NEW SECTION

WAC 173-303-235 Alternative requirements for eligible academic laboratories. (1) The following definitions apply to this section:

(a) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

(b) "Central accumulation area" means an on-site dangerous waste accumulation area subject to either WAC 173-303-200 (large quantity generators) or 173-303-201 (persons who generate more than two hundred twenty pounds but less than two thousand two hundred pounds per calendar month of dangerous waste). A central accumulation area at an eligible academic entity that chooses to be subject to this section must also comply with subsection (12) of this section when accumulating unwanted material and/or dangerous waste.

(c) "College/university" means a private or public, postsecondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

(d) "Eligible academic entity" means a college or university, or a nonprofit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

(e) "Formal written affiliation agreement" for a nonprofit research institute means a written document that establishes a relationship between institutions for the purposes of research and/or education and is signed by authorized representatives from each institution. A relationship on a project-by-project or grant-by-grant basis is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the Accreditation Council for Graduate Medical Education, with an accredited medical program or medical school.

(f) "Laboratory" means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a nonproduction basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories (or diagnostic laboratories at teaching hospitals) are also considered laboratories.

(g) "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materi-

als from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (e.g., at the end of a semester or academic year) or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by subsection (9) of this section does not qualify as a laboratory clean-out.

(h) "Laboratory worker" means a person who handles chemicals and/or unwanted material in a laboratory and may include, but is not limited to, faculty, staff, postdoctoral fellows, interns, researchers, technicians, supervisors/managers, and principal investigators. A person does not need to be paid or otherwise compensated for his/her work in the laboratory to be considered a laboratory worker. Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.

(i) "Nonprofit research institute" means an organization that conducts research as its primary function and files as a nonprofit organization under the tax code of 26 U.S.C. 501(c)(3).

(j) "Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in WAC 173-303-9903 for reactivity.

(k) "Teaching hospital" means a hospital that trains students to become physicians, nurses, or other health or laboratory personnel.

(l) "Trained professional" means a person who has completed the applicable dangerous waste training requirements of WAC 173-303-200 (1)(e)(i) for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with WAC 173-303-201 (2)(c) for generators regulated under WAC 173-303-201 and small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

(m) "Unwanted material" means any chemical, mixtures of chemicals, products of experiments or other material from a laboratory that is no longer needed, wanted or usable in the laboratory and that is destined for dangerous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to WAC 173-303-016, or a dangerous waste pursuant to WAC 173-303-070(2). If an eligible academic entity elects to use another equally effective term in lieu of unwanted material, as allowed by subsection (7)(a)(i)(A) of this section, the equally effective term has the same meaning and is subject to the same requirements as unwanted material under this section.

(n) "Working container" means a small container (i.e., two gallons or less) that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

(2) Purpose and applicability.

(a) Large quantity generators and generators regulated under WAC 173-303-201. This section provides alternative requirements to the requirements in WAC 173-303-070(3) and 173-303-200(2) for the dangerous waste determination and accumulation of dangerous waste in laboratories owned by eligible academic entities that choose to be subject to this section, provided that they complete the notification requirements in subsection (4) of this section.

(b) Small quantity generators. This section provides alternative requirements to the conditional exemption in WAC 173-303-070 (8)(b) for the accumulation of dangerous waste in laboratories owned by eligible academic entities that choose to be subject to this section, provided that they complete the notification requirements of subsection (4) of this section.

(3) This section is optional.

(a) Large quantity generators and generators regulated under WAC 173-303-201: Eligible academic entities have the option of complying with this section with respect to its laboratories, as an alternative to complying with the requirements of WAC 173-303-070(3) and 173-303-200(2).

(b) Small quantity generators: Eligible academic entities have the option of complying with this section with respect to its laboratories, as an alternative to complying with the conditional exemption of WAC 173-303-070 (8)(b).

(4) How an eligible academic entity indicates it will be subject to the requirements of this section.

(a) An eligible academic entity must notify the department in writing, using the Washington State Dangerous Waste Site Identification form, that it is electing to be subject to the requirements of this section for all the laboratories owned by the eligible academic entity under the same EPA/state identification number. An eligible academic entity that is a small quantity generator must notify that it is electing to be subject to the requirements of this section for all the laboratories owned by the eligible academic entities that are onsite. An eligible academic entity must submit a separate notification (Washington State Dangerous Waste Site Identification form) for each EPA/state identification number that is electing to be subject to the requirements of this section, and must submit the Washington State Dangerous Waste Site Identification form before it begins operating under this section.

(b) When submitting the Washington State Dangerous Waste Site Identification form, the eligible academic entity must completely fill out the form according to the form instructions including, but not limited to, the following fields:

(i) Reason for submittal;

(ii) Site EPA/state identification number;

(iii) Site name;

(iv) Site location information;

(v) Site land type;

(vi) North American Industry Classification System (NAICS) code(s) for the site;

(vii) Site mailing address;

(viii) Site contact person;

(ix) Operator and legal owner of the site;

(x) Type of regulated waste activity;

(xi) Certification.

(c) An eligible academic entity must keep a copy of the notification on file at the eligible academic entity for as long as its laboratories are subject to this section.

(d) A teaching hospital that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the teaching

hospital for as long as its laboratories are subject to this section.

(e) A nonprofit research institute that is not owned by a college or university must keep a copy of its formal written affiliation agreement with a college or university on file at the nonprofit research institute for as long as its laboratories are subject to this section.

(5) How an eligible academic entity indicates it will withdraw from the requirements of this section.

(a) An eligible academic entity must notify in writing, using the Washington State Dangerous Waste Site Identification form, that it is electing to no longer be subject to the requirements of this section for all the laboratories owned by the eligible academic entity under the same EPA/state identification number and that it will comply with the requirements of WAC 173-303-070(3) and 173-303-200(2) for large quantity generators and for generators regulated under WAC 173-303-201. An eligible academic entity that is a small quantity generator must also notify that it is withdrawing from the requirements of this section for all the laboratories owned by the eligible academic entity that are under the same EPA/state identification number and that it will comply with the conditional exemption in WAC 173-303-070(8). An eligible academic entity must submit a separate notification (Washington State Dangerous Waste Site Identification form) for each EPA/state identification number that is withdrawing from the requirements of this section and must submit the Washington State Dangerous Waste Site Identification form before it begins operating under the requirements of WAC 173-303-070(3) and 173-303-200(2) for large quantity generators and for generators regulated under WAC 173-303-201 or 173-303-070(8) for small quantity generators.

(b) When submitting the Washington State Dangerous Waste Site Identification form, the eligible academic entity must completely fill out the form according to the form instructions including, but not limited to, the following fields:

(i) Reason for submittal;

(ii) Site EPA/state identification number;

(iii) Site name;

(iv) Site location information;

(v) Site land type;

(vi) North American Industry Classification System (NAICS) code(s) for the site;

(vii) Site mailing address;

(viii) Site contact person;

(ix) Operator and legal owner of the site;

(x) Type of regulated waste activity;

(xi) Certification.

(c) An eligible academic entity must keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

(6) Summary of the requirements of this section. An eligible academic entity that chooses to be subject to this section is not required to have interim status or a final facility Part B permit for the accumulation of unwanted material and dangerous waste in its laboratories, provided the laboratories comply with the provisions of this section and the eligible academic entity has a laboratory management plan (LMP) in accordance with subsection (15) of this section that describes how the laboratories owned by the eligible academic entity will comply with the requirements of this section.

(7) Labeling and management standards for containers of unwanted material in the laboratory. An eligible academic entity must manage containers of unwanted material while in the laboratory in accordance with the requirements in this section.

(a) Labeling: Label unwanted material as follows:

(i) The following information must be affixed or attached to the container:

(A) The words "unwanted material" or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the laboratory management plan;

(B) The date that the unwanted material first began accumulating in the container; and

(C) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

(I) The name of the chemical(s);

(II) The type or class of chemical, such as organic solvents or halogenated organic solvents;

(III) The risk(s) associated with the unwanted material.

(ii) The following information may be affixed or attached to the container, but must at a minimum be associated with the container.

This includes information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and dangerous waste and to assign the proper dangerous waste code(s), pursuant to WAC 173-303-070(3). Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or dangerous waste include, but are not limited to:

(A) The name and/or description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction;

(B) Whether the unwanted material has been used or is unused;

(C) A description of the manner in which the chemical was produced or processed, if applicable.

(b) Management of containers in the laboratory: An eligible academic entity must properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management must include the following:

(i) Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired;

(ii) Containers are compatible with their contents to avoid reactions between the contents and the container and are made of, or lined with, material that is compatible with the unwanted material so that the container's integrity is not impaired; and

(iii) Containers must be kept closed at all times, except:

(A) When adding, removing or bulking unwanted material;

(B) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container must either be closed or the contents emptied into a separate container that is then closed; or

(C) When venting of a container is necessary.

(I) For the proper operation of laboratory equipment, such as with in-line collection of unwanted materials from high performance liquid chromatographs; or

(II) To prevent dangerous situations, such as build-up of extreme pressure.

(8) Training. An eligible academic entity must provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

(a) Training for laboratory workers and students must be commensurate with their duties so they understand the requirements in this section and can implement them.

(b) An eligible academic entity can provide training for laboratory workers and students in a variety of ways including, but not limited to:

(i) Instruction by the professor or laboratory manager before or during an experiment;

(ii) Formal classroom training;

(iii) Electronic/written training;

(iv) On-the-job training; or

(v) Written or oral exams.

(c) An eligible academic entity that is a large quantity generator must maintain documentation for the durations specified in WAC 173-303-330(3) demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

(i) Sign-in/attendance sheet(s) for training session(s);

(ii) Syllabus for training session;

(iii) Certificate of training completion; or

(iv) Test results.

(d) A trained professional must:

(i) Accompany the transfer of unwanted material and dangerous waste when the unwanted material and dangerous waste is removed from the laboratory; and

(ii) Make the dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material.

(9) Removing containers of unwanted material from the laboratory.

(a) Removing containers of unwanted material on a regular schedule. An eligible academic entity must either:

(i) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed six months; or

(ii) Remove containers of unwanted material from each laboratory within six months of each container's accumulation start date.

(b) The eligible academic entity must specify in Part I of its laboratory management plan whether it will comply with (a)(i) or (ii) of this subsection for the regular removal of unwanted material from its laboratories.

(c) The eligible academic entity must specify in Part II of its laboratory management plan how it will comply with (a)(i) or (ii) of this subsection and develop a schedule for regular removals of unwanted material from its laboratories.

(d) Removing containers of unwanted material when volumes are exceeded.

(i) If a laboratory accumulates a total volume of unwanted material (including reactive acutely hazardous unwanted material) in excess of fifty-five gallons before the regularly scheduled removal, the eligible academic entity must ensure that all containers of unwanted material in the laboratory (including reactive acutely hazardous unwanted material):

(A) Are marked on the label that is affixed or attached to the container with the date that fifty-five gallons is exceeded; and

(B) Are removed from the laboratory within ten calendar days of the date that fifty-five gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.

(ii) If a laboratory accumulates more than one quart (or 2.2 pounds) of reactive acutely hazardous unwanted material before the regularly scheduled removal, the eligible academic entity must ensure that all containers of reactive acutely hazardous unwanted material:

(A) Are marked on the label that is affixed or attached to the container with the date that one quart (or 2.2 pounds) is exceeded; and

(B) Are removed from the laboratory within ten calendar days of the date that one quart (or 2.2 pounds) was exceeded, or at the next regularly scheduled removal, whichever comes first.

(10) Where and when to make the dangerous waste determination and where to send containers of unwanted material upon removal from the laboratory.

(a) Large quantity generators and generators regulated under WAC 173-303-201 - An eligible academic entity must ensure that a trained professional makes a dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material in any of the following areas:

(i) In the laboratory before the unwanted material is removed from the laboratory, in accordance with subsection (11) of this section;

(ii) Within four calendar days of arriving at an on-site central accumulation area, in accordance with subsection (12) of this section; and

(iii) Within four calendar days of arriving at an on-site interim status or permitted treatment, storage or disposal facility, in accordance with subsection (13) of this section.

(b) Small quantity generators - An eligible academic entity must ensure that a trained professional makes a dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with subsection (11) of this section.

(11) Making the dangerous waste determination in the laboratory before the unwanted material is removed from the laboratory. If an eligible academic entity makes the dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material in the laboratory, it must comply with the following:

(a) A trained professional must make the dangerous waste determination, pursuant to WAC 173-303-070(3), before the unwanted material is removed from the laboratory.

(b) If an unwanted material is a dangerous waste, the eligible academic entity must:

(i) Write the words "hazardous waste" or "dangerous wastes" on the container label that is affixed or attached to the container, before the dangerous waste may be removed from the laboratory; and

(ii) Write the appropriate dangerous waste code(s) on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the dangerous waste is transported off-site; and

(iii) Count the dangerous waste toward the eligible academic entity's generator status, pursuant to WAC 173-303-070 (7)(c) and (d), in the calendar month that the dangerous waste determination was made.

(c) A trained professional must accompany all dangerous waste that is transferred from the laboratory(ies) to an on-site central accumulation area or on-site interim status or permitted treatment, storage or disposal facility.

(d) When dangerous hazardous waste is removed from the laboratory:

(i) Large quantity generators and generators regulated under WAC 173-303-201 must ensure it is taken directly from the laboratory(ies) to an on-site central accumulation area, or on-site interim status or permitted treatment, storage or disposal facility, or transported off-site.

(ii) Small quantity generators must ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in WAC 173-303-070 (8)(b) for dangerous waste.

(e) An unwanted material that is a dangerous waste is subject to all applicable dangerous waste regulations when it is removed from the laboratory.

(12) Making the dangerous waste determination at an on-site central accumulation area. If an eligible academic entity makes the dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material at an on-site central accumulation area, it must comply with the following:

(a) A trained professional must accompany all unwanted material that is transferred from the laboratory(ies) to an on-site central accumulation area.

(b) All unwanted material removed from the laboratory(ies) must be taken directly from the laboratory(ies) to the on-site central accumulation area.

(c) The unwanted material becomes subject to the generator accumulation regulations of WAC 173-303-200 (1)(b)(i) for large quantity generators or WAC 173-303-201 and 173-303-202 for generators regulated under WAC 173-303-201 as soon as it arrives in the central accumulation area.

(d) A trained professional must determine, pursuant to WAC 173-303-070(3), if the unwanted material is a dangerous waste within four calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) If the unwanted material is a dangerous waste, the eligible academic entity must:

(i) Write the words "hazardous waste" or "dangerous waste" on the container label that is affixed or attached to the container, within four calendar days of arriving at the on-site central accumulation area and before the dangerous waste may be removed from the on-site central accumulation area;

(ii) Write the appropriate dangerous waste code(s) on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the dangerous waste may be treated or disposed of on-site or transported off-site;

(iii) Count the dangerous waste toward the eligible academic entity's generator status, pursuant to WAC 173-303-070 (7)(c) and (d) in the calendar month that the dangerous waste determination was made; and

(iv) Manage the dangerous waste according to all applicable dangerous waste regulations.

(13) Making the dangerous waste determination at an on-site interim status or permitted treatment, storage or disposal facility.

If an eligible academic entity makes the dangerous waste determination, pursuant to WAC 173-303-070(3), for unwanted material at an on-site interim status or permitted treatment, storage or disposal facility, it must comply with the following:

(a) A trained professional must accompany all unwanted material that is transferred from the laboratory(ies) to an on-site interim status or permitted treatment, storage or disposal facility.

(b) All unwanted material removed from the laboratory(ies) must be taken directly from the laboratory(ies) to the on-site interim status or permitted treatment, storage or disposal facility.

(c) The unwanted material becomes subject to the terms of the eligible academic entity's dangerous waste permit or interim status as soon as it arrives in the on-site treatment, storage or disposal facility.

(d) A trained professional must determine, pursuant to WAC 173-303-070(3), if the unwanted material is a dangerous waste within four calendar days of the unwanted materials' arrival at an on-site interim status or permitted treatment, storage or disposal facility.

(e) If the unwanted material is a dangerous waste, the eligible academic entity must:

(i) Write the words "hazardous waste" or "dangerous waste" on the container label that is affixed or attached to the container within four calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the dangerous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility; and

(ii) Write the appropriate dangerous waste code(s) on the container label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) before the dangerous waste may be treated or disposed on-site or transported off-site; and

(iii) Count the dangerous waste toward the eligible academic entity's generator status, pursuant to WAC 173-303-070 (7)(c) and (d) in the calendar month that the dangerous waste determination was made; and

(iv) Manage the dangerous waste according to all applicable dangerous waste regulations.

(14) Laboratory clean-outs.

(a) One time per twelve-month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of this section, except that:

(i) If the volume of unwanted material in the laboratory exceeds fifty-five gallons (or one quart of reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within ten calendar days of exceeding fifty-five gallons (or one quart of reactive acutely hazardous unwanted material), as required by subsection (9) of this section. Instead, the eligible academic entity must remove all unwanted materials from the laboratory within thirty calendar days from the start of the laboratory clean-out; and

(ii) For the purposes of on-site accumulation, an eligible academic entity is not required to count a dangerous waste that is an unused commercial chemical product (listed in WAC 173-303-9903, or exhibiting one or more characteristics in WAC 173-303-090 or exhibits a state criteria in WAC 173-303-100) generated solely during the laboratory clean-out toward its dangerous waste generator status, pursuant to WAC 173-303-070 (7)(c) and (d). An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences must be counted toward dangerous waste generator status, pursuant to WAC 173-303-070 (7)(c) and (d), if it is determined to be dangerous waste;

(iii) For the purposes of off-site management, an eligible academic entity must count all its dangerous waste, regardless of whether the dangerous waste was counted toward generator status under (a)(ii) of this subsection, and if it generates more than 2.2 pounds/month of acute hazardous waste, more than 2.2 pounds of WT01 EHW or more than two hundred twenty pounds/month of dangerous waste, the dangerous waste is subject to all applicable dangerous waste regulations when it is transported off-site; and

(iv) An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of dangerous waste generated during the laboratory clean-out. The eligible academic entity must maintain the records for a period of five years from the date the clean-out ends; and

(b) For all other laboratory clean-outs conducted during the same twelve-month period, an eligible academic entity is subject to all the applicable requirements of this section including, but not limited to:

(i) The requirement to remove all unwanted materials from the laboratory within ten calendar days of exceeding fifty-five gallons (or one quart of reactive acutely hazardous unwanted material), as required by subsection (9) of this section; and

(ii) The requirement to count all dangerous waste, including unused dangerous waste, generated during the laboratory clean-out toward its dangerous waste generator status, pursuant to WAC 173-303-070 (7)(c) and (d).

(15) Laboratory management plan. An eligible academic entity must develop and retain a written laboratory management plan, or revise an existing written plan. The laboratory management plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with this section. An eligible academic entity may write one laboratory management plan for all the laboratories owned by the eligible academic entity that have opted into this section, even if the laboratories are located at sites with different EPA/state identification numbers. The laboratory management plan must contain two parts with a total of nine elements identified in (a) and (b) of this subsection. In Part I of its laboratory management plan, an eligible academic entity must describe its procedures for each of the elements listed in (a) of this subsection. An eligible academic entity must implement and comply with the specific provisions that it develops to address the elements in Part I of the laboratory management plan. In Part II of its laboratory management plan, an eligible academic entity must describe its best management practices for each of the elements listed in (b) of this subsection. The specific actions taken by an eligible academic entity to implement each element in Part II of its laboratory management plan may vary from the procedures described in the eligible academic entity's laboratory management plan, without constituting a violation of this section. An eligible academic entity may include additional elements and best management practices in Part II of its laboratory management plan if it chooses.

(a) The eligible academic entity must implement and comply with the specific provisions of Part I of its laboratory management plan. In Part I of its laboratory management plan, an eligible academic entity must:

(i) Describe procedures for container labeling in accordance with subsection (7)(a) of this section, as follows:

(A) Identifying whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of "unwanted material" and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as "unwanted material."

(B) Identifying the manner in which information that is "associated with the container" will be imparted.

(ii) Identify whether the eligible academic entity will comply with subsection (9)(a)(i) or (ii) of this section for regularly scheduled removals of unwanted material from the laboratory.

(b) In Part II of its laboratory management plan, an eligible academic entity must:

(i) Describe its intended best practices for container labeling and management (see the required standards in subsection (7) of this section).

(ii) Describe its intended best practices for providing training for laboratory workers and students commensurate with their duties (see the required standards in subsection (8)(a) of this section).

(iii) Describe its intended best practices for providing training to ensure safe on-site transfers of unwanted material and hazardous waste by trained professionals (see the required standards in subsection (8)(d)(i) of this section).

(iv) Describe its intended best practices for removing unwanted material from the laboratory, including:

(A) For regularly scheduled removals - Develop a regular schedule for identifying and removing unwanted materials from its laboratories (see the required standards in subsection (9)(a)(i) and (ii) of this section).

(B) For removals when maximum volumes are exceeded:

(I) Describe its intended best practices for removing unwanted materials from the laboratory within ten calendar days when unwanted materials have exceeded their maximum volumes (see the required standards in subsection (9)(d) of this section).

(II) Describe its intended best practices for communicating that unwanted materials have exceeded their maximum volumes.

(v) Describe its intended best practices for making dangerous waste determinations, including specifying the duties of the individuals involved in the process (see the required standards in WAC 173-303-070 (7) and subsections (10) through (13) of this section).

(vi) Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in subsection (14) of this section, including:

(A) Procedures for conducting laboratory clean-outs (see the required standards in subsection (14)(a)(i) through (iii) of this section); and

(B) Procedures for documenting laboratory clean-outs (see the required standards in subsection (14)(a)(iv) of this section).

(vii) Describe its intended best practices for emergency prevention, including:

(A) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory;

(B) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they exceed their expiration date and/or as they degrade;

(C) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date and/or as they degrade; and

(D) Procedures for the timely designation of unknown chemicals.

(c) An eligible academic entity must make its laboratory management plan available to laboratory workers, students, or any others at the eligible academic entity who request it.

(d) An eligible academic entity must review and revise its laboratory management plan, as needed.

(16) Unwanted material that is not solid or dangerous waste.

(a) If an unwanted material does not meet the definition of solid waste in WAC 173-303-016, it is no longer subject to this section or to the dangerous waste regulations.

(b) If an unwanted material does not meet the definition of dangerous waste in WAC 173-303-070(2), it is no longer subject to this subsection or to the dangerous waste regulations, but must be managed in compliance with any other applicable regulations and/or conditions.

(17) Nonlaboratory dangerous waste generated at an eligible academic entity. An eligible academic entity that generates dangerous waste outside of a laboratory is not eligible to manage that dangerous waste under this section; and

(a) Remains subject to the generator requirements of WAC 173-303-070(3) and 173-303-200(d) for large quantity generators and generators regulated under WAC 173-303-201 and all other applicable generator requirements of chapter 173-303 WAC, with respect to that dangerous waste; or

(b) Remains subject to the conditional exemption of WAC 173-303-070(8) for small quantity generators, with respect to that dangerous waste.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-240 Requirements for transporters of dangerous waste. (1) Applicability. This section establishes standards that apply to persons transporting dangerous waste and transporters who own or lease and operate a transfer facility.

(2) A transporter must have a current EPA/state ID#. Transporters must comply with the notification and identification requirements of WAC 173-303-060. A transporter who has previously obtained an EPA/state ID# in another state is not required to obtain a new ID# when operating in Washington state. Transporters who must comply with the generator requirements as a result of a spill at a transfer facility or during transport must obtain a separate generator EPA/state ID# for the spill.

(3) Any person who transports a dangerous waste must comply with the requirements of WAC 173-303-240 through 173-303-270, when the dangerous waste must be manifested in accordance with WAC 173-303-180.

(4) Any person who transports a dangerous waste must also comply with the requirements of WAC 173-303-170 through 173-303-230 for generators, if he:

(a) Transports dangerous waste into the state from another country; or

(b) Mixes dangerous waste of different United States DOT shipping descriptions by mixing them into a single container.

(5) These requirements do not apply to on-site (as defined in WAC 173-303-040) transportation of dangerous waste by generators, or by owners or operators of permitted TSD facilities.

(6) Transfer facility. The requirements of this subsection apply to a transporter or marine terminal operator who owns or leases and operates a transfer facility. Transfer of a shipment of dangerous waste from one transport vehicle to another transport vehicle, from one container to another container, and from one transporter to another transporter and any ten-day storage activities may only occur at a transfer facility that is registered with the department. A transporter may store manifested shipments of dangerous waste in containers meeting the requirements of WAC 173-303-190 (1), (2), (3), and (5) for ten days or less at a transfer facility((~~:~~)), provided((~~,~~)) that he or she complies with the following:

(a) A transporter who owns or leases and operates a transfer facility within Washington that is related to their dangerous waste transportation activities must register with the department. Washington registration is not required for a transporter whose activities are limited to passing through Washington with shipments of dangerous waste or picking up

shipments from Washington generators or delivering shipments to designated treatment, storage or disposal facilities. In order to obtain registration, a transporter must complete a Dangerous Waste Site Identification Form according to the instructions and submit it to the department;

(b) Maintains ten-day storage records that include the dates that a manifested shipment of dangerous waste entered the facility and departed the facility. The ten-day records must be retained for a period of three years from the date the shipment was transported from the transfer facility;

(c) WAC 173-303-310 (1) and (2), Security. Instead of WAC 173-303-310(2) for an enclosed or an open flatbed transport vehicle parked at a transfer facility that has no twenty-four-hour surveillance system or natural or artificial barrier, the transport vehicle must meet the placarding requirements of 49 C.F.R. Part 172 and be secured (that is, locked) or the shipment must be transferred to a secured area of the facility to prevent unknowing entry and minimize unauthorized entry;

(d) WAC 173-303-320, General inspection. Instead of keeping inspection records for a period of five years from the date of inspection in WAC 173-303-320 (2)(d), inspection records must be kept at the transfer facility for one year from the date of inspection;

(e) WAC 173-303-330, Personnel training;

(f) WAC 173-303-340, Preparedness and prevention except WAC 173-303-340(3), Aisle space;

(g) WAC 173-303-350, Contingency plan and emergency procedures;

(h) WAC 173-303-360, Emergencies;

(i) WAC 173-303-630 (2), (3), (4), (5)(a) and (b), (8), (9)(a) and (b) and (10), Use and management of containers;

(j) WAC 173-303-630(7) in areas where waste is transferred from container to container and in areas where containers are stored outside in the weather. The secondary containment system must be completed by October 15, 2001. The department may, on a case-by-case basis, grant an extension to the required completion date if the transporter has a design and has entered into binding financial or other agreements for construction prior to October 15, 2001;

(k) The requirements of WAC 173-303-630(7) may be required in areas other than those described in WAC 173-303-240 (6)(j) if the department determines that there is a potential threat to public health and the environment due to the nature of the wastes being stored or due to a history of spills or releases from waste stored in containers.

(7) Transporter exemptions. A transporter will not be required to comply with the following:

(a) The requirements of WAC 173-303-240(6) in the event of an emergency or other unforeseen event beyond the reasonable control of the transporter during transit over public highway, rail track or water route and the waste shipment is loaded, reloaded or transferred to another transport vehicle or container to facilitate transportation;

(b) The requirements of WAC 173-303-240 (6)(i) and (j) for dangerous waste that is stored in a secured, enclosed transport vehicle, intermodal container or portable tank during the time it is parked at a transfer facility;

(c) The requirements of WAC 173-303-240 (6)(i) and (j) for a transfer facility that is located at a pier, dock or barge unloading facility and associated with the loading and unloading of water vessels: Provided, That the dangerous waste shipment is stored within a transport unit, as defined under 49 C.F.R. Part 176, and accepted by the approval authority of the United States Coast Guard;

(d) The requirements of WAC 173-303-240 (6)(j) for dangerous waste that is stored within a building: Provided, That the floor is compatible with and sufficiently impervious to the waste stored and is designed and operated so that any release or spill will be captured within the building and will prevent any waste from migrating to the soil, groundwater or surface water.

(8) A transporter who accumulates or stores manifested shipments of dangerous waste for more than ten days at a transfer facility is subject to the dangerous waste management facility general requirements and permit requirements of this chapter with respect to the storage of those wastes.

(9) Reference to WAC 173-303-200 in 173-303-240(4) does not constitute authority for storage in excess of ten days for a transporter who owns or leases and operates a transfer facility.

(10) The regulations in WAC 173-303-250 through 173-303-260 do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with WAC 173-303-400 (2)(c)(xiii)(A)(IV) or (xiii)(D) or WAC 173-303-600 (3)(p)(i)(D) or (3)(p)(iv), and WAC 173-303-800 (7)(c)(i)(C) or (D).

(11) A transporter of hazardous waste subject to the manifesting requirements of WAC 173-303-180 or to the universal waste management standards of WAC 173-303-573, that is being imported from or exported to any of the countries listed in 40 C.F.R. 262.58 (a)(1) for purposes of recovery is subject to this section and to all other relevant requirements of 40 C.F.R. subpart H part 262, including, but not limited to, 40 C.F.R. 262.84 for ((~~tracking~~)) movement documents. 40 C.F.R. subpart H is incorporated by reference at WAC 173-303-230(1).

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-290 Required notices. (1)(a) The facility owner or operator who is receiving dangerous waste from sources outside the United States must notify the appropriate regional office of the department annually, and in writing at least four weeks in advance of the date the first shipment of waste is expected to arrive at the facility. The notification must be in writing, signed by the importer and operator of the receiving facility, and include the following information:

(i) Name, street address, mailing address, and telephone number of the exporter.

(ii) Name, street address, mailing address, telephone number, and EPA/state ID number of the importer and receiving facility.

(iii) A description of the dangerous waste and the EPA/state waste numbers, U.S. DOT proper shipping name, hazard class and ID number (UN\NA) for each hazardous waste as identified in 49 C.F.R. Parts 171 through 177.

(iv) The estimated frequency or rate at which such waste is to be imported and the period of time over which such waste is to be imported.

(v) The estimated total quantity of the dangerous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22).

(vi) A description of the manner by which the dangerous waste will be treated, stored, disposed of, or recycled by the receiving facility.

Upon request by the department, the importer and/or receiving facility must furnish to the department any additional information regarding the importation of dangerous waste.

(b) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 C.F.R. part 262, subpart H (incorporated by reference at WAC 173-303-230(1)) must provide a copy of the ((~~tracking~~)) movement document bearing all required signatures to the ((~~notifier,~~)) foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of ((~~Compliance, Enforcement Planning, Targeting and Data Division (2222A)~~)) Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed ((~~tracking~~)) movement document must be maintained at the facility for at least three years. In addition, such owner or operator shall, as soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

(2) Before transferring ownership or operation of a facility during its active life or post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this chapter 173-303 WAC.

(3) The owner or operator of a facility that receives dangerous waste from an offsite source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record required under WAC 173-303-380(1).

AMENDATORY SECTION (Amending WSR 95-22-008, filed 10/19/95, effective 11/19/95)

WAC 173-303-330 Personnel training. (1) Training program. The facility owner or operator must provide a program of classroom instruction or on-the-job training for facility personnel. This program must teach personnel to perform their duties in a way that ensures the facility's compliance with this chapter 173-303 WAC, must teach facility personnel dangerous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed, must ensure that facility personnel are able to respond effectively to emergencies, and must include those elements set forth in the training plan required in subsection (2) of this section. In addition:

(a) The training program must be directed by a person knowledgeable in dangerous waste management procedures, and must include training relevant to the positions in which the facility personnel are employed;

(b) Facility personnel must participate in an annual review of the training provided in the training program;

(c) This program must be successfully completed by the facility personnel:

(i) Within six months after these regulations become effective; or

(ii) Within six months after their employment at or assignment to the facility, or to a new position at the facility, whichever is later.

(d) Employees hired after the effective date of these regulations must be supervised until they complete the training program; and

((~~(d)~~)) (e) At a minimum, the training program must familiarize facility personnel with emergency equipment and systems, and emergency procedures. The program must include other parameters as set forth by the department, but at a minimum must include, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(ii) Key parameters for automatic waste feed cut-off systems;

(iii) Communications or alarm systems;

(iv) Response to fires or explosions;

(v) Response to ground-water contamination incidents; and

(vi) Shutdown of operations.

(2) Written training plan. The owner or operator must develop a written training plan which must be kept at the facility and which must include the following documents and records:

(a) For each position related to dangerous waste management at the facility, the job title, the job description, and the name of the employee filling each job. The job description must include the requisite skills, education, other qualifications, and duties for each position;

(b) A written description of the type and amount of both introductory and continuing training required for each position; and

(c) Records documenting that facility personnel have received and completed the training required by this section. The department may require, on a case-by-case basis, that training records include employee initials or signature to verify that training was received.

(3) Training records. Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

AMENDATORY SECTION (Amending WSR 95-22-008, filed 10/19/95, effective 11/19/95)

WAC 173-303-335 Construction quality assurance program. (1) CQA program.

(a) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with WAC 173-303-650 (2)(j) and (k), 173-303-660 (2)(j) and (k), and 173-303-665 (2)(h) and (j). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(b) The CQA program must address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes (flexible membrane liners);

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(2) Written CQA plan. The owner or operator of units subject to the CQA program under (a) of this subsection must develop and implement a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include:

(a) Identification of applicable units, and a description of how they will be constructed.

(b) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(c) A description of inspection and sampling activities for all unit components identified in subsection (1)(b) of this section, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under WAC 173-303-380.

(3) Contents of program.

(a) The CQA program must include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in subsection (1)(b) of this section;

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under WAC 173-303-650, 173-303-660, and 173-303-665.

(b) The CQA program will include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of WAC 173-303-650 (2)(j)(i)(B), 173-303-660 (2)(j)(i)(B), and 173-303-665 (2)(h)(i)(B) in the field. Compliance with the hydraulic conductivity requirements must be verified by using in situ testing on the constructed test fill. The department may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of WAC 173-303-650 (2)(j)(i)(B), 173-303-660 (2)(j)(i)(B), and 173-303-665 (2)(h)(i)(B) in the field.

(4) Certification. Waste will not be received in a unit subject to this section until the owner or operator has submitted to the department by certified mail ((~~or~~)), hand delivery or other means that establish proof of receipt (including applicable electronic means), a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of WAC 173-303-650 (2)(j) or (k), 173-303-660 (2)(j) or (k), or 173-303-665 (2)(h) or (j); and the procedure in WAC 173-303-810 (14)(a) has been completed. Documentation supporting the CQA officer's certification must be furnished to the department upon request.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-350 Contingency plan and emergency procedures. (1) Purpose. The purpose of this section and WAC 173-303-360 is to lessen the potential impact on the public health and the environment in the event of an emergency circumstance, including a fire, explosion, or unplanned sudden or nonsudden release of dangerous waste or dangerous waste constituents to air, soil, surface water, or groundwater by a facility. A contingency plan must be developed to lessen the potential impacts of such emergency circumstances, and the plan must be implemented immediately in such emergency circumstances.

(2) Contingency plan. Each owner or operator must have a contingency plan at his facility for use in emergencies or sudden or nonsudden releases which threaten human health and the environment. If the owner or operator has already prepared a spill prevention control and countermeasures (SPCC) plan in accordance with Part 112 of Title 40 C.F.R. ((~~or Part 1510 of chapter V~~)), or some other emergency or contingency plan, they need only amend that plan to incorporate dangerous waste management provisions that are sufficient to comply with the requirements of this section and WAC 173-303-360. The owner or operator may develop one contingency plan that meets all regulatory requirements. Ecology recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan") as found at www.nrt.org. When modifications are made to nondangerous waste (non-Hazardous Waste Management Act or nondangerous waste regulation) provisions in an integrated contingency plan, the changes do not trigger the need for a dangerous waste permit modification.

(3) The contingency plan must contain the following:

(a) A description of the actions which facility personnel must take to comply with this section and WAC 173-303-360;

(b) A description of the actions which will be taken in the event that a dangerous waste shipment, which is damaged or otherwise presents a hazard to the public health and the environment, arrives at the facility, and is not acceptable to the owner or operator, but cannot be transported, pursuant to the requirements of WAC 173-303-370 (6), Manifest system, reasons for not accepting dangerous waste shipments;

(c) A description of the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services as required in WAC 173-303-340(4);

(d) A current list of names, addresses, and phone numbers (office and home) of all persons qualified to act as the emergency coordinator required under WAC 173-303-360(1). Where more than one person is listed, one must be named as primary emergency coordinator, and others must be listed in the order in which they will assume responsibility as alternates. For new facilities only, this list may be provided to the department at the time of facility certification (as required by WAC 173-303-810 (14)(a)(i)), rather than as part of the permit application;

(e) A list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems, and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities; and

(f) An evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe the signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes.

(4) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(a) Maintained at the facility; and

(b) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

(5) Amendments. The owner or operator must review and immediately amend the contingency plan, if necessary, whenever:

(a) Applicable regulations or the facility permit are revised;

(b) The plan fails in an emergency;

(c) The facility changes (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of dangerous waste or dangerous waste constituents, or in a way that changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-370 Manifest system. (1) Applicability. The requirements of this section apply to owners and operators of permitted treatment, storage, and disposal facilities and of dangerous waste recycling facilities operating under the requirements of this chapter who receive dangerous waste from off-site sources. If a facility receives dangerous waste accompanied by a manifest, the owner, operator, or his/her agent must sign and date the manifest as indicated in subsection (2) of this section to certify that the dangerous waste covered by the manifest was received, that the dangerous waste was received except as noted in the discrepancy space of the manifest, or that the dangerous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives dangerous waste shipment accompanied by a manifest, the owner, operator, or their agent, must:

(a) Sign and date, by hand, each copy of the manifest;

(b) Note any discrepancies (as defined in subsection (5)(a) of this section) on each copy of the manifest;

(c) Immediately give the transporter at least one copy of the manifest;

(d) Within thirty days of delivery, send a copy of the manifest to the generator; and

(e) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division((, ~~OFA/OECA~~)) (2254A), U.S. Environmental Protection Agency, ((~~Ariel Rios Building,~~)) 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

(4) If a facility receives, from a rail or water (bulk shipment) transporter, dangerous waste which is accompanied by a manifest or shipping paper containing all the information required on the manifest (excluding the EPA/state identification numbers, generator's certification, and signatures), the owner or operator, or his or her agent, must:

(a) Sign and date each copy of the manifest or shipping paper to certify that the dangerous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies in the manifest or shipping paper, as described in subsection (5) of this section, on each copy of the manifest or shipping paper;

(c) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper;

(d) Within thirty days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within thirty days after delivery) to the generator; and

(e) Retain at the facility a copy of each shipping paper and manifest for at least three years from the date of delivery.

(5) Manifest discrepancies.

(a) Manifest discrepancies are:

(i) Significant differences (as defined in (b) of this subsection) between the quantity or type of dangerous waste designated on the manifest or shipping paper, and the quantity and type of dangerous waste a facility actually receives;

(ii) Rejected wastes, which may be a full or partial shipment of dangerous waste that the TSDF cannot accept; or

(iii) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in WAC 173-303-160(2).

(b) Significant differences in quantity are: For bulk waste, variations greater than ten percent in weight (for example, tanker trucks, railroad tank cars, etc.); for batch waste, any variations in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter. If the discrepancy is not resolved within fifteen days after receiving the waste, the owner or operator must immediately submit to the department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(i) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in WAC 173-303-160(2), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within sixty days of the rejection or the container residue identification.

(ii) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under (e) or (f) of this subsection.

(e) Except as provided in (e)(vii) of this section, for full or partial load rejections and residues that are to be sent offsite to an alternate facility, the facility is required to prepare a new manifest in accordance with WAC 173-303-180 and the following instructions:

(i) Write the generator's U.S. EPA/state ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(ii) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(iii) Copy the manifest tracking number found in Item 4 of the old manifest to the special handling and additional information block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(iv) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the discrepancy block of the old manifest (Item 18a).

(v) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(vi) Sign the generator's/offeror's certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(vii) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the alternate facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with (e)(i), (ii), (iii), (iv), (v), and (vi) of this subsection.

(f) Except as provided in (f)(vii) of this subsection, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with WAC 173-303-180 and the following instructions:

(i) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the ((~~generator's~~)) facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the ((~~generator's~~)) facility's site address, then write the ((~~generator's~~)) facility's site address in the designated space for Item 5 of the new manifest.

(ii) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(iii) Copy the manifest tracking number found in Item 4 of the old manifest to the special handling and additional information block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(iv) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the discrepancy block of the old manifest (Item 18a).

(v) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(vi) Sign the generator's/offeror's certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(vii) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the

generator's information in the alternate facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with (f)(i), (ii), (iii), (iv), (v), ((~~and~~)) (vi), and (viii) of this subsection.

(viii) For full or partial load rejections and container residues contained in nonempty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in WAC 173-303-220(2).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in WAC 173-303-160(2) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within thirty days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

(6) Reasons for not accepting dangerous waste shipments. The owner or operator may decide that a dangerous shipment should not be accepted by his facility.

(a) The following are acceptable reasons for denying receipt of a dangerous waste shipment:

(i) The facility is not capable of properly managing the type(s) of dangerous waste in the shipment;

(ii) There is a significant discrepancy (as described in subsection (5) of this section) between the shipment and the wastes listed on the manifest or shipping paper; or

(iii) The shipment has arrived in a condition which the owner or operator believes would present an unreasonable hazard to facility operations, or to facility personnel handling the dangerous waste(s) (including, but not limited to, leaking or damaged containers, and improperly labeled containers).

(b) The owner or operator may send the shipment on to the alternate facility designated on the manifest or shipping paper, or contact the generator to identify another facility capable of handling the waste and provide for its delivery to that other facility, unless, the containers are damaged to such an extent, or the dangerous waste is in such a condition as to present a hazard to the public health or the environment in the process of further transportation.

(c) If the dangerous waste shipment cannot leave the facility for the reasons described in (b) of this subsection, then the owner or operator must take those actions described in the contingency plan, WAC 173-303-350 (3)(b).

(7) Within three working days of the receipt of a shipment subject to 40 C.F.R. part 262, subpart H (which is incorporated by reference at WAC 173-303-230(1)), the owner or operator of the facility must provide a copy of the ((~~tracking~~)) movement document bearing all required signatures to the ((~~notifier~~)) exporter, to the Office of Enforcement and Compliance Assurance, Office of ((~~Compliance, Enforcement Planning, Targeting and Data Division (2222A)~~)) Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460, and to competent authorities of all other concerned countries. The original copy of the ((~~tracking~~)) movement document must be maintained at the facility for at least three years from the date of signature.

(8) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-380 Facility recordkeeping. (1) Operating record. The owner or operator of a facility must keep a written operating record at their facility. The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description of and the quantity of each dangerous waste received or managed on-site, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by subsection (2) of this section, recordkeeping instructions;

(b) The location of each dangerous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each dangerous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

(c) Records and results of waste analyses, waste determinations (as required by 40 C.F.R. Parts 264 and 265, Subpart CC), and trial tests required by WAC 173-303-300, General waste analysis, and by 40 C.F.R. sections 264.1034, 264.1063, 264.1083, 265.1034, 265.1063, 265.1084, 268.4(a), and 268.7. Note that data from laboratory analyses for 40 C.F.R. 268.4(a) and 268.7 must meet the requirements of WAC 173-303-110;

(d) Summary reports and details of all incidents that require implementing the contingency plan, as specified in WAC 173-303-360 (2)(k);

(e) Records and results of inspections as required by WAC 173-303-320 (2)(d), General inspection (except such information need be kept only for five years);

(f) Monitoring, testing, or analytical data, and corrective action where required by 40 C.F.R. Part 265 Subparts F through R and sections 265.1034 (c) through (f), 265.1035, 265.1063 (d) through (i), 265.1064, and 265.1083 through 265.1090 for interim status facilities (incorporated by reference at WAC 173-303-400(3)), and by WAC 173-303-630 through 173-303-695 and 40 C.F.R. sections 264.1034 (c) through (f), 264.1035, 264.1063 (d) through (i), 264.1064, and 264.1082 through 264.1090 for final status facilities (incorporated by reference at WAC 173-303-690, 173-303-691, and 173-303-692). Note that data provided from laboratory analyses for WAC 173-303-400(3) which incorporates

by reference 40 C.F.R. Part 265 Subparts F through R, WAC 173-303-140 (4)(b), 173-303-395(1), 173-303-630 through 173-303-680, 173-303-693 and 173-303-695, 40 C.F.R. 268.4(a) and 268.7 must meet the requirements of WAC 173-303-110;

(g) All closure and post-closure cost estimates required for the facility;

(h) For off-site facilities, copies of notices to generators informing them that the facility has all appropriate permits, as required by WAC 173-303-290, Required notices;

(i) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to 40 C.F.R. 268.5, a petition pursuant to 40 C.F.R. 268.6, and the applicable notice required by a generator under 40 C.F.R. 268.7(a);

(j) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under 40 C.F.R. 268.7;

(k) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 C.F.R. 268.7;

(l) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under 40 C.F.R. 268.7;

(m) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under 40 C.F.R. 268.7, except for the manifest number;

(n) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 C.F.R. 268.7;

(o) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 C.F.R. 268.7;

(p) Any records required under WAC 173-303-280(6); ((~~and~~))

(q) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that they generate to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment; and

(r) Certifications of major repairs to tank systems as required by WAC 173-303-640 (7)(f).

(2) Recordkeeping instructions. This ((~~paragraph~~)) subsection provides instructions for recording the portions of the operating record which are related to describing the types, quantities, and management of dangerous wastes at the facility. This information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility, as follows:

(a) Each dangerous waste received, treated, stored, or disposed of at the facility must be described by its common name and by its dangerous waste number(s) from WAC 173-303-080 through 173-303-104. Each listed, characteristic, and criteria waste has its own four-digit dangerous waste number. Where a dangerous waste contains more than one process waste or waste constituent the waste description must include all applicable dangerous waste numbers. If the dangerous waste number is not listed, the waste description must include the process which generated the waste;

(b) The waste description must include the waste's physical form (i.e., liquid, solid, sludge, or contained gas);

(c) The estimated or manifest-reported weight, or volume and density, where applicable, of the dangerous waste must be recorded, using one of the units of measure specified in Table 1, below; and

TABLE 1

Unit of Measure	Code[1]
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters per Hour	H
Liters per Day	V
Short tons (2000 lbs)	T
Short Tons per Hour	D
Metric Tons per Hour	W
Short Tons per Day	N
Metric Tons per Day	S
Pounds	P
Pounds per Hour	J
Kilograms	K
Kilograms per Hour	R
Cubic yards	Y
Cubic meters	C
Acres	B
Acres-feet	A
Hectares	Q
Hectare-meter	F
Btus per Hour	I
Tons (2000 lbs)	M

Footnote: [1]Single-digit symbols are used here for data processing purposes.

(d) The method(s) (by handling code(s)) of management for each dangerous waste received or managed, and the date(s) of treatment, recycling, storage, or disposal must be recorded, using the handling code(s) specified in Table 2, below.

TABLE 2 - Handling Codes for Treatment, Storage, and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of dangerous waste received.

1. Storage
- S01 Container (barrel, drum, etc.)
- S02 Tank
- S03 Waste pile
- S04 Surface impoundment
- S05 Drip Pad
- S06 Containment Building (Storage)
- S99 Other storage (specify)

2. Treatment

(a) Thermal Treatment
- T06 Liquid injection incinerator
- T07 Rotary kiln incinerator
- T08 Fluidized bed incinerator
- T09 Multiple hearth incinerator
- T10 Infrared furnace incinerator
- T11 Molten salt destructor
- T12 Pyrolysis
- T13 Wet air oxidation
- T14 Calcination
- T15 Microwave discharge
- T18 Other (specify)

(b) Chemical treatment
- T19 Absorption mound
- T20 Absorption field
- T21 Chemical fixation
- T22 Chemical oxidation
- T23 Chemical precipitation
- T24 Chemical reduction
- T25 Chlorination
- T26 Chlorinolysis
- T27 Cyanide destruction
- T28 Degradation
- T29 Detoxification
- T30 Ion exchange
- T31 Neutralization
- T32 Ozonation
- T33 Photolysis
- T34 Other (specify)

(c) Physical treatment

(i) Separation of components
- T35 Centrifugation
- T36 Clarification
- T37 Coagulation
- T38 Decanting
- T39 Encapsulation
- T40 Filtration
- T41 Flocculation
- T42 Flotation
- T43 Foaming
- T44 Sedimentation
- T45 Thickening
- T46 Ultrafiltration
- T47 Other (specify)

(ii) Removal of specific components
- T48 Absorption-molecular sieve
- T49 Activated carbon
- T50 Blending
- T51 Catalysis
- T52 Crystallization
- T53 Dialysis
- T54 Distillation
- T55 Electrodialysis
- T56 Electrolysis
- T57 Evaporation
- T58 High gradient magnetic separation
- T59 Leaching
- T60 Liquid ion exchange
- T61 Liquid-liquid extraction
- T62 Reverse osmosis
- T63 Solvent recovery
- T64 Stripping
- T65 Sand filter
- T66 Other (specify)

(d) Biological treatment
- T67 Activated sludge
- T68 Aerobic lagoon
- T69 Aerobic tank
- T70 Anaerobic tank
- T71 Composting
- T72 Septic tank
- T73 Spray irrigation
- T74 Thickening filter
- T75 Trickling filter
- T76 Waste stabilization pond
- T77 Other (specify)
- T78-79 (Reserved)

(e) Boilers and industrial furnaces
- T80 Boiler
- T81 Cement kiln
- T82 Lime kiln
- T83 Aggregate kiln
- T84 Phosphate kiln
- T85 Coke oven
- T86 Blast furnace
- T87 Smelting, melting, or refining furnace
- T88 Titanium dioxide chloride process oxidation reactor
- T89 Methane reforming furnace
- T90 Pulping liquor recovery furnace
- T91 Combustion device used in the recovery of sulfur values from spent sulfuric acid
- T92 Halogen acid furnaces
- T93 Other industrial furnaces listed in WAC 173-303-040 (specify)

(f) Other treatment
- T94 Containment building (treatment)

3. Disposal
- D79 Underground injection
- D80 Landfill
- D81 Land treatment
- D82 Ocean disposal
- D83 Surface impoundment (to be closed as a landfill)
- D99 Other disposal (specify)

4. Miscellaneous (Subpart X)
X01 Open burning/open detonation
X02 Mechanical processing
X03 Thermal unit
X04 Geologic repository
X99 Other Subpart X (specify)

(3) Availability, retention and disposition of records.

(a) All facility records, including plans, required by this chapter must be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of the department who is designated by the director.

(b) The retention period for all facility records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the director.

(c) A copy of records of waste disposal locations and quantities under this section must be submitted to the United States EPA regional administrator, the department, and the local land use and planning authority upon closure of the facility.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-400 Interim status facility standards. (1) Purpose. The purpose of WAC 173-303-400 is to establish standards which define the acceptable management of dangerous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(2) Applicability.

(a) Except as provided in 40 C.F.R. 265.1080(b), the interim status standards apply to owners and operators of facilities that treat, store, transfer, and/or dispose of dangerous waste. For purposes of this section, interim status applies to all facilities that comply fully with the requirements for interim status under Section 3005(e) of the Federal Resource Conservation and Recovery Act or WAC 173-303-805. The interim status standards also apply to those owners and operators of facilities in existence on November 19, 1980, for RCRA wastes and those facilities in existence on August 9, 1982, for state only wastes who have failed to provide the required notification pursuant to WAC 173-303-060 or failed to file Part A of the permit application pursuant to WAC 173-303-805 (4) and (5). Interim status will end after final administrative disposition of the Part B permit application is completed, or may be terminated for the causes described in WAC 173-303-805(8).

(b) Interim status facilities must meet the interim status standards by November 19, 1980, except that:

(i) Interim status facilities which handle only state designated wastes (that is, not designated by 40 C.F.R. Part 261) must meet the interim status standards by August 9, 1982; and

(ii) Interim status facilities must comply with the additional state interim status requirements specified in subsection (3)(c)(ii), (iii) and (v), of this section, by August 9, 1982.

(c) The requirements of the interim status standards do not apply to:

(i) Persons disposing of dangerous waste subject to a permit issued under the Marine Protection, Research and Sanctuaries Act;

(ii) The owner or operator of a facility managing recyclable materials described in WAC 173-303-120 (2), (3), and (5) (except to the extent that they are referred to in WAC 173-303-515 or 173-303-505, 173-303-520, 173-303-525, or 40 C.F.R. Part 266 subpart H);

(iii) The owner or operator of a POTW who treats, stores, or disposes of dangerous wastes, provided that he has a permit by rule pursuant to the requirements of WAC 173-303-802(4);

(iv) The owner or operator of a totally enclosed treatment facility or elementary neutralization or wastewater treatment units as defined in WAC 173-303-040, provided that he has a permit by rule pursuant to the requirements of WAC 173-303-802(5);

(v) Generators accumulating waste for less than ninety days except to the extent WAC 173-303-200 provides otherwise;

(vi) The addition, by a generator, of absorbent material to waste in a container, or of waste to absorbent material in a container, provided that these actions occur at the time the waste is first placed in containers or, in the case of repackaging of previously containerized waste into new containers, at the time the waste is first placed into the new containers and the generator complies with WAC 173-303-200 (1)(b) and 173-303-395 (1)(a) and (b);

(vii) The compaction or sorting, by a generator, of miscellaneous waste forms such as cans, rags, and bottles in a container, so long as the activity is solely for the purpose of reducing waste void space, and so long as these activities are conducted in a manner that protects human health and prevents any release to the environment and the generator complies with WAC 173-303-200 (1)(b) and 173-303-395 (1)(a) and (b);

(viii) Generators treating dangerous waste on-site in tanks, containers, or containment buildings that are used for accumulation of such wastes provided the generator complies with the WAC 173-303-170(3);

(ix) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in WAC 173-303-040, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 C.F.R. section 268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in WAC 173-303-395 (1)(a); and

(x) Any person, other than an owner or operator who is already subject to the final facility standards, who is carrying out an immediate or emergency response to contain or treat a discharge or potential discharge of a dangerous waste or hazardous substance.

(xi) Universal waste handlers and universal waste transporters (as defined in WAC 173-303-040) handling the wastes listed below. These handlers are subject to regulation

under WAC 173-303-573, when handling the below listed universal wastes.

(A) Batteries as described in WAC 173-303-573(2);

(B) Mercury-containing equipment as described in WAC 173-303-573(3); and

(C) Lamps as described in WAC 173-303-573(5).

(xii) WAC 173-303-578 identifies when the requirements of this section apply to the storage of military munitions classified as solid waste under WAC 173-303-578(2). The treatment and disposal of dangerous waste military munitions are subject to the applicable permitting, procedural, and technical standards in this chapter.

(xiii)(A) Except as provided in (c)(xiii)(B) of this subsection, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(I) A discharge of a dangerous waste;

(II) An imminent and substantial threat of a discharge of dangerous waste;

(III) A discharge of a material that, when discharged, becomes a dangerous waste;

(IV) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in WAC 173-303-040.

(B) An owner or operator of a facility otherwise regulated by WAC 173-303-600 must comply with all applicable requirements of WAC 173-303-340 and 173-303-350.

(C) Any person who is covered by (c)(xiii)(A) of this section and who continues or initiates dangerous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(D) In the case of an explosives or munitions emergency response, if a federal, state, tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA/state identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(xiv) The owner or operator of a facility that is permitted to manage solid waste pursuant to chapter 173-350 WAC, if the only dangerous waste the facility manages is excluded from regulation under this chapter by WAC 173-303-070(8).

(xv) A farmer disposing of waste pesticides from his own use provided he complies with WAC 173-303-160 (2)(b).

(3) Standards.

(a) Interim status standards are the standards set forth by the Environmental Protection Agency in 40 C.F.R. Part 265 Section 265.19 of Subpart B, Subparts F through R, Subpart W, Subparts AA, BB, CC (including references to 40 C.F.R. Parts 60, 61, and 63), DD, EE, and Appendix VI, which are incorporated by reference into this regulation (including, by reference, any EPA requirements specified in those subparts which are not otherwise explicitly described in this chapter), and:

(i) The land disposal restrictions of WAC 173-303-140; the facility requirements of WAC 173-303-280 through 173-303-440 except WAC 173-303-335; and the corrective action requirements of WAC 173-303-646;

(ii) WAC 173-303-630(3), for containers. In addition, for container storage, the department may require that the storage area include secondary containment in accordance with WAC 173-303-630(7), if the department determines that there is a potential threat to public health or the environment due to the nature of the wastes being stored, or due to a history of spills or releases from stored containers. Any new container storage areas constructed or installed after September 30, 1986, must comply with the provisions of WAC 173-303-630(7).

(iii) WAC 173-303-640 (5)(d), for tanks; and

(iv) WAC 173-303-805.

(b) For purposes of applying the interim status standards of 40 C.F.R. Part 265 Subparts F through R, Subpart W, and Subparts AA, BB, CC, DD, and EE to the state of Washington facilities, the federal terms have (and in the case of the wording used in the financial instruments referenced in Subpart H of Part 265, must be replaced with) the following state of Washington meanings:

(i) "Regional administrator" means the "department" except for 40 C.F.R. Parts 270.2; 270.3; 270.5; 270.10 (e)(1), (2) and (4); 270.10 (f) and (g); 270.11 (a)(3); 270.14 (b)(20); 270.32 (b)(2); and 270.51;

(ii) "Hazardous" means "dangerous" except for Subparts AA, BB, CC, and DD. These subparts apply only to hazardous waste as defined in WAC 173-303-040;

(iii) "Compliance procedure" has the meaning set forth in WAC 173-303-040, Definitions;

(iv) "EPA hazardous waste numbers" mean "dangerous waste numbers."

(c) In addition to the changes described in (b) of this subsection, the following modifications are made to interim status standards of 40 C.F.R. Part 265 Subparts F through R, Subpart W, and Subparts AA, BB, CC, DD, and EE:

(i) The words "the effective date of these regulations" means:

(A) November 19, 1980, for facilities which manage any wastes designated by 40 C.F.R. Part 261;

(B) For wastes which become designated by 40 C.F.R. Part 261 subsequent to November 19, 1980, the effective date is the date on which the wastes become regulated;

(C) March 12, 1982, for facilities which manage wastes designated only by WAC 173-303-080 through 173-303-100 and not designated by 40 C.F.R. Part 261;

(D) For wastes which become designated only by WAC 173-303-080 through 173-303-100 and not designated by 40 C.F.R. Part 261 subsequent to March 12, 1982, the effective date is the date on which the wastes become regulated.

(ii) The following sections and any cross-reference to these sections are not incorporated or adopted by reference:

(A) 40 C.F.R. Parts 260.1 (b)(4)-(6) and 260.20-22.

(B) 40 C.F.R. Parts 264.1 (d) and (f); 265.1 (c)(4); 264.149-150 and 265.149-150; 264.301(k); and 265.430.

(C) 40 C.F.R. Parts 268.5 and 6; 268 Subpart B; 268.42(b); and 268.44 (a) through (g).

(D) 40 C.F.R. Parts 270.1 (c)(1)(i); 270.60(b); and 270.64.

(E) 40 C.F.R. Parts 124.1 (b)-(e); 124.4; 124.5(e); 124.9; 124.10 (a)(1)(iv); 124.12(e); 124.14(d); 124.15 (b)(2); 124.16; 124.17(b); 124.18; 124.19; and 124.21.

(F) 40 C.F.R. Parts 2.106(b); 2.202(b); 2.205(i); 2.209 (b)-(c); 2.212-213; and 2.301-311.

(G) ((~~40 C.F.R. 265.110(c), 40 C.F.R. 265.118 (e)(4), 40 C.F.R. 265.121 and~~)) 40 C.F.R. 265.1080 (e) and (f).

(iii) Where 40 C.F.R. 265 Subparts F through R, W, DD, and EE have been incorporated by reference refer to 40 C.F.R. 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110.

(iv) "Subpart B - general facility standards." References to "EPA" in 40 C.F.R. 265.19, means the "department." Additionally, references to "administrator" means the "director."

(v) "Subpart F - groundwater monitoring."

(A) Section 265.90 (d)(1) is modified by adding the following sentence. "A copy of the plan must be submitted to the department,"

(B) Section 265.90 (d)(3) is modified by adding the following sentence. "A copy of the plan must be submitted to the department,"

(C) Section 265.91(c) includes the requirement that: "Groundwater monitoring wells must be designed, constructed, and operated so as to prevent groundwater contamination. Chapter 173-160 WAC may be used as guidance in the installation of wells",

(D) Section 265.93 (d)(2) is modified by adding the following sentence. "A copy of the plan must be submitted to the department," and

(E) Section 265.93 (d)(5) is modified by adding the following sentence. "A copy of the report must be submitted to the department within 15 days."

(vi) "Subpart G - closure and post-closure."

(A) The third sentence in section 265.112 (d)(1) is modified to read "The owner or operator must submit the closure plan to the department at least 45 days prior to the date on which they expect to begin closure of a tank, container storage, or incinerator unit, or final closure of a facility with only such units."

(B) The sixth sentence of section 265.112 (d)(1) is modified to read "Owners or operators with approved closure plans must notify the department in writing at least 45 days prior to the date on which they expect to begin closure of a tank, container storage, or incinerator unit, or final closure of a facility with only such units." The first sentence of section 265.115 is modified to read "Within 60 days of completion of closure of each dangerous waste management unit (including tank systems and container storage areas) and within 60 days of completion of final closure, the owner or operator must submit to the department, by registered mail or other means that establish proof of receipt (including appropriate electronic means), a certification that the dangerous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan." In addition, the clean-up levels for removal or decontamination set forth at WAC 173-303-610 (2)(b) apply.

(C) Section 265.113 (e)(5) is modified by changing "annual reports" to "semi-annual reports."

(D) Section 265.115 is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(E) Section 265.120 is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(vii) "Subpart H - financial requirements."

(A) An additional sentence that reads: "Any owner or operator who can provide financial assurances and instruments which satisfy the requirements of WAC 173-303-620 will be deemed to be in compliance with 40 C.F.R. Part 265 Subpart H."

(B) In 40 C.F.R. Parts 265.143(g) and 265.145(g) the following sentence does not apply to the state: "If the facilities covered by the mechanisms are in more than one Region, identical evidence of financial assurance must be submitted to, and maintained with the Regional Administrators of all such Regions." Instead, the following sentence applies: "If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste or with the appropriate regional administrator if the facility is located in an unauthorized state."

(C) Section 265.143(h) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(D) Section 265.145(h) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(E) Section 265.147(e) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(F) The following sections and any cross-reference to these sections are not incorporated by reference: 40 C.F.R. Parts 265.149 and 265.150;

(viii) "Subpart I use and management of containers."

Section 265.174 is modified by replacing the paragraph with the following. "The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors."

(ix) "Subpart J - tank systems."

(A) Section 265.191(a) is modified so that the date by which an assessment of a tank system's integrity must be completed is January 12, 1990.

(B) Section 265.191(a) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(C) Section 265.191 (b)(5)(ii) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(D) Section 265.192(a) introductory text is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(E) Section 265.192(b) introductory text is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(F) Section 265.193(a) is modified so that the dates by which secondary containment (which meets the requirements of that section) must be provided are the same as the dates in WAC 173-303-640 (4)(a).

(G) Section 265.193 (i)(2) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(H) Section 265.195(b) is modified by deleting the words "Except as noted under the paragraph (c) of this section."

(I) Section 265.195 is modified by deleting paragraphs (c) and (d).

(J) Section 265.196(f) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer" and by adding the following sentence. "A copy of the plan must be submitted to the department within seven days after returning the tank system to use."

(K) Section 265.201(c) is modified by deleting the words "Except as noted in paragraph (d) of this section."

(L) Section 265.201 is modified by deleting paragraphs (d) and (e).

(x) "Subpart K surface impoundments." Section 265.224(a) is modified by adding the following sentence. "A copy of the plan must be submitted to the department when submitting the proposed action leakage rate under section 265.222."

(xi) "Subpart L waste piles." Section 265.259(a) is modified by adding the following sentence. "A copy of the response action plan must be submitted to the department when submitting the proposed action leakage rate under section 265.255."

(xii) "Subpart M land treatment."

(A) Section 265.273(b) is modified by replacing the words "Part 261, Subpart D of this chapter" with "WAC 173-303-080";

(B) Section 265.280(e) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(xiii) "Subpart N - landfills."

(A) An additional sentence reads: "An owner/operator must not landfill an organic/carbonaceous waste or an EHW, as defined by WAC 173-303-080 through 173-303-100, except at the EHW facility at Hanford" as allowed under WAC 173-303-700 or as allowed under WAC 173-303-140(4).

(B) Section 265.303(a). "A copy of the response action plan must be submitted to the department when submitting the proposed action leakage rate under section 265.302."

(xiv) "Subpart O incinerators."

(xv) "Subpart P thermal treatment."

(xvi) "Subpart Q chemical, physical and biological treatment."

(xvii) "Subpart R - underground injection." An additional sentence reads: "Owners and operators of wells are prohibited from disposing of EHW or an organic carcinogen designated under WAC 173-303-080 through 173-303-100."

(xviii) "Subpart W drip pads."

(A) Section 265.441(a) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(B) Section 265.441(b) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(C) Section 265.441(c) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(D) Section 265.443 (a)(4)(ii) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(E) Section 265.443(g) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(F) 265.444(a) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(xix) "Subpart AA air emission standards for process vents."

(xx) "Subpart BB air emission standards for equipment leaks."

(A) Section 265.1061 is modified by adding (d) "If an owner or operator decides no longer to comply with this section, the owner or operator must notify the department in writing that the work practice standard described in 265.1057 (a) through (e) will be followed."

(B) Section 265.1061(b) is modified by adding (b)(3) "An owner or operator must notify the department that the owner or operator has elected to comply with the requirements of this section."

(C) Section 265.1062(a) is modified by adding the sentence "An owner or operator must notify the department before implementing one of the alternative work practices."

(xxi) "Subpart CC air emission standards for tanks, surface impoundments, and containers."

(xxii) "Subpart DD containment buildings."

(A) Section 265.1101 (c)(2) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

(B) Section 265.1101 (c)((~~(4) is modified by deleting the words "except for Performance Track member facilities, that must inspect up to once each month, upon approval of the director" and deleting the last sentence of the paragraph.~~)) (3)(iii) is modified by changing "qualified registered professional engineer" to "independent qualified registered professional engineer."

(xxiii) "Subpart EE - hazardous waste munitions and explosives storage."

The first sentence at 40 C.F.R. 265.1202 is modified to exclude the exception for hazardous wastes managed under 261.3(d).

(4) The requirements of this section apply to owners or operators of all facilities that treat, store or dispose of hazardous waste referred to in 40 C.F.R. Part 268, and the 40 C.F.R.

Part 268 standards are considered material conditions or requirements of the interim status standards incorporated by reference in subsection (3) of this section.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-505 Special requirements for recyclable materials used in a manner constituting disposal. (1) Applicability. (Also, see WAC 173-303-120(3).)

(a) This section applies to recyclable materials that are applied to or placed on the land:

(i) Without mixing with any other substance(s); or

(ii) After mixing or combining with any other substance(s). These materials will be referred to as "materials used in a manner that constitutes disposal."

(b)(i) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in 40 C.F.R. Part 268 Subpart D (or applicable prohibition levels in 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain, and the recycler complies with 40 C.F.R. 268.7(b)(6).

(ii) Antiskid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of dangerous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in (b)(i) of this subsection and remain subject to regulation.

(iii) Fertilizers that contain recyclable materials are not subject to regulation provided that:

(A) They are zinc fertilizers excluded according to WAC 173-303-071 (3)(pp); or

(B) They meet the applicable treatment standards in subpart D of Part 268, which is incorporated by reference at WAC 173-303-140 (2)(a) for each hazardous waste that they contain.

(Note: Fertilizers that contain recyclable material derived from state-only waste must also meet the treatment standards in WAC 173-303-140 (2)(a) that apply to the characteristics of dangerous waste that the state-only waste exhibits.)

(iv) The department may recommend registration under chapter 15.54 RCW for a waste-derived fertilizer (including fertilizers that contain recyclable material) or micronutrient fertilizer: Provided, That the registrant submits the information described in (b)(iv)(A) or (B) of this subsection. However, the information requirements in (b)(((~~(v)~~))) (iv)(A) of this subsection may not be required if: The registrant provides documentation that the fertilizer has been previously registered in Washington state two or more times using the information in (b)(((~~(v)~~))) (iv)(A) of this subsection, and the source materials used to manufacture the product have not changed.

(A) Initial criteria.

(I) The applicable Land Disposal Restriction (LDR) Certification as described in 40 C.F.R. Part 268, or toxicity characteristic leaching procedure (TCLP) data that indicate the product contains less than the maximum concentrations for TCLP metals described in WAC 173-303-090(8); and

(II) Total Halogenated Organic Compounds (HOC) test data that indicate the product contains less than 1% total HOC.

(B) Secondary criteria.

(I) A complete description of the fertilizer manufacturing process, including the location of the manufacturing facility; and

(II) A complete list of all ingredients used in manufacturing the fertilizer and a complete description of the sources of those ingredients, including a description of the original process and location for each of those ingredients; and

(III) Evidence that any waste(s) used in manufacturing the product does not designate as dangerous waste according to procedures described in WAC 173-303-070; and

(IV) Other information as required by the department.

(2) Recyclable materials used in a manner that constitutes disposal are dangerous wastes and are subject to the following requirements:

(a) For generators, WAC 173-303-170 through 173-303-230;

(b) For transporters, WAC 173-303-240 through 173-303-270; and

(c) For facilities that store or use dangerous wastes in a manner constituting disposal, the applicable requirements of 40 C.F.R. Part 268 (incorporated by reference in WAC 173-303-140 (2)(a)) and 173-303-280 through 173-303-840 (except that users of such products are not subject to these standards if the products meet the requirements of subsection (1)(b) of this section).

(d) The use of waste oil, used oil, or other material that is contaminated with dioxin or any other dangerous waste for dust suppression or road treatment is prohibited.

AMENDATORY SECTION (Amending WSR 03-07-049, filed 3/13/03, effective 4/13/03)

WAC 173-303-520 Special requirements for reclaiming spent lead acid battery wastes. This section applies to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials ("spent batteries"). (Also, see WAC 173-303-120(3).)

(1) Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated) are subject only to the requirements of WAC 173-303-016 through 173-303-161 except for 173-303-060, and WAC 173-303-960 if such spent batteries are going to a battery reclaimer. Persons who reclaim spent batteries through regeneration (such as by electrolyte replacement) are not subject to 40 C.F.R. Part 268, which is incorporated by reference at WAC 173-303-140 (2)(a).

(a) Exporters who send spent batteries to a foreign destination other than to those OECD countries specified in 40 C.F.R. 262.58(a)(1) which is incorporated by reference in WAC 173-303-230(1) (in which case the exporter is subject to the requirements of 40 C.F.R. part 262, Subpart H which is incorporated by reference in WAC 173-303-230(1)) must:

(i) Comply with the requirements applicable to a primary exporter in 40 C.F.R. 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57 which are incorporated by reference in WAC 173-303-230(1);

(ii) Export such spent batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 C.F.R. 262 Subpart E which is incorporated by reference in WAC 173-303-230(1);

(iii) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

(b) A spent battery transporter transporting a shipment of spent batteries to a foreign destination other than to those OECD countries specified in 40 C.F.R. 262.58(a)(1) (in which case the transporter is subject to the requirements of 40 C.F.R. part 262, Subpart H which is incorporated by reference in WAC 173-303-230(1)) may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(i) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(ii) The shipment is delivered to the facility designated by the person initiating the shipment.

(2) Owners and operators of battery reclaiming facilities that store spent lead acid batteries prior to reclaiming (other than spent batteries that are to be regenerated) them are subject to the following requirements:

(a) For all reclaimers, the applicable storage provisions of:

(i) WAC 173-303-280 (2) and (3);

(ii) WAC 173-303-282;

(iii) WAC 173-303-283;

(iv) WAC 173-303-290;

(v) WAC 173-303-310 through 173-303-360;

(vi) WAC 173-303-380;

(vii) WAC 173-303-390 (2) and (3);

(viii) WAC 173-303-395; and

(ix) WAC 173-303-800 through 173-303-840.

(b) For reclaimers with interim status permits, the applicable storage provisions of WAC 173-303-400 including Subparts F through L of 40 C.F.R. Part 265;

(c) For reclaimers with final facility permits, the applicable storage provisions of:

(i) WAC 173-303-600 through 173-303-650; and

(ii) WAC 173-303-660.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-573 Standards for universal waste management. (1) **Scope.**

(a) This section establishes requirements for managing the following:

(i) Batteries as described in subsection (2) of this section;

(ii) Mercury-containing equipment as described in subsection (3) of this section; and

(iii) Lamps as described in subsection (5) of this section.

(b) This section provides an alternative set of management standards in lieu of regulation under the rest of this chapter except for WAC 173-303-050, 173-303-145, and 173-303-960.

(2) **Applicability((—)) - Batteries.**

(a) Batteries covered under this section.

(i) The requirements of this section apply to persons managing batteries, as described in WAC 173-303-040, except those listed in (b) of this subsection.

(ii) Spent lead-acid batteries which are not managed under WAC 173-303-120 (3)(f) and 173-303-520, are subject to management under this section.

(b) Batteries not covered under this section. The requirements of this section do not apply to persons managing the following batteries:

(i) Spent lead-acid batteries that are managed under WAC 173-303-120(3) and 173-303-520.

(ii) Batteries, as described in WAC 173-303-040, that are not yet wastes under WAC 173-303-016, 173-303-017, or 173-303-070, including those that do not meet the criteria for waste generation in (c) of this subsection.

(iii) Batteries, as described in WAC 173-303-040, that are not dangerous waste. A battery is a dangerous waste if it exhibits one or more of the characteristics or criteria identified in WAC 173-303-090 or 173-303-100.

(c) Generation of waste batteries.

(i) A used battery becomes a waste on the date it is discarded (for example, when sent for reclamation).

(ii) An unused battery becomes a waste on the date the handler decides to discard it.

(3) **Applicability((—)) - Mercury-containing equipment.**

(a) Mercury-containing equipment covered under this section. The requirements of this section apply to persons managing mercury-containing equipment, as described in WAC 173-303-040, except those listed in (b) of this subsection.

(b) Mercury-containing equipment not covered under this section. The requirements of this section do not apply to persons managing the following mercury-containing equipment:

(i) Mercury-containing equipment that is not yet a waste under WAC 173-303-016, 173-303-017, or 173-303-070. Paragraph (c) of this subsection describes when mercury-containing equipment becomes a waste;

(ii) Mercury-containing equipment that is not a dangerous waste. Mercury-containing equipment is a dangerous waste if it exhibits one or more of the characteristics or criteria identified in WAC 173-303-090 or 173-303-100; and

(iii) Equipment and devices from which the mercury-containing components have been removed.

(c) Generation of waste mercury-containing equipment.

(i) Used mercury-containing equipment becomes a waste on the date it is discarded.

(ii) Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

(4) Reserve.

(5) **Applicability((—)) - Lamps.**

(a) Lamps covered under this section. The requirements of this section apply to persons managing lamps, as described

in WAC 173-303-040, except those listed in (b) of this subsection.

(b) Lamps not covered under this section. The requirements of this section do not apply to persons managing the following lamps:

(i) Lamps that are not yet wastes under WAC 173-303-016, 173-303-017, or 173-303-070. Paragraph (c) of this subsection describes when lamps become wastes.

(ii) Lamps that are not dangerous waste. Lamps that do not exhibit one or more of the characteristics or criteria identified in WAC 173-303-090 or 173-303-100 are not dangerous waste.

(c) Generation of waste lamps.

(i) A used lamp becomes a waste on the date it is discarded.

(ii) An unused lamp becomes a waste on the date the handler decides to discard it.

(6) **Applicability((—)) - Small quantity handlers of universal waste.** Subsections (6) through (16) of this section apply to small quantity handlers of universal waste (as defined in WAC 173-303-040).

(7) **Prohibitions.**

A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in subsection (13) of this section; or by managing specific wastes as provided in subsection (9) of this section.

(8) **Notification.**

A small quantity handler of universal waste is not required to notify the department of universal waste handling activities.

(9) **Waste management.**

(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(ii) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(A) Sorting batteries by type;

(B) Mixing battery types in one container;

(C) Discharging batteries so as to remove the electric charge;

(D) Regenerating used batteries;

(E) Disassembling batteries or battery packs into individual batteries or cells;

(F) Removing batteries from consumer products; or

(G) Removing electrolyte from batteries.

(iii) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100.

(A) If the electrolyte and/or other solid waste exhibit a characteristic or criteria of dangerous waste, it is subject to all applicable requirements of this chapter. The handler is considered the generator of the dangerous electrolyte and/or other waste and is subject to WAC 173-303-170 through 173-303-230.

(B) If the electrolyte or other solid waste is not dangerous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste mercury-containing equipment. A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(ii) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(A) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(B) Removes the ampules only over or in a containment device (for example, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(C) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of WAC 173-303-200;

(D) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of WAC 173-303-200;

(E) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(F) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(G) Stores removed ampules in closed, nonleaking containers that are in good condition;

(H) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(iii) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(A) Immediately seals the original housing holding the mercury with an airtight seal to prevent the release of any mercury to the environment; and

(B) Follows all requirements for removing ampules and managing removed ampules under (b)(ii) of this subsection; and

(iv)(A) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100:

(I) Mercury or clean-up residues resulting from spills or leaks; and/or

(II) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (for example, the remaining mercury-containing device).

(B) If the mercury, residues, and/or other solid waste exhibit a characteristic or criteria of dangerous waste, it must be managed in compliance with all applicable requirements of this chapter. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it subject to WAC 173-303-170 through 173-303-230.

(C) If the mercury, residues, and/or other solid waste is not dangerous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(c) Universal waste lamps. A small quantity handler of universal waste must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A small quantity handler of universal waste must immediately clean up and place in a container any universal waste lamps that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the lamps, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(ii) A small quantity handler of universal waste must minimize lamp breakage by accumulating lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. The containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(iii) A small quantity handler of universal waste must store lamps accumulated in cardboard or fiber containers indoors, meaning in a structure that prevents the container from being exposed to the elements.

(10) **Labeling/marking.**

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (that is, each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b)(i) Universal waste mercury-containing equipment (that is, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste Mercury-Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(ii) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(c) Universal waste lamps (that is, each lamp), or a container in which the lamps are accumulated, must be labeled or marked clearly with any one of the following phrases: "Universal Waste Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

(11) **Accumulation time limits.**

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of (b) of this subsection are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(i) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(ii) Marking or labeling each individual item of universal waste (for example, each battery, thermostat, mercury-containing equipment, or lamp) with the date it became a waste or was received;

(iii) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

(iv) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of

universal waste items or a group of containers of universal waste became a waste or was received;

(v) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(vi) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

(12) **Employee training.**

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

(13) **Response to releases.**

(a) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste must determine whether any material resulting from the release is dangerous waste, and if so, must manage the dangerous waste in compliance with all applicable requirements of this chapter. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with WAC 173-303-170 through 173-303-230.

(14) **Off-site shipments.**

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self-transports universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of subsections (28) through (34) of this section while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 C.F.R. Parts 171 through 180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 C.F.R. Parts 172 through 180.

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(i) Receive the waste back when notified that the shipment has been rejected, or

(ii) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(i) Send the shipment back to the originating handler; or

(ii) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing dangerous waste that is not a universal waste, the handler must immediately notify the department of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The department will provide instructions for managing the dangerous waste.

(h) If a small quantity handler of universal waste receives a shipment of nondangerous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(15) **Tracking universal waste shipments.**

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

(16) **Exports.**

A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in 40 C.F.R. 262.58 (a)(1) (in which case the handler is subject to the requirements of 40 C.F.R. part 262, subpart H which is incorporated by reference at WAC 173-303-230) must:

(a) Comply with the requirements applicable to a primary exporter in 40 C.F.R. 262.53, 262.56 (a)(1) through (4), (6), and (b) and 262.57 which are incorporated by reference at WAC 173-303-230(1);

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 C.F.R. Subpart E of Part 262 which is incorporated by reference at WAC 173-303-230(1); and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

(17) **Applicability((—)) - Large quantity handlers of universal waste.**

Subsections (17) through (27) of this section apply to large quantity handlers of universal waste (as defined in WAC 173-303-040).

(18) **Prohibitions.**

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in subsection (24) of this section; or by managing specific wastes as provided in subsection (20) of this section.

(19) **Notification.**

(a)(i) Except as provided in (a)(ii) of this subsection, a large quantity handler of universal waste must have sent written notification of universal waste management to the department, and received an EPA Identification Number, before meeting or exceeding the 11,000 pound storage limit and/or before meeting or exceeding the 2,200 pound storage limit for lamps.

(ii) A large quantity handler of universal waste who has already notified the department of their dangerous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(b) This notification must include:

(i) The universal waste handler's name and mailing address;

(ii) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(iii) The address or physical location of the universal waste management activities;

(iv) A list of all of the types of universal waste managed by the handler (for example, batteries, ((~~thermostats,~~)) mercury-containing equipment, and lamps); and

(v) A statement indicating that the handler is accumulating more than 11,000 pounds of universal waste at one time, and/or a statement indicating that the handler is accumulating more than 2,200 pounds of lamps at one time. (For example, if a handler is accumulating ((~~4,000~~)) 6,000 pounds of batteries, 4,500 pounds ((~~of thermostats, 2,000 pounds~~)) of mercury-containing equipment and 600 pounds of universal waste lamps, they would notify for having 11,100 pounds of universal waste at one time - Likewise, if a handler is accumulating ((~~1,000~~)) 6,000 pounds of batteries, ((~~4,000 pounds of thermostats,~~)) 2,000 pounds of mercury-containing equipment and 2,400 pounds of universal waste lamps, they would also need to notify for exceeding the 2,200 pound limit for universal waste lamps.)

(20) **Waste management.**

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(ii) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(A) Sorting batteries by type;

(B) Mixing battery types in one container;

(C) Discharging batteries so as to remove the electric charge;

(D) Regenerating used batteries;

(E) Disassembling batteries or battery packs into individual batteries or cells;

(F) Removing batteries from consumer products; or

(G) Removing electrolyte from batteries.

(iii) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100.

(A) If the electrolyte and/or other solid waste exhibit a characteristic or criteria of dangerous waste, it must be managed in compliance with all applicable requirements of this chapter. The handler is considered the generator of the dangerous electrolyte and/or other waste and is subject to WAC 173-303-170 through 173-303-230.

(B) If the electrolyte or other solid waste is not dangerous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste mercury-containing equipment. A large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A large quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(ii) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(A) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(B) Removes ampules only over or in a containment device (for example, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(C) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules, from that containment device to a container that meets the requirements of WAC 173-303-200;

(D) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of WAC 173-303-200;

(E) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(F) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(G) Stores removed ampules in closed, nonleaking containers that are in good condition;

(H) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(iii) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(A) Immediately seals the original housing holding the mercury with an airtight seal to prevent the release of any mercury to the environment; and

(B) Follows all requirements for removing ampules and managing removed ampules under (b)(ii) of this subsection; and

(iv)(A) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100:

(I) Mercury or clean-up residues resulting from spills or leaks; and/or

(II) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (for example, the remaining mercury-containing device).

(B) If the mercury, residues, and/or other solid waste exhibits a characteristic or criteria of dangerous waste, it must be managed in compliance with all applicable requirements of this chapter. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with WAC 173-303-170 through 173-303-230.

(C) If the mercury, residues, and/or other solid waste is not dangerous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(c) Universal waste lamps. A large quantity handler of universal waste must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(i) A large quantity handler of universal waste must immediately clean up and place in a container any universal waste lamps that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the lamps, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(ii) A large quantity handler of universal waste must minimize lamp breakage by accumulating lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. The containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(iii) A large quantity handler of universal waste must store lamps accumulated in cardboard or fiber containers indoors, meaning in a structure that prevents a container from being exposed to the elements.

(21) **Labeling/marking.**

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (that is, each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b)(i) Mercury-containing equipment (that is, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury-Containing Equipment," or "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(ii) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(c) Universal waste lamp (that is, each lamp), or a container in which the lamps are accumulated, must be labeled or marked clearly with any one of the following phrases: "Universal Waste Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

(22) **Accumulation time limits.**

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of (b) of this subsection are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(i) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(ii) Marking or labeling the individual item of universal waste (for example, each battery, thermostat, mercury-containing equipment, or lamp) with the date it became a waste or was received;

(iii) Maintaining an inventory system on site that identifies the date the universal waste being accumulated became a waste or was received;

(iv) Maintaining an inventory system on site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(v) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(vi) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

(23) **Employee training.**

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

(24) **Response to releases.**

(a) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste must determine whether any material resulting from the release is dangerous waste, and if so, must manage the dangerous waste in compliance with all applicable requirements of this chapter. The handler is considered the generator of the material resulting from the release, and is subject to WAC 173-303-145 and 173-303-170 through 173-303-230.

(25) **Off-site shipments.**

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self-transports universal waste off site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of subsections (28) through (34) of this section while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 C.F.R. 171 through 180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 C.F.R. Parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(i) Receive the waste back when notified that the shipment has been rejected; or

(ii) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(i) Send the shipment back to the originating handler; or

(ii) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing dangerous waste that is not a universal waste, the handler must immediately notify the department of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The department will provide instructions for managing the dangerous waste.

(h) If a large quantity handler of universal waste receives a shipment of nondangerous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(26) **Tracking universal waste shipments.**

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(i) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(ii) The quantity of each type of universal waste received (for example, batteries, thermostats, mercury-containing equipment, or lamps);

(iii) The date of receipt of the shipment of universal waste.

(b) Shipments off site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

(i) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(ii) The quantity of each type of universal waste sent (for example, batteries, thermostats, mercury-containing equipment, or lamps);

(iii) The date the shipment of universal waste left the facility.

(c) Record retention.

(i) A large quantity handler of universal waste must retain the records described in (a) of this subsection for at least three years from the date of receipt of a shipment of universal waste.

(ii) A large quantity handler of universal waste must retain the records described in (b) of this subsection for at least three years from the date a shipment of universal waste left the facility.

(27) **Exports.**

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in 40 C.F.R. 262.58 (a)(1) (in which case the handler is subject to the requirements of 40 C.F.R. part 262, subpart H which is incorporated by reference at WAC 173-303-230) must:

(a) Comply with the requirements applicable to a primary exporter in 40 C.F.R. 262.53, 262.56 (a)(1) through (4), (6), and (b) and 262.57 which are incorporated by reference at WAC 173-303-230(1);

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 C.F.R. 262 Subpart E which is incorporated by reference at WAC 173-303-230(1); and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

(28) **Applicability((—)) - Universal waste transporters.** Subsections (28) through (34) of this section apply to universal waste transporters (as defined in WAC 173-303-040).

(29) **Prohibitions.**

A universal waste transporter is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in subsection (32) of this section.

(30) **Waste management.**

(a) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 C.F.R. Part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 C.F.R. 171.8. For purposes of the Department of Transportation regulations, a material is considered a dangerous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in WAC 173-303-180. Because universal waste does not require a dangerous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 C.F.R. 173.2. As universal waste shipments do not require a manifest under WAC 173-303-180, they may not be described by the DOT proper shipping name "hazardous waste, (l) or (s), n.o.s.," nor may the hazardous material's proper shipping name be modified by adding the word "waste."

(31) **Storage time limits.**

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

(b) If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements for small or large quantity handlers (subsections (6) through (27) of this section) while storing the universal waste.

(32) **Response to releases.**

(a) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter must determine whether any material resulting from the release is dangerous waste, and if so, it is subject to all applicable requirements of this chapter. If the waste is determined to be a dangerous waste, the transporter is subject to WAC 173-303-145 and 173-303-170 through 173-303-230.

(33) **Off-site shipments.**

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off site meets the Department of Transportation's definition of hazardous materials under 49 C.F.R. 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 C.F.R. Part 172.

(34) **Exports.**

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in 40 C.F.R. 262.58 (a)(1) (in which case the handler is subject to the requirements of 40 C.F.R. part 262, subpart H which is incorporated by reference at WAC 173-303-230) may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

(35) **Applicability((—)) - Destination facilities.** Subsections (35) through (37) of this section apply to destination facilities.

(a) The owner or operator of a destination facility (as defined in WAC 173-303-040) is subject to all applicable requirements of WAC 173-303-140 and 173-303-141, 173-303-280 through 173-303-525, 173-303-600 through 173-303-695, 173-303-800 through 173-303-840, and the notification requirement at WAC 173-303-060:

(b) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with WAC 173-303-120 (4)(c).

(36) **Off-site shipments.**

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

(i) Send the shipment back to the original shipper; or

(ii) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the owner or operator of a destination facility receives a shipment containing dangerous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the department of the illegal shipment, and provide the name, address, and phone number

of the shipper. The department will provide instructions for managing the dangerous waste.

(d) If the owner or operator of a destination facility receives a shipment of nondangerous, nonuniversal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

(37) **Tracking universal waste shipments.**

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(i) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(ii) The quantity of each type of universal waste received (for example, batteries, thermostats, mercury-containing equipment, or lamps);

(iii) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in (a) of this subsection for at least three years from the date of receipt of a shipment of universal waste.

(38) **Imports.**

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this section, immediately after the waste enters the United States, as indicated in (a) through (c) of this subsection:

(a) A universal waste transporter is subject to the universal waste transporter requirements of subsections (28) through (34) of this section.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of subsections (6) through (27) of this section, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of subsections (35) through (37) of this section.

(d) Persons managing universal waste that is imported from an OECD country as specified at 40 C.F.R. 262.58 (a)(1), which is incorporated by reference at WAC 173-303-230(1), are subject to (a) through (c) of this subsection, in addition to the requirements of 40 C.F.R. part 262 subpart H, which is incorporated by reference at WAC 173-303-230(1).

(39) **General((—)) - Petitions.** Subsections (39) and (40) of this section address petitions to include other wastes under this section.

(a) Any person seeking to add a dangerous waste or a category of dangerous waste to this section may petition for a regulatory amendment under subsections (39) and (40) of this section and WAC 173-303-910 (1) and (7).

(b) To be successful, the petitioner must demonstrate to the satisfaction of the department that regulation under the universal waste regulations of this section is: Appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the dangerous waste program. The petition must include the information required by WAC 173-303-910 (1)(b). The petition should also address as many of the factors listed in subsection (40) of this section as are appropriate for the waste or waste category addressed in the petition.

(c) The department will evaluate petitions using the factors listed in subsection (40) of this section. The department will grant or deny a petition using the factors listed in subsection (40) of this section. The decision will be based on the weight of evidence showing that regulation under this section is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the dangerous waste program.

(40) **Factors for petitions to include other wastes under this section.**

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in WAC 173-303-081 or 173-303-082, or (if not listed) a proportion of the waste stream exhibits one or more characteristics or criteria of dangerous waste identified in WAC 173-303-090 or 173-303-100. (When a characteristic waste is added to the universal waste regulations of this section by using a generic name to identify the waste category (for example, batteries), the definition of universal waste in WAC 173-303-040 will be amended to include only the dangerous waste portion of the waste category (for example, dangerous waste batteries).) Thus, only the portion of the waste stream that does exhibit one or more characteristics or criteria (that is, is dangerous waste) is subject to the universal waste regulations of this section;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);

(c) The waste or category of waste is generated by a large number of generators (for example, more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other dangerous wastes, and specific management standards proposed or referenced by the petitioner (for example, waste management requirements appropriate to be added to subsections (9), (20), and (30) of this section; and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under this section will increase the likelihood that the waste will be diverted from nondangerous waste management systems (for example, the municipal waste stream, nondangerous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compli-

ance with the Hazardous Waste Management Act chapter 70.105 RCW, this chapter, and RCRA Subtitle C.

(g) Regulation of the waste or category of waste under this section will improve implementation of and compliance with the dangerous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

(41) **Applicability((—)) - Household and conditionally exempt small quantity generator waste.**

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(i) Household wastes that are exempt under WAC 173-303-071 (3)(c) and are also of the same type as the universal wastes defined at WAC 173-303-040; and/or

(ii) Small quantity generator wastes that are conditionally exempt under WAC 173-303-070(8) and are also of the same type as the universal wastes defined at WAC 173-303-040.

(b) Persons who commingle the wastes described in (a)(i) and (ii) of this subsection together with universal waste regulated under this section must manage the commingled waste under the requirements of this section.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-600 Final facility standards. Purpose, scope, and applicability.

(1) ((~~The purpose of~~)) Final facility standards are established in WAC 173-303-600 through 173-303-695, ((~~is to establish~~)) and also include WAC 173-303-280 through 173-303-395. Final facility standards are minimum statewide standards which describe the acceptable management of dangerous waste. ((~~In addition to WAC 173-303-600 through 173-303-695, the final facility standards include WAC 173-303-280 through 173-303-395.~~))

(2) The final facility standards apply to owners and operators of all facilities which treat, store or dispose of dangerous waste, and which are not exempted by subsection (3) of this section. Only permitted facilities which treat, store or dispose of dangerous waste and owners or operators of a facility which recycles dangerous waste in compliance with subsection (5) of this section can receive dangerous waste from off-site sources, unless exempted by subsection (3) of this section.

(3) The final facility standards do not apply to:

(a) Persons whose disposal activities are permitted under the Marine Protection, Research and Sanctuaries Act, except that storage, or treatment facilities where dangerous waste is loaded onto an ocean vessel for incineration or disposal at sea are subject to final facility standards;

(b) Persons whose disposal activities are permitted under the underground injection control program of the Safe Drinking Water Act, except that storage, or treatment facilities needed to handle dangerous wastes are subject to final facility standards;

(c) The owner or operator of a POTW which treats, stores, or disposes of dangerous waste provided he has a permit by rule pursuant to the requirements of WAC 173-303-802(4);

(d) A generator accumulating waste on site in compliance with WAC 173-303-200;

(e) The owner or operator of a facility which is permitted to manage solid waste pursuant to chapter 173-350 WAC, if the only dangerous waste the facility manages is excluded from regulation under this chapter by WAC 173-303-070(8);

(f) A farmer disposing of waste pesticides from his own use provided he complies with WAC 173-303-160 (2)(b);

(g) A transporter storing a manifested shipment of dangerous waste for ten days or less in accordance with WAC 173-303-240(6);

(h) Any person, other than an owner or operator who is already subject to the final facility standards, who is carrying out an immediate or emergency response to contain or treat a discharge or potential discharge of a dangerous waste or hazardous substance;

(i) The owner or operator of a facility which is in compliance with the interim status requirements of WAC 173-303-400 and 173-303-805, until final administrative disposition of his final facility permit;

(j) The owner or operator of a totally enclosed treatment facility or elementary neutralization or wastewater treatment unit as defined in WAC 173-303-040, provided that he has a permit by rule pursuant to the requirements of WAC 173-303-802(5);

(k) The addition, by a generator, of absorbent material to waste in a container, or of waste to absorbent material in a container, provided that these actions occur at the time the waste is first placed in containers or, in the case of repackaging of previously containerized waste into new containers, at the time the waste is first placed into the new containers and the generator complies with WAC 173-303-200 (1)(b) and 173-303-395 (1)(a) and (b);

(l) The compaction or sorting of miscellaneous waste forms such as cans, rags, and bottles in a container, so long as the activity is solely for the purpose of reducing waste void space, and so long as these activities are conducted in a manner that protects human health and prevents any release to the environment and the generator complies with WAC 173-303-200 (1)(b) and 173-303-395 (1)(a) and (b);

(m) Generators treating dangerous waste on-site in tanks, containers, or containment buildings that are used for accumulation of such wastes provided the generator complies with the WAC 173-303-170(3);

(n) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in WAC 173-303-040, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 C.F.R. section 268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in WAC 173-303-395 (1)(a);

(o) Universal waste handlers and universal waste transporters (as defined in WAC 173-303-040) handling the wastes listed below. These handlers are subject to regulation under WAC 173-303-573, when handling the below listed universal wastes.

(i) Batteries as described in WAC 173-303-573(2);

(ii) Mercury-containing equipment as described in WAC 173-303-573(3); and

(iii) Lamps as described in WAC 173-303-573(5);

(p)(i) Except as provided in (p)(ii) of this subsection, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a dangerous waste;

(B) An imminent and substantial threat of a discharge of dangerous waste;

(C) A discharge of a material that, when discharged, becomes a dangerous waste;

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in WAC 173-303-040.

(ii) An owner or operator of a facility otherwise regulated by WAC 173-303-600 must comply with all applicable requirements of WAC 173-303-340 and 173-303-350.

(iii) Any person who is covered by (p)(i) of this subsection and who continues or initiates dangerous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(iv) In the case of an explosives or munitions emergency response, if a federal, state, tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA/state identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

(q) WAC 173-303-578 identifies when the requirements of WAC 173-303-600 apply to the storage of military munitions classified as solid waste under WAC 173-303-578(2). The treatment and disposal of dangerous waste military munitions are subject to the applicable permitting, procedural, and technical standards in this chapter.

(4) Reserve.

(5) The owner or operator of a facility which recycles dangerous waste may, for such recycled wastes only, comply with the applicable recycling standards specified in WAC 173-303-120 and 173-303-500 through 173-303-525 in lieu of the final facility standards.

(6) The owner or operator must comply with the special land disposal restrictions for certain dangerous wastes in WAC 173-303-140.

(7) The final facility requirements apply to owners or operators of all facilities that treat, store, or dispose of hazardous wastes referred to in 40 C.F.R. Part 268, which is incorporated by reference at WAC 173-303-140(2).

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-610 Closure and post-closure. (1) Applicability.

(a) Subsections (2) through (6) of this section, (which concern closure), apply to the owners and operators of all dangerous waste facilities.

(b) Subsections (7) through (11) of this section, (which concern post-closure care), apply to the owners and operators of all regulated units (as defined in WAC 173-303-040) at which dangerous waste will remain after closure, to tank systems that are required under WAC 173-303-640(8) to meet the requirements of landfills, to surface impoundments, waste piles, and miscellaneous units as specified in WAC 173-303-650(6), 173-303-660(9), and 173-303-680(4), respectively; to containment buildings that are required under 40 C.F.R. 264.1102 (incorporated by reference at WAC 173-303-695) to meet the requirements for landfills; and, unless otherwise authorized by the department, to the owners and operators of all facilities which, at closure, cannot meet the removal or decontamination limits specified in subsection (2)(b) of this section.

(c) Owners and operators of off-site recycling facilities subject to WAC 173-303-120 (3) or (4), and off-site used oil processors subject to regulation under WAC 173-303-515(9) are subject to:

(i) WAC 173-303-610(2) Closure performance standard; and

(ii) WAC 173-303-610(12) Off-site recycling and used oil processor closure plans.

(d) For the purposes of the closure and post-closure requirements, any portion of a facility which closes is subject to the applicable closure and post-closure standards even if the rest of the facility does not close and continues to operate.

(e) Except for subsection (2)(a) of this section, the director may, in an enforceable document, replace all or part of the requirements of this section and the unit-specific requirements referenced in subsection (2)(b) of this section with alternative requirements when he or she determines:

(i) A dangerous waste unit is situated among other solid waste management units or areas of concern, a release has occurred, and both the dangerous waste unit and one or more of the solid waste management units or areas of concern are likely to have contributed to the release; and

(ii) It is not necessary to apply the requirements of this section (or the unit-specific requirements referenced in subsection (2)(b) of this section) because the alternative requirements will protect human health and the environment.

(2) Closure performance standard. The owner or operator must close the facility in a manner that:

(a)(i) Minimizes the need for further maintenance;

(ii) Controls, minimizes or eliminates to the extent necessary to protect human health and the environment, post-closure escape of dangerous waste, dangerous constituents, leachate, contaminated runoff, or dangerous waste decomposition products to the ground, surface water, groundwater, or the atmosphere; and

(iii) Returns the land to the appearance and use of surrounding land areas to the degree possible given the nature of the previous dangerous waste activity.

(b) Where the closure requirements of this section, or of WAC 173-303-630(10), 173-303-640(8), 173-303-650(6), 173-303-655(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), 173-303-670(8), 173-303-680 (2) through (4), or 40 C.F.R. 264.1102 (incorporated by reference at WAC 173-303-695) call for the removal or decontamination of dangerous wastes, waste residues, or equipment, bases, liners, soils or other materials containing or contaminated with dangerous wastes or waste residue, then such removal or decontamination must assure that the levels of dangerous waste or dangerous waste constituents or residues do not exceed:

(i) For soils, groundwater, surface water, and air, the numeric cleanup levels calculated using unrestricted use exposure assumptions according to the Model Toxics Control Act Regulations, chapter 173-340 WAC as of the effective date or hereafter amended. Primarily, these will be numeric cleanup levels calculated according to MTCA Method B, although MTCA Method A may be used as appropriate, see WAC 173-340-700 through 173-340-760, excluding WAC 173-340-745; and

(ii) For all structures, equipment, bases, liners, etc., clean closure standards will be set by the department on a case-by-case basis in accordance with the closure performance standards of WAC 173-303-610 (2)(a)(ii) and in a manner that minimizes or eliminates post-closure escape of dangerous waste constituents.

(3) Closure plan; amendment of plan.

(a) The owner or operator of a dangerous waste management facility must have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the dangerous waste at partial or final closure are required by WAC 173-303-650(6) and 173-303-660(9) to have contingent closure plans. The plan must be submitted with the permit application, in accordance with WAC 173-303-806(4), and approved by the department as part of the permit issuance procedures under WAC 173-303-840. The approved closure plan will become a condition of any permit. The department's decision must assure that the approved closure plan is consistent with subsections (2), (3), (4), (5), and (6) of this section, and the applicable requirements of WAC 173-303-630(10), 173-303-640(8), 173-303-645, 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), 173-303-670(8), 173-303-680(2), and 40 C.F.R. 264.1102 (incorporated by reference at WAC 173-303-695). A copy of the approved plan and all revisions to the plan must be furnished to the department upon request, including request by mail until final closure is completed and certified in accordance with subsection (6) of this section. The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include at least:

(i) A description of how each dangerous waste management unit at the facility will be closed in accordance with subsection (2) of this section;

(ii) A description of how final closure of the facility will be conducted in accordance with subsection (2) of this section. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility;

(iii) An estimate of the maximum inventory of dangerous wastes ever on-site over the active life of the facility. (Any change in this estimate is a Class 1 modification with prior approval under WAC 173-303-830(4));

(iv) A detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all dangerous wastes, and identification of the type(s) of the off-site dangerous waste management units to be used, if applicable;

(v) A detailed description of the steps needed to remove or decontaminate all dangerous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(vi) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and runoff control;

(vii) A schedule for closure of each dangerous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each dangerous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all dangerous waste inventory and of the time required to place a final cover must be included.); and

(viii) For facilities that use trust funds to establish financial assurance under WAC 173-303-620 (4) or (6) and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(ix) For facilities where the director has applied alternative requirements under subsection (1) (e) of this section, WAC 173-303-645 (1)(e), or 173-303-620 ((~~(8)(d)~~)) (1)(d)(i), the closure plan must include either the alternative requirements or a reference to the enforceable document that contains the alternative requirements.

(b) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in WAC 173-303-800 through 173-303-840. The written notification or request must include a copy of the amended closure plan for review or approval by the department.

(i) The owner or operator may submit a written notification or request to the department for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(ii) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved closure plan whenever:

(A) Changes in operating plans or facility design affect the closure plan; or

(B) There is a change in the expected year of closure, if applicable; or

(C) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan; or

(D) The owner/operator requests the director apply alternative requirements under subsection (1) (e) of this section, WAC 173-303-645 (1)(e), or 173-303-620 (((~~(8)~~))) (1)(d).

(iii) The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least sixty days prior to the proposed change in facility design or operation, or no later than sixty days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than thirty days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all dangerous waste at closure and is not otherwise required to prepare a contingent closure plan under WAC 173-303-650(6) or 173-303-660(9), must submit an amended closure plan to the department no later than sixty days from the date that the owner or operator or department determines that the dangerous waste management unit must be closed as a landfill, subject to the requirements of WAC 173-303-665, or no later than thirty days from that date if the determination is made during partial or final closure. The department will approve, disapprove, or modify this amended plan in accordance with the procedures in WAC 173-303-800 through 173-303-840. The approved closure plan will become a condition of any permit issued.

(iv) The department may request modifications to the plan under the conditions described in (b)(ii) of this subsection. The owner or operator must submit the modified plan within sixty days of the department's request, or within thirty days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the department will be approved in accordance with the procedures in WAC 173-303-800 through 173-303-840.

(c) Notification of partial closure and final closure.

(i) The owner or operator must notify the department in writing at least sixty days prior to the date on which they expect to begin closure of a surface impoundment, waste pile, land treatment, or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the department in writing at least forty-five days prior to the date on which they expect to begin closure of a treatment or storage tank, container storage, or incinerator unit, or final closure of a facility with only such units.

(ii) The date when he "expects to begin closure" must be either:

(A) No later than thirty days after the date on which any dangerous waste management unit receives the known final volume of dangerous wastes or, if there is a reasonable possibility that the dangerous waste management unit will receive additional dangerous wastes, no later than one year after the date on which the unit received the most recent volume of dangerous waste. If the owner or operator of a dangerous waste management unit can demonstrate to the department that the dangerous waste management unit or facility has the capacity to receive additional dangerous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the department may approve an extension to this one-year limit; or

(B) For units meeting the requirements of subsection (4)(d) of this section, no later than thirty days after the date on which the dangerous waste management unit receives the known final volume of nondangerous wastes, or if there is a reasonable possibility that the dangerous waste management unit will receive additional nondangerous wastes, no later than one year after the date on which the unit received the most recent volume of nondangerous wastes. If the owner or operator can demonstrate to the department that the dangerous waste management unit has the capacity to receive additional nondangerous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the department may approve an extension to this one-year limit.

(iii) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order to cease receiving dangerous wastes or to close, then the requirements of (c) of this subsection do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in subsection (4) of this section.

(iv) Removal of wastes and decontamination or dismantling of equipment. Nothing in this subsection will preclude the owner or operator from removing dangerous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(4) Closure; time allowed for closure.

(a) Within ninety days after receiving the final volume of dangerous wastes, or the final volume of nondangerous wastes if the owner or operator complies with all applicable requirements in (d) and (e) of this subsection, at a dangerous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on site, all dangerous wastes in accordance with the approved closure plan. The department may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that he has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, and either:

(i) The activities required to comply with this paragraph will, of necessity, take longer than ninety days to complete; or

(ii)(A) The dangerous waste management unit or facility has the capacity to receive additional dangerous wastes, or has the capacity to receive nondangerous wastes if the owner or operator complies with (d) and (e) of this subsection;

(B) There is a reasonable likelihood that he or another person will recommence operation of the dangerous waste management unit or the facility within one year; and

(C) Closure of the dangerous waste management unit or facility would be incompatible with continued operation of the site.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within one hundred eighty days after receiving the final volume of dangerous wastes, or the final volume of nondangerous wastes if the owner or operator complies with all applicable requirements in (d) and (e) of this subsection, at the dangerous waste management unit or facility. The department may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that he has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating dangerous waste management unit or facility, including compliance with all applicable permit requirements, and either:

(i) The partial or final closure activities will, of necessity, take longer than one hundred eighty days to complete; or

(ii)(A) The dangerous waste management unit or facility has the capacity to receive additional dangerous wastes, or has the capacity to receive nondangerous wastes if the owner or operator complies with (d) and (e) of this subsection;

(B) There is reasonable likelihood that he or another person will recommence operation of the dangerous waste management unit or the facility within one year; and

(C) Closure of the dangerous waste management unit or facility would be incompatible with continued operation of the site.

(c) The demonstrations referred to in (a)(i) and (ii) and (b)(i) and (ii) of this subsection must be made as follows: The demonstrations in (a)(i) and (ii) of this subsection must be made at least thirty days prior to the expiration of the specified ninety-day period; and the demonstration in (b)(i) and (ii) of this subsection must be made at least thirty days prior to the expiration of the specified one hundred eighty-day period unless the owner or operator is otherwise subject to the deadlines in (d) of this subsection.

(d) The department may allow an owner or operator to receive only nondangerous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of dangerous wastes at that unit if:

(i) The owner or operator requests a permit modification in compliance with all applicable requirements in WAC 173-303-830 and 40 C.F.R. Part 124 and in the permit modification request demonstrates that:

(A) The unit has the existing design capacity as indicated on the part A application to receive nondangerous wastes; and

(B) There is a reasonable likelihood that the owner or operator or another person will receive nondangerous wastes in the unit within one year after the final receipt of dangerous wastes; and

(C) The nondangerous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this part; and

(D) Closure of the dangerous waste management unit would be incompatible with continued operation of the unit or facility; and

(E) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(ii) The request to modify the permit includes an amended wastes analysis plan, groundwater monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plan, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of dangerous constituents in the nondangerous wastes, and changes in closure activities, including the expected year of closure if applicable under subsection (3)(a)(viii) of this section, as a result of the receipt of nondangerous wastes following the final receipt of dangerous wastes; and

(iii) The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of nondangerous wastes following receipt of the final volume of dangerous wastes; and

(iv) The request to modify the permit and the demonstration referred to in (d)(i) and (ii) of this subsection are submitted to the department no later than one hundred twenty days prior to the date on which the owner or operator of the facility receives the known final volume of dangerous wastes at the unit, or no later than ninety days after the effective date of this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in (d) of this subsection, an owner or operator of a dangerous wastes surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004 (o)(1) and 3005 (j)(1) or 42 U.S.C. 3004 (o)(2) or (3) or 3005 (j)(2), (3), (4) or (13) must:

(i) Submit with the request to modify the permit:

(A) A contingent corrective measures plan, unless a corrective action plan has already been submitted under WAC 173-303-645(10); and

(B) A plan for removing dangerous wastes in compliance with (e)(ii) of this subsection; and

(ii) Remove all dangerous wastes from the unit by removing all dangerous liquids, and removing all dangerous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(iii) Removal of dangerous wastes must be completed no later than ninety days after the final receipt of dangerous wastes. The department may approve an extension to this deadline if the owner or operator demonstrates that the removal of dangerous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(iv) If a release that is a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters of constituents specified in the permit or that exceeds the facility's groundwater protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in WAC 173-303-645, the owner or operator of the unit:

(A) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by (e)(i) of this subsection no later than one year

after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(B) May continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(C) May be required by the department to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(v) During the period of corrective action, the owner or operator must provide semiannual reports to the department that describe the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nondangerous wastes on the effectiveness of the corrective action.

(vi) The department may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in (e)(iv) of this subsection, or fails to make substantial progress in implementing corrective action and achieving the facility's groundwater protection standard or background levels if the facility has not yet established a groundwater protection standard.

(vii) If the owner or operator fails to implement corrective measures as required in (e)(iv) of this subsection or if the department determines that substantial progress has not been made pursuant to (e)(vi) of this subsection the department will:

(A) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadline in (a) and (b) of this subsection and provide a detailed statement of reasons for this determination; and

(B) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than twenty days after the date of the notice.

(C) If the department receives no written comments, the decision will become final five days after the close of the comment period. The department will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within fifteen days of the final notice and that closure must begin in accordance with the deadlines in (a) and (b) of this subsection.

(D) If the department receives written comments on the decision, it will make a final decision within thirty days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the department determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in (a) and (b) of this subsection.

(E) The final determinations made by the department under (e)(vii)(C) and (D) of this subsection are not subject to administrative appeal.

(5) Disposal or decontamination of equipment, structures and soils. During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of or decontaminated unless otherwise specified in WAC 173-303-640(8), 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), or under the authority of WAC 173-303-680 (2) and (4). By removing any dangerous wastes or dangerous constituents during partial and final closure, the owner or operator may become a generator of dangerous waste and must handle that waste in accordance with all applicable requirements of WAC 173-303-170 through 173-303-230.

(6) Certification of closure. Within sixty days of completion of closure of each dangerous waste management unit (including tank systems and container storage areas), and within sixty days of the completion of final closure, the owner or operator must submit to the department by registered mail or other means that establish proof of receipt (including applicable electronic means), a certification that the dangerous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent qualified registered professional engineer. Documentation supporting the independent qualified registered professional engineer's certification must be furnished to the department upon request until it releases the owner or operator from the financial assurance requirements for closure under WAC 173-303-620(4).

(7) Post-closure care and use of property.

(a) Post-closure care for each dangerous waste management unit subject to post-closure requirements must begin after completion of closure of the unit and continue for thirty years after that date and must consist of at least the following:

(i) Groundwater monitoring and reporting as required by WAC 173-303-645, 173-303-650, 173-303-655, 173-303-660, 173-303-665, and 173-303-680; and

(ii) Maintenance and monitoring of waste containment systems as applicable.

(b) Any time preceding partial closure of a dangerous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the department may, in accordance with the permit modification procedures in WAC 173-303-800 through 173-303-840:

(i) Shorten the post-closure care period applicable to the dangerous waste management unit, or facility, if all disposal units have been closed, if it finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the dangerous waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the dangerous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the dangerous waste management unit or facility if it finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of dangerous waste at levels which may be harmful to human health and the environment).

(c) The department may require, at partial or final closure, continuation of any of the security requirements of

WAC 173-303-310 during part or all of the post-closure period when:

(i) Dangerous wastes may remain exposed after completion of partial or final closure; or

(ii) Access by the public or domestic livestock may pose a hazard to human health.

(d) Post-closure use of property on or in which dangerous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the department finds that the disturbance:

(i) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(ii) Is necessary to reduce a threat to human health or the environment.

(e) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in subsection (8) of this section.

(8) Post-closure plan; amendment of plan.

(a) The owner or operator of a dangerous waste disposal unit must have a written post-closure plan. In addition, certain surface impoundments and certain piles from which the owner or operator intends to remove or decontaminate the dangerous wastes at partial or final closure are required by WAC 173-303-650 and 173-303-660, respectively, to have written contingent post-closure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under WAC 173-303-650 or 173-303-660 must submit a post-closure plan to the department within ninety days from the date that the owner or operator or department determines that the dangerous waste management unit must be closed as a landfill, subject to the post-closure requirements. The plan must be submitted with the permit application, in accordance with WAC 173-303-806, and approved by the department as part of the permit issuance procedures under WAC 173-303-840. The approved post-closure plan will become a condition of any permit issued.

(b) For each dangerous waste management unit subject to the requirements of this subsection, the post-closure plan must identify the activities which will be carried on after closure and the frequency of these activities, and include at least:

(i) A description of the planned groundwater monitoring activities and frequencies at which they will be performed;

(ii) A description of the planned maintenance activities, and frequencies at which they will be performed to comply with WAC 173-303-645, 173-303-650, 173-303-655, 173-303-660, 173-303-665, and 173-303-680 during the post-closure care period, to ensure:

(A) The integrity of the cap and final cover or other containment structures in accordance with the requirements of 173-303-645, 173-303-650, 173-303-655, 173-303-660, 173-303-665, and 173-303-680; and

(B) The function of the facility monitoring equipment;

(iii) The name, address, and phone number of the person or office to contact about the dangerous waste disposal unit or facility during the post-closure care period;

(iv) And, for facilities where the director has applied alternative requirements under subsection (1) (e) of this section, WAC 173-303-645 (1)(e) or 173-303-620 (8)(d), the post-closure plan must include either the alternative requirements or a reference to the enforceable document that contains the alternative requirements.

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the department upon request, including request by mail. After final closure has been certified, the person or office specified in (b)(iii) of this subsection must keep the approved post-closure plan during the remainder of the post-closure period.

(d) Amendment of plan. The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of WAC 173-303-800 through 173-303-840. The written notification or request must include a copy of the amended post-closure plan for review or approval by the department.

(i) The owner or operator may submit a written notification or request to the department for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(ii) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan whenever:

(A) Changes in operating plans or facility design affect the approved post-closure plan; or

(B) There is a change in the expected year of final closure, if applicable; or

(C) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan; or

(D) The owner/operator requests the director to apply alternative requirements under subsection (1) (e) of this section, WAC 173-303-645 (1)(e), or 173-303-620 ((~~(8)~~)) (1)(d).

(iii) The owner or operator must submit a written request for a permit modification at least sixty days prior to the proposed change in facility design or operation, or no later than sixty days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all dangerous waste at closure and is not otherwise required to submit a contingent post-closure plan under WAC 173-303-650 or 173-303-660 must submit a post-closure plan to the department no later than ninety days after the date that the owner or operator or department determines that the dangerous waste management unit must be closed as a landfill, subject to the requirements of WAC 173-303-665. The department will approve, disapprove, or modify this plan in accordance with the procedures in WAC 173-303-800 through 173-303-840. The approved post-closure plan will become a permit condition.

(iv) The department may request modifications to the plan under the conditions described in (d)(ii) of this subsection. The owner or operator must submit the modified plan no later than sixty days after the department's request, or no later than ninety days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the department

will be approved, disapproved, or modified in accordance with the procedures in WAC 173-303-800 through 173-303-840.

(9) Notice to local land authority. No later than the submission of the certification of closure of each dangerous waste disposal unit, the owner or operator of a disposal facility must submit to the local zoning authority or the authority with jurisdiction over local land use and to the department a survey plat indicating the location and dimensions of landfill cells or other dangerous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the dangerous waste disposal unit in accordance with the applicable requirements of this section. In addition, no later than sixty days after certification of closure of each dangerous waste disposal unit, the owner or operator must submit to the local zoning authority or the authority with jurisdiction over local land use and to the department, a record of the type, location, and quantity of dangerous wastes disposed of within each cell or other disposal unit of the facility. For wastes disposed of before November 19, 1980 (March 12, 1982, for facilities subject to this chapter but not subject to 40 C.F.R. Part 264), the owner or operator must identify the type, location, and quantity of the dangerous wastes to the best of his knowledge and in accordance with any records he has kept.

(10) Notice in deed to property.

(a) No later than sixty days after certification of closure of each dangerous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the department a record of the type, location, and quantity of dangerous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes (as defined in WAC 173-303-040) disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the dangerous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within sixty days of certification of closure of the first dangerous waste disposal unit and within sixty days of certification of closure of the last dangerous waste disposal unit, the owner or operator must:

(i) Record, in accordance with state law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(A) The land has been used to manage dangerous wastes;

(B) Its use is restricted under this section; and

(C) The survey plat and record of the type, location, and quantity of dangerous wastes disposed of within each cell or other dangerous waste disposal unit of the facility required in subsection (9) of this section have been filed with the local zoning authority, or the authority with jurisdiction over local land use, and with the department; and

(ii) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in (b)(i) of this subsection, including a copy of the document in which the notation has been placed, to the department.

(c) If the owner or operator or any subsequent owner of the land upon which a dangerous waste facility was located wishes to remove dangerous wastes and dangerous waste residues, the liner, if any, or contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in WAC 173-303-800 through 173-303-840. The owner or operator must demonstrate that the removal of dangerous wastes will satisfy the criteria of subsection (7)(d) of this section. By removing dangerous waste, the owner or operator may become a generator of dangerous waste and must manage it in accordance with all applicable requirements of this chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the department approve either:

(i) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(ii) The addition of a notation to the deed or instrument indicating the removal of the dangerous waste.

(11) Certification of completion of post-closure care. No later than sixty days after completion of the established post-closure care period for each dangerous waste disposal unit, the owner or operator must submit to the department, by registered mail or other means that establish proof of receipt (including applicable electronic means), a certification that the post-closure care period for the dangerous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent qualified registered professional engineer. Documentation supporting the independent qualified registered professional engineer's certification must be furnished to the department upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under WAC 173-303-620(6).

(12) Off-site recycling and used oil processor closure plans. The owner or operator of an off-site recycling facility subject to regulation under WAC 173-303-120 (3), (4), or used oil processor or rerefiner subject to WAC 173-303-515(9) must have a written closure plan.

(a) Submittal. For new facilities, the closure plan must be submitted with the notification required under WAC 173-303-060. For existing facilities, the closure plan must be submitted within one hundred eighty days of the effective date of this regulation. For closure plans denied under (b) of this subsection that will be resubmitted, the amended plan must be resubmitted within ninety days after the owner or operator receives the denial.

(b) Review by department. Decision to approve or deny. Closure plans must be submitted to department for review, comment, approval or denial. The department decision to approve a closure plan must assure it is consistent with requirements in subsections (2) and (12) of this section. The department decision to deny a closure plan must be justified on the inability or unwillingness of the owner and operator to meet requirements in subsections (2) and (12) of this section

or WAC 173-303-620 (1)(e). The department's decision may be appealed under the provisions of WAC 173-303-845.

(c) Availability. A copy of the approved closure plan and all updates to the plan must be maintained at the facility and furnished to the department upon request, including request by mail, until final closure is completed and certified in accordance with subsection (6) of this section.

(d) Contents of plan. The closure plan must identify steps necessary to perform final closure of recycling units at any point during its active life. The closure plan must include at least:

(i) An estimate of the maximum inventory of dangerous wastes or used oil ever on-site over the active life of the facility;

(ii) Descriptions, schedules, and disposal or decontamination procedures in subsections (3), (4), (5), (6) of this section, except any provisions dealing with permits, permit applications, modifications or approvals. The term "recycling unit" will replace the terms "dangerous waste management unit" or "regulated unit" in these subsections. Any references to permits or permit modifications in these subsections do not apply.

(e) Obligation to amend. At least sixty days prior to a major change at an off-site recycling or used oil processor/rerefining facility, the owners/operator of that facility must submit an amended closure plan. A major change may include the addition of a recycling or recovery process that is subject to WAC 173-303-120 (3) or (4), any increase in the maximum inventory of dangerous waste or used oil described in the previously approved closure plan, the closure of an existing recycling unit, or a change in ownership or operational control. The department must approve or deny, with justification, the revised closure plan. Refer to (a) of this subsection when a closure plan is denied if the closure plan needs to be resubmitted. Alternatively, the owner or operator may challenge the denial pursuant to WAC 173-303-845.

(f) Notification of closure. At least forty-five days prior to closure, an owner/operator must provide written notice to the department of intent to close.

(g) Relationship to closure plans for permitted facilities. A facility owner/operator that is subject to permitting and closure planning requirements for storage, treatment or disposal that is also required to prepare a closure plan for off-site recycling or used oil processing/rerefining, may satisfy the requirements of this subsection by combining all closure requirements in a single closure plan.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-620 Financial requirements. (1) Applicability.

(a) The requirements of subsections (3), (4), (7), (8), (9), and (10) of this section, apply to owners and operators of all dangerous waste facilities, except as provided otherwise in this section.

(b) The requirements of subsections (5) and (6) of this section apply to owners and operators of:

(i) Dangerous waste disposal facilities;

(ii) Tank systems that are required under WAC 173-303-640(8) to meet the requirements of landfills;

(iii) Miscellaneous units as specified in WAC 173-303-680(4);

(iv) Waste piles and surface impoundments to the extent that WAC 173-303-650 and 173-303-660, respectively, require that such facilities comply with this section; and

(v) Containment buildings that are required under WAC 173-303-695 to meet the requirements for landfills.

(c) States and the federal government are exempt from the requirements of this section. Operators of state or federally owned facilities are exempt from the requirements of this section, except subsections (3) and (5) of this section. Operators of facilities who are under contract with (but not owned by) the state or federal government must meet all of the requirements of this section.

(d) The director may, in an enforceable document, replace all or part of the requirements of this section with alternative requirements for financial assurance when he or she:

(i) Applies alternative requirements for groundwater monitoring, closure or post-closure under WAC 173-303-610 (1)(((~~d~~))) (e) or 173-303-645 (1)(e); and

(ii) Determines that it is not necessary to apply the requirements of this section because the alternative requirements will protect human health and the environment.

(e) Except as provided in (c) of this subsection, the requirements of subsections (3), (4), (8), (9) and (10) of this section apply to owners and operators of off-site recycling facilities and processors/rerefiners of used oil, except the term "recycling unit" will replace the terms "dangerous waste management unit" or "regulated unit."

(i) If the closure plan for an off-site recycling or used oil processing/rerefining facility has not been approved by the department within one year of submittal to the department, the department may determine the closure cost estimate and direct the facility to establish financial assurance in that amount. Note that the schedule for partially funded trust funds for existing facilities of WAC 173-303-620 (4)(c)(i) may apply.

(ii) Relationship to closure cost estimates and financial responsibility for permitted facilities. A facility owner/operator that is subject to closure cost estimating and financial responsibility requirements for dangerous waste management units and recycling unit may choose to consolidate those requirements into a single mechanism for submittal to the department.

(2) Definitions. As used in this section, the following listed or referenced terms have the meanings given below:

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of WAC 173-303-610(3), or for off-site recycling or used oil processing facilities prepared in accordance with WAC 173-303-610(12);

(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with subsection (3) of this section;

(c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with subsection (5) of this section;

(d) "Parent corporation" means a corporation which directly owns at least fifty percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation;

(e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of WAC 173-303-610 (7), (8), (9), and (10);

(f) "Regional administrator" means the department;

(g) "Hazardous waste" means dangerous waste; and

(h) The additional terms listed and defined in 40 C.F.R. 264.141 (f), (g), and (h) are incorporated by reference.

(3) Cost estimate for facility closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in WAC 173-303-610 (2) through (6), and applicable closure requirements in WAC 173-303-630(10), 173-303-640(5), 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), 173-303-670(8), 173-303-680 (2) through (4) and 173-303-695. The closure cost estimate:

(i) Must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see WAC 173-303-610 (3)(a));

(ii) Must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. On a case-by-case basis, the department may determine that a party that shares common ownership, a common parent corporation, or other higher-tier corporate ownership, may not qualify as a third party. (See definition of parent corporation in subsection (2)(d) of this section.) The owner or operator may use costs for on-site disposal if ((~~he~~)) the guarantor can demonstrate that on-site disposal capacity will exist at all times over the life of the facility;

(iii) May not incorporate any salvage value that may be realized with the sale of dangerous wastes, or nondangerous wastes if applicable under WAC 173-303-610 (4)(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure;

Except that, off-site recyclers subject to WAC 173-303-120 (3) or (4), or off-site used oil processors subject to WAC 173-303-515(9) may exclude the estimated value for certain types of recyclable materials from the estimated cost of closing a recycling unit. This exclusion may include dangerous wastes or used oil held in tanks or containers that are dedicated solely to the management of recyclable materials that will require only incidental processing prior to producing a product that may be sold to the general public. Incidental processing may include simple screening or filtering to remove minor amounts of foreign material or removal of less than five percent water by volume; ((~~and~~))

(iv) May not incorporate a zero cost for dangerous wastes, or nondangerous wastes if applicable under WAC 173-303-610 (4)(d), that might have economic value; and

(v) May not be reduced for "net present value," "present discounted value," or other adjustments.

(b) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than thirty days after the department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in (c)(i) and (ii) of this subsection.

(c) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with this section. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within thirty days after the close of the firm's fiscal year and before submission of updated information to the department as specified in subsection (4) of this section. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent *Implicit Price Deflator for Gross National Product or Gross Domestic Product* as published by the United States Department of Commerce in its survey of current business. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(i) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(ii) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(d) During the operating life of the facility, the owner or operator must keep at the facility the latest closure cost estimate prepared in accordance with (a) and (b) of this subsection, and, when this estimate has been adjusted in accordance with (c) of this subsection, the latest adjusted closure cost estimate.

(4) Financial assurance for facility closure.

(a) An owner or operator of a TSD, or off-site recycling or used oil processing/rerefining facility must establish financial assurance for closure of the facility. The owner or operator must choose from the following options or combination of options:

(i) Closure trust fund;

(ii) Surety bond guaranteeing payment into a closure trust fund;

(iii) Surety bond guaranteeing performance of closure;

(iv) Closure letter of credit;

(v) Closure insurance; or

(vi) Financial test and/or corporate guarantee for closure.

(b) In satisfying the requirements of financial assurance for facility closure in this subsection, the owner or operator must meet all the requirements for the mechanisms listed above as set forth in 40 C.F.R. 264.143 which are incorporated by reference. If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste or with the appropriate regional administrator if the facility is located in an unauthorized state.

(c) An owner or operator of an off-site recycling or used oil processing/rerefining facility may also meet the requirements of this subsection through the use of an assigned secu-

rity deposit held in a Washington state bank. This mechanism is not available to an owner or operator of a TSD.

(i) The department will establish minimum standards for the assigned security deposit mechanism. These standards will include, but are not limited to, the language to be used in the assignment form. Copies of the assignment forms will be available from the department.

(ii) The department is not required to accept an assigned security deposit that does not meet the established minimum standards.

(d) 40 C.F.R. 264.143 is modified by the following requirements:

(i) Partially funded trust funds of 264.143 (a)(3) may not be accepted as a mechanism for a closure trust fund for TSDs. Owners and operators of existing used oil and recycling units that become subject to this section may establish a partially funded closure trust fund with a pay-in period of five years. The fund must be fully funded no later than five years (and the first, second, third, fourth, and fifth payments due no later than one, two, three, four, and five year(s) respectively) after the date of the department's approval of the closure plan under WAC 173-303-610 (12)(b);

(ii) Insurance companies providing closure coverage must have a current rating of financial strength of:

(A) AAA, AA+, AA, AA-, A+, A as rated by Standard and Poor's;

(B) Aaa, Aa1, Aa2, Aa3, A1, A2 as rated by Moody's; or

(C) A++, A+, A, A-, B++, B+ as rated by A.M. Best;

(iii) Ecology must be named as secondary beneficiary on an insurance policy;

(iv) Facility owners/operators and corporate guarantors requesting the use of the financial test ((~~and~~)) or corporate guarantee must meet a minimum tangible net worth criterion of ((~~twenty~~)) twenty-five million dollars;

(v) Facility owners/operators and corporate guarantors requesting the use of the financial test or corporate guarantee are not required to submit a "negative assurance" report, such as the one detailed in 40 C.F.R. 264.143 (f)(3)(iii). A financial test or corporate guarantee submission must instead include a CPA report based on an "Agreed Upon Procedures" engagement that complies with the American Institute of Certified Public Accountants' "Statement on Auditing Standards No. 75, Engagements to apply Agreed-Upon Procedures to Specific Elements, Accounts or Items of a Financial Statement" or any subsequent equivalent document from AICPA. This report must describe the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

(e) Owners and operators of off-site recycling facilities regulated under WAC 173-303-120 (3) or (4), or used oil processing/rerefining facilities regulated under WAC 173-303-515(9), must demonstrate financial assurance for closure of the facility or recycling units. In addition to the requirements of 40 C.F.R. 264.143, as amended by this subsection, the financial assurance must meet the following requirements:

(i) For existing facilities choosing a surety bond guaranteeing payment, surety bond guaranteeing performance, letter of credit, insurance, financial test, corporate guarantee, or assigned security deposit, the mechanism must be established within thirty-six months of the effective date of this section;

(ii) Owners and operators of existing facilities choosing a partially funded trust fund mechanism must establish a fully funded trust fund within sixty months of approval of the closure plan by the department (see (c)(i) of this subsection);

(iii) For new facilities, financial assurance must be established and submitted to the department at least sixty days prior to the acceptance of the first shipment of wastes.

(f) Owners and operators of off-site recycling facilities regulated under WAC 173-303-120 (3) or (4), or used oil processing/rerefining facilities regulated under WAC 173-303-515(9) may request an alternative mechanism for financing the closure of recycling units that is determined by the department to be equivalent to one of the methods listed in (a) of this subsection. This may include any alternative mechanism as may be established through action by the Washington state legislature. An assigned security deposit that meets the department's standards is an equivalent alternative mechanism within the meaning of this section.

(g) The amount of financial assurance for closure must not be less than the facility's current closure cost estimate. Financial assurance amounts, regardless of mechanism, may not be reduced for "net present value," "present discounted value," or other adjustments.

(5) Cost estimate for post-closure monitoring and maintenance.

(a) The owner or operator of a facility subject to post-closure monitoring or maintenance requirements must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in WAC 173-303-610 (7) through (10), 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), and 173-303-680(4). The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. On a case-by-case basis, the department may determine that a party that shares common ownership, a common parent corporation, or other higher-tier corporate ownership may not qualify as a third party. (See definition of parent corporation in subsection (2)(d) of this section.) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required by WAC 173-303-610.

(b) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within thirty days after the department has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in (c)(i) and (ii) of this subsection.

(c) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with subsection (6) of this section. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within thirty days after the close of the firm's fiscal year and before the submission of updated information to the department as spec-

ified in subsection (6) of this section. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent *Implicit Price Deflator for Gross National Product* or *Gross Domestic Product* as published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(i) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(ii) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(d) During the operating life of the facility, the owner or operator must keep at the facility the latest post-closure cost estimate prepared in accordance with (a) and (b) of this subsection, and, when this estimate has been adjusted in accordance with (c) of this subsection, the latest adjusted post-closure cost estimate.

(6) Financial assurance for post-closure monitoring and maintenance.

(a) An owner or operator of a facility subject to post-closure monitoring or maintenance requirements must establish financial assurance for post-closure care in accordance with the approved post-closure care plan. ((~~He~~)) The owner or operator must choose from the following options or combination of options:

(i) Post-closure trust fund, except that the use of partially funded trust funds, as provided in 40 C.F.R. 264.145(a), will not be allowed by the department;

(ii) Surety bond guaranteeing payment into a post-closure trust fund;

(iii) Surety bond guaranteeing performance of post-closure care;

(iv) Post-closure letter of credit;

(v) Post-closure insurance; however, financial or insurance institutions providing such insurance must have a current rating of financial strength of:

(A) AAA, AA+, AA, AA-, A+, A as rated by Standard and Poor's;

(B) Aaa, Aa1, Aa2, Aa3, A1, A2 as rated by Moody's; or

(C) A++, A+, A, A-, B++, B+ as rated by A.M. Best; or

(vi) Financial test and/or corporate guarantee for post-closure care, except that the criterion for minimum tangible net worth in 40 C.F.R. 264.145(f) must be in an amount of at least ((~~twenty~~)) twenty-five million dollars;

(vii) Facility owners/operators and corporate guarantors requesting the use of the financial test or corporate guarantee are not required to submit a "negative assurance" report, such as the one detailed in 40 C.F.R. 264.145 (f)(3)(iii). A financial test or corporate guarantee submission must instead include a CPA report based on an "Agreed Upon Procedures" engagement that complies with the American Institute of Certified Public Accountants' "Statement on Auditing Standards No. 75, Engagements to apply Agreed-Upon Procedures to Specific Elements, Accounts or Items of a Financial Statement" or any subsequent equivalent document from AICPA. This report must describe the procedures performed and related findings, including whether or not there were discrepancies found in the comparison.

(b) In satisfying the requirements of financial assurance for facility post-closure care in this subsection, the owner or operator must meet all the requirements set forth in 40 C.F.R. 264.145 which are incorporated by reference. If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste or with the appropriate regional administrator if the facility is located in an unauthorized state.

(c) The amount of financial assurance for post-closure must not be less than the facility's current post-closure cost estimate. Financial assurance amounts, regardless of mechanism, may not be reduced for "net present value," "present discounted value," or other adjustments.

(7) Use of a mechanism for financial assurance of both closure and post-closure care. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both 40 C.F.R. 264.143 and 264.145 which are incorporated by reference. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

(8) Liability requirements.

(a) An owner or operator of a TSD facility, off-site recycling or used oil processing/rerefining facility, or a group of such facilities must demonstrate financial responsibility for bodily injury and property damages to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must meet the requirements of 40 C.F.R. 264.147(a), which is incorporated by reference, with the following additional requirements:

(i) The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least two million five hundred thousand dollars per occurrence with an annual aggregate of at least five million dollars, exclusive of legal defense costs. For facilities that meet the criteria listed in 40 C.F.R. 264.147(b), the owner or operator must have and maintain liability coverage for non-sudden accidental occurrences in the amount of seven million dollars per occurrence with an annual aggregate of fourteen million dollars, exclusive of legal defense costs.

(ii) Insurance companies providing liability coverage must have a current rating of financial strength of:

(A) AAA, AA+, AA, AA-, A+, A as rated by Standard and Poor's;

(B) Aaa, Aa1, Aa2, Aa3, A1, A2 as rated by Moody's; or

(C) A++, A+, A, A-, B++, B+ as rated by A.M. Best;

((~~(ii)~~)) (iii) The department may file claims against liability insurance when contamination occurs as a result of releases or discharges of dangerous wastes or used oil from recycling units subject to regulation under this section to waters of the state as defined under chapter 90.48 RCW;

((~~(iii)~~)) (iv) Facility owners/operators and corporate guarantors requesting the use of the financial test and corporate guarantee must meet a minimum tangible net worth criterion of ((~~twenty~~)) twenty-five million dollars.

(b) An owner or operator of a facility with a regulated unit or units (as defined in WAC 173-303-040) or a disposal miscellaneous unit or units used to manage dangerous waste or a group of such facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must meet the requirements of 40 C.F.R. 264.147(b), 264.147 (f), (g), (h), (i), and (j) which are incorporated by reference.

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the department that the levels of financial responsibility required by (a) or (b) of this subsection are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the department. The request for a variance must be submitted to the department as part of the application under WAC 173-303-806(4) for a facility that does not have a permit, or pursuant to the procedures for permit modification under WAC 173-303-830 for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the department to determine a level of financial responsibility other than that required by (a) or (b) of this subsection. Any request for a variance for a permitted facility will be treated as a request for a permit modification under WAC 173-303-830.

(d) Adjustments by the department. If the department determines that the levels of financial responsibility required by (a) or (b) of this subsection are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the department may adjust the level of financial responsibility required under (a) or (b) of this subsection as may be necessary to protect human health and the environment. This adjusted level will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that has no regulated units (as defined in WAC 173-303-040), it may require that the owner or operator of the facility comply with (b) of this subsection. An owner or operator must furnish to the department within a reasonable time, any information which the department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustments of level or type of coverage for a facility that has a permit will be treated as a permit modification under WAC 173-303-830.

(e) Period of coverage. An owner or operator must continuously provide liability coverage for a facility as required by this subsection until certifications of closure of the facility, as specified in WAC 173-303-610(6), are received by the department.

(f) The following subsections are incorporated by reference: 40 C.F.R. section 264.147(f), Financial test for liability coverage, (g) Guarantee for liability coverage, (h) Letter of credit for liability coverage, (i) Surety bond for liability coverage, and (j) Trust fund for liability coverage.

(9) Incapacity of owners or operators, guarantor or financial institutions.

(a) An owner or operator must notify the department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within ten days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in 40 C.F.R. 264.143(f) and 264.145(f) must make such a notification if ((~~he~~)) the guarantor is named as debtor, as required under the terms of the corporate guarantee (40 C.F.R. 264.151(h)).

(b) An owner or operator who fulfills the requirements of 40 C.F.R. 264.143, 264.145, or 264.147 (a) or (b) by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within sixty days after such an event.

(10) Wording of the instruments. The financial instruments required by this section must contain the wording specified by 40 C.F.R. 264.151 which is incorporated by reference, except that:

(a) The words "regional administrator" and "environmental protection agency" must be replaced with the words Washington state department of ecology;

(b) The words "hazardous waste" must be replaced with the words "dangerous waste";

(c) Any other words specified by the department must be changed as necessary to assure financial responsibility of the facility in accordance with the requirements of this section; and

(d) Whenever 40 C.F.R. 264.151 requires that owners and operators notify several regional administrators of their financial obligations, the owner or operator must notify both the department and all regional administrators of regions that are affected by the owner or operator's financial assurance mechanisms.

Copies of the financial instruments with the appropriate word changes will be available from the department by June 30, 1984.

(11) Financial assurance requirements for corrective action sites are detailed in WAC 173-303-64620(5).

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-630 Use and management of containers. (1) Applicability. The regulations in this section apply to owners and operators of all dangerous waste facilities that store containers of dangerous waste.

(2) Condition of containers. If a container holding dangerous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the dangerous waste from the container to a container that is in good condition or manage the waste in some other way that complies with the requirements of chapter 173-303 WAC. In addition, the owner or operator must address leaks and spills in accordance with the applicable provisions of WAC 173-303-145 and 173-303-360.

(3) Identification of containers. The owner or operator must label containers in a manner which adequately identifies the major risk(s) associated with the contents of the containers for employees, emergency response personnel and the public (note((—)): If there is already a system in use that performs this function in accordance with local, state or federal regulations, then such system will be adequate). The owner or operator must affix labels upon transfer of dangerous wastes from one container to another. The owner or operator must destroy or otherwise remove labels from the emptied container, unless the container will continue to be used for storing dangerous waste at the facility. The owner or operator must ensure that labels are not obscured, removed, or otherwise unreadable in the course of inspection required under WAC 173-303-320.

(4) Compatibility of waste with containers. The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the dangerous waste to be stored, so that the ability of the container to contain the waste is not impaired.

(5) Management of containers.

(a) A container holding dangerous waste must always be closed, except when it is necessary to add or remove waste.

(b) A container holding dangerous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(c) A minimum thirty-inch separation is required between aisles of containers holding dangerous waste(s). A row of drums must be no more than two drums wide.

(6) Inspections. At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion, deterioration, or other factors. The owner or operator must keep an inspection log including at least the date and time of the inspection, the printed name and the handwritten signature of the inspector, a notation of the observations made and the date and nature of any repairs or remedial actions taken. The log must be kept at the facility for at least five years from the date of inspection.

(7) Containment.

(a) Container storage areas must have a containment system that is capable of collecting and holding spills and leaks. In addition to the necessary leak containment capacity, uncovered storage areas must be capable of holding the additional volume that would result from the precipitation of a maximum twenty-five year storm of twenty-four hours duration. The containment system must:

(i) Have a base underlying the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated rainfall until the collected material is detected and removed. The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(ii) Be designed for positive drainage control (such as a locked drainage valve) to prevent release of contaminated liquids and so that uncontaminated precipitation can be drained promptly for convenience of operation. Spilled or leaked waste and accumulated precipitation must be removed from the containment system in as timely a manner as is necessary to prevent overflow; and

(iii) Have sufficient capacity to contain ten percent of the volume of all containers or the volume of the largest container, whichever is greater. Only containers holding free liquids, or holding wastes designated as F020, F021, F022, F023, F026, or F027 need to be considered in this determination.

(b) Run-on into the containment system must be prevented, unless the department waives this requirement in the permit after determining that the collection system has sufficient excess capacity in addition to that required in (a)(iii) of this subsection to accommodate any run-on which might enter the system.

(c) Storage areas that store containers holding only wastes that do not contain free liquids, do not exhibit either the characteristic of ignitability or reactivity as described in WAC 173-303-090 (5) or (7), and are not designated as F020, F021, F022, F023, F026, or F027, need not have a containment system as described in this subsection: Provided, That:

(i) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(ii) The containers are elevated or are otherwise protected from contact with accumulated liquids.

(d) The department may require ((~~generators~~)) owners and operators to protect their containers from the elements by means of a building or other protective covering if the department determines that such protection is necessary to prevent a release of waste or waste constituents due to the nature of the waste or design of the container. The building or other protective covering must allow adequate inspection under subsection (6) of this section.

(8) Special requirements for ignitable or reactive waste.

(a) Containers holding reactive waste exhibiting a characteristic specified in WAC 173-303-090 (7)(a)(vi), (vii) or (viii) must be stored in a manner equivalent to the International Fire Code's "*American Table of Distances for Storage of Explosives*" Table 3304.5.2(2) or "*Table of Separation Distances for Low Explosives*" Table 3304.5.2(3), 2003 edition, or the version adopted by the local fire district.

(b) The owner or operator must design, operate, and maintain ignitable waste and reactive waste (other than a reactive waste which must meet (a) of this subsection) container storage in a manner equivalent with the International

Fire Code. Where no specific standard or requirements are specified in the International Fire Code, or in existing state or local fire codes, applicable sections of the NFPA Pamphlet #30, "*Flammable and Combustible Liquids Code*," must be used. The owner/operator must also comply with the requirements of WAC 173-303-395 (1)(d).

(9) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials must not be placed in the same container, unless WAC 173-303-395 (1)(b) is complied with.

(b) Dangerous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

(c) A storage container holding a dangerous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. Containment systems for incompatible wastes must be separate.

(10) Closure. At closure, all dangerous waste and dangerous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with dangerous waste or dangerous waste residues must be decontaminated or removed.

(11) Air emission standards. The owner or operator must manage all hazardous waste placed in a container in accordance with the applicable requirements of 40 C.F.R. Subparts AA, BB, and CC, which are incorporated by reference at WAC 173-303-690 through 173-303-692.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-640 Tank systems. (1) Applicability.

(a) The regulations in WAC 173-303-640 apply to owners and operators of facilities that use tank systems to treat or store dangerous waste, except as (b), (c), and (d) of this subsection provides otherwise.

(b) Tank systems that are used to store or treat dangerous waste which contain no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in subsection (4) of this section. To demonstrate the absence or presence of free liquids in the stored/treated waste, the Paint Filter Liquids Test Method 9095B described in "*Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods*" EPA Publication SW-846 as incorporated by reference at WAC 173-303-110 (3)(a) must be used.

(c) Tank systems, including sumps, as defined in WAC 173-303-040, that serve as part of a secondary containment system to collect or contain releases of dangerous wastes are exempted from the requirements in subsection (4)(a) of this section.

(d) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in WAC 173-303-040 and regulated under WAC 173-303-675, must meet the requirements of this section.

(2) Assessment of existing tank system's integrity.

(a) For each existing tank system, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in (b) of this subsection, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified registered professional engineer, in accordance with WAC 173-303-810 (13)(a), that attests to the tank system's integrity by January 12, 1988, for underground tanks that do not meet the requirements of subsection (4) of this section and that cannot be entered for inspection, or by January 12, 1990, for all other tank systems.

(b) Tank systems that store or treat materials that become dangerous wastes subsequent to January 12, 1989, must conduct this assessment within twelve months after the date that the waste becomes a dangerous waste.

(c) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(i) Design standard(s), if available, according to which the tank system was constructed;

(ii) Dangerous characteristics of the waste(s) that have been and will be handled;

(iii) Existing corrosion protection measures;

(iv) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(v) Results of a leak test, internal inspection, or other tank system integrity examination such that:

(A) For nonenterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

(B) For other than nonenterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination, that is certified by an independent, qualified, registered professional engineer, in accordance with WAC 173-303-810 (13)(a), that addresses cracks, leaks, corrosion, and erosion.

Note: Three publications may be used, where applicable, as guidelines in conducting other than a leak test: *Tank Inspection, Repair, Alteration, and Reconstruction*, API Standard 653, ((~~Addendum 4 issued in December 1999~~)) Fourth Edition, April 2009; *Guidance for Assessing and Certifying Tank Systems that Store and Treat Dangerous Waste*, Ecology Publication No. 94-114; and *Steel Tank Institute* publication ((~~#SP001-00~~)) #SP001-05 *Standard for the Inspection of ((~~In-Service Shop Fabricated~~)) Aboveground Storage Tanks ((~~for Storage of Combustible and Flammable Liquids~~ copyright 2000))* 5th Edition, revised September 2011.

(d) If, as a result of the assessment conducted in accordance with (a) of this subsection, a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of subsection (7) of this section.

(e) The owner or operator must develop a schedule for conducting integrity assessments over the life of the tank to ensure that the tank retains its structural integrity and will not collapse, rupture, or fail. The schedule must be based on the results of past integrity assessments, age of the tank system, materials of construction, characteristics of the waste, and any other relevant factors.

(3) Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain (and for facilities that are pursuing or have obtained a final status permit, submit to the department, at time of submittal of Part B information) a written assessment, reviewed and certified by an independent, qualified registered professional engineer, in accordance with WAC 173-303-810 (13)(a), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of dangerous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment (which will be used by the department to review and approve or disapprove the acceptability of the tank system design at facilities which are pursuing or have obtained a final status permit) must include, at a minimum, the following information:

(i) Design standard(s) according to which tank system(s) are constructed;

(ii) Dangerous characteristics of the waste(s) to be handled;

(iii) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(A) Factors affecting the potential for corrosion, including but not limited to:

(I) Soil moisture content;

(II) Soil pH;

(III) Soil sulfides level;

(IV) Soil resistivity;

(V) Structure to soil potential;

(VI) Influence of nearby underground metal structures (e.g., piping);

(VII) Existence of stray electric current;

(VIII) Existing corrosion-protection measures (e.g., coating, cathodic protection); and

(B) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(I) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;

(II) Corrosion-resistant coating (such as epoxy, fiberglass, etc.,) with cathodic protection (e.g., impressed current or sacrificial anodes); and

(III) Electrical isolation devices such as insulating joints, flanges, etc.

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in providing corrosion protection for tank systems.

(iv) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(v) Design considerations to ensure that:

(A) Tank foundations will maintain the load of a full tank;

(B) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is either placed in a saturated zone, or is located less than five hundred feet from a fault which has had displacement in Holocene times; and

(C) Tank systems will withstand the effects of frost heave.

(b) The owner or operator must develop a schedule for conducting integrity assessments over the life of the tank to ensure that the tank retains its structural integrity and will not collapse, rupture or fail. The schedule must be based on the results of past integrity assessments, age of the tank system, materials of construction, characteristics of the waste, and any other relevant factors.

(c) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

(i) Weld breaks;

(ii) Punctures;

(iii) Scrapes of protective coatings;

(iv) Cracks;

(v) Corrosion;

(vi) Other structural damage or inadequate construction/installation.

All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

(d) New tank systems or components that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(e) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed into use.

(f) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

Note: The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems," or ANSI Standard B31.3, "Petroleum Refinery Piping," and ANSI Standard B31.4 "Liquid Petroleum Transportation Piping System," may be used, where applicable, as guidelines for proper installation of piping systems.

(g) The owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under (a)(iii) of this subsection, or other corrosion protection if the department believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(h) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of (b) through (g) of this subsection, that attest that the tank system was properly designed and installed and that repairs, pursuant to (c) and (e) of this subsection, were performed. These written statements must also include the certification statement as required in WAC 173-303-810 (13)(a).

(4) Containment and detection of releases.

(a) In order to prevent the release of dangerous waste or dangerous constituents to the environment, secondary containment that meets the requirements of this subsection must be provided (except as provided in (f) and (g) of this subsection):

(i) For all new and existing tank systems or components, prior to their being put into service.

(ii) For tank systems that store or treat materials that become dangerous wastes, within two years of the dangerous waste listing, or when the tank system has reached fifteen years of age, whichever comes later.

(b) Secondary containment systems must be:

(i) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(ii) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of (b) of this subsection, secondary containment systems must be at a minimum:

(i) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, stress of installation, and the stress of daily operations (including stresses from nearby vehicular traffic);

(ii) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(iii) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of dangerous waste or accumulated liquid in the secondary containment system within twenty-four hours, or at the earliest practicable time if the owner or operator can demonstrate to the department that existing detection technologies or site conditions will not allow detection of a release within twenty-four hours; and

(iv) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within twenty-four hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the department that removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four hours.

Note: If the collected material is a dangerous waste under WAC 173-303-070, it is subject to management as a dangerous waste in accordance with all applicable requirements of WAC 173-303-170 through 173-303-400 and WAC 173-303-600 through 173-303-695. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a publicly owned treatment works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 C.F.R. Part 302.

(d) Secondary containment for tanks must include one or more of the following devices:

(i) A liner (external to the tank);

(ii) A vault;

(iii) A double-walled tank; or

(iv) An equivalent device as approved by the department.

(e) In addition to the requirements of (b), (c), and (d) of this subsection, secondary containment systems must satisfy the following requirements:

(i) External liner systems must be:

(A) Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary;

(B) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event.

(C) Free of cracks or gaps; and

(D) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(ii) Vault systems must be:

(A) Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary;

(B) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event;

(C) Constructed with chemical-resistant water stops in place at all joints (if any);

(D) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

(E) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(I) Meets the definition of ignitable waste under WAC 173-303-090(5); or

(II) Meets the definition of reactive waste under WAC 173-303-090(7), and may form an ignitable or explosive vapor; and

(F) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(iii) Double-walled tanks must be:

(A) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

(B) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(C) Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four hours, or at the earliest practicable time, if the owner or operator can demonstrate to the department, and the department concludes, that the existing detection technology or site conditions would not allow detection of a release within twenty-four hours.

Note: The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(f) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of (b) and (c) of this subsection except for:

(i) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(ii) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(iii) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(iv) Pressurized aboveground piping systems with automatic shutoff devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements of this subsection if the department finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any dangerous waste or dangerous constituents into the groundwater, or surface water at least as effectively as secondary containment during the active life of the tank system or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with (g)(ii) of this subsection, be exempted from the secondary containment requirements of this section.

(i) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the department will consider:

(A) The nature and quantity of the wastes;

(B) The proposed alternate design and operation;

(C) The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and groundwater; and

(D) All other factors that would influence the quality and mobility of the dangerous constituents and the potential for them to migrate to groundwater or surface water.

(ii) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the department will consider:

(A) The potential adverse effects on groundwater, surface water, and land quality taking into account:

(I) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

(II) The hydrogeological characteristics of the facility and surrounding land;

(III) The potential for health risks caused by human exposure to waste constituents;

(IV) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(V) The persistence and permanence of the potential adverse effects.

(B) The potential adverse effects of a release on groundwater quality, taking into account:

(I) The quantity and quality of groundwater and the direction of groundwater flow;

(II) The proximity and withdrawal rates of groundwater users;

(III) The current and future uses of groundwater in the area; and

(IV) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality.

(C) The potential adverse effects of a release on surface water quality, taking into account:

(I) The quantity and quality of groundwater and the direction of groundwater flow;

(II) The patterns of rainfall in the region;

(III) The proximity of the tank system to surface waters;

(IV) The current and future uses of surface waters in the area and any water quality standards established for those surface waters; and

(V) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality.

(D) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(I) The patterns of rainfall in the region; and

(II) The current and future uses of the surrounding land.

(iii) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of (g)(i) of this subsection,

at which a release of dangerous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

(A) Comply with the requirements of subsection (7) of this section, except subsection (7)(d) of this section; and

(B) Decontaminate or remove contaminated soil to the extent necessary to:

(I) Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(II) Prevent the migration of dangerous waste or dangerous constituents to groundwater or surface water.

(C) If contaminated soil cannot be removed or decontaminated in accordance with (g)(iii)(B) of this subsection, comply with the requirements of subsection (8) of this section.

(iv) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of (g)(i) of this subsection, at which a release of dangerous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

(A) Comply with the requirements of subsection (7)(a), (b), (c), and (d) of this section; and

(B) Prevent the migration of dangerous waste or dangerous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator must comply with the requirements of subsection (8)(b) of this section; and

(C) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of (a) through (f) of this subsection or reapply for a variance from secondary containment and meet the requirements for new tank systems in subsection (3) of this section if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(h) The following procedures must be followed in order to request a variance from secondary containment:

(i) The department must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in (g) of this subsection according to the following schedule:

(A) For existing tank systems, at least twenty-four months prior to the date that secondary containment must be provided in accordance with (a) of this subsection.

(B) For new tank systems, at least thirty days prior to entering into a contract for installation.

(ii) As part of the notification, the owner or operator must also submit to the department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in (g)(i) or (ii) of this subsection;

(iii) The demonstration for a variance must be completed within one hundred eighty days after notifying the department of an intent to conduct the demonstration; and

(iv) If a variance is granted under this subsection, the department will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(i) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, must comply with the following:

(i) For nonenterable underground tanks, a leak test that meets the requirements of subsection (2)(c)(v) of this section or other tank integrity method, as approved or required by the department, must be conducted at least annually.

(ii) For other than nonenterable underground tanks, the owner or operator must either conduct a leak test as in (i)(i) of this subsection or develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent, qualified registered professional engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

(iii) For ancillary equipment, a leak test or other integrity assessment as approved by the department must be conducted at least annually.

Note: Three publications may be used, where applicable, as guidelines for assessing the overall condition of the tank system: *Tank Inspection, Repair, Alteration, and Reconstruction*, API Standard 653, ((~~Addendum 4 issued in December 1999~~)) Fourth Edition, April 2009; *Guidance for Assessing and Certifying Tank Systems that Store and Treat Dangerous Waste*, Ecology Publication No. 94-114; and *Steel Tank Institute* publication ((~~#SP001-00~~)) #SP001-05 *Standard for the Inspection of ((~~In-Service Shop Fabricated~~)) Aboveground Storage Tanks ((~~for Storage of Combustible and Flammable Liquids~~* copyright ~~2000~~)) 5th Edition, revised September 2011.

(iv) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with (i)(i) through (iii) of this subsection.

(v) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in (i)(i) through (iii) of this subsection, the owner or operator must comply with the requirements of subsection (7) of this section.

(5) General operating requirements.

(a) Dangerous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(i) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(ii) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(iii) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of subsection (7) of this section if a leak or spill occurs in the tank system.

(d) All tank systems holding dangerous waste must be marked with labels or signs to identify the waste contained in the tank. The label or sign must be legible at a distance of at least fifty feet, and must bear a legend which identifies the waste in a manner which adequately warns employees, emergency response personnel, and the public of the major risk(s) associated with the waste being stored or treated in the tank system(s). (Note—If there already is a system in use that performs this function in accordance with local, state or federal regulations, then such system will be adequate.)

(e) All tank systems holding dangerous wastes which are acutely or chronically toxic by inhalation must be designed to prevent escape of vapors, fumes, or other emissions into the air.

(6) Inspections.

(a) The owner or operator must develop and follow a schedule and procedure for inspecting overfill controls.

(b) The owner or operator must inspect at least once each operating day:

(i) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(ii) Data gathered from monitoring any leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

(iii) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of dangerous waste (e.g., wet spots, dead vegetation).

Note: WAC 173-303-320 requires the owner or operator to remedy any deterioration or malfunction he finds. Subsection (7) of this section requires the owner or operator to notify the department within twenty-four hours of confirming a leak. Also, 40 C.F.R. Part 302 may require the owner or operator to notify the National Response Center of a release.

(c) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(i) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

(ii) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

(d) The owner or operator must document in the operating record of the facility an inspection of those items in (a) through (c) of this subsection. The owner or operator must keep an inspection log including at least the date and time of the inspection, the printed name and the handwritten signature of the inspector, a notation of the observations made and the date and nature of any repairs or remedial actions taken. The log must be kept at the facility for at least five years from the date of inspection.

(7) Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of wastes. The owner or operator must immediately stop the flow of dangerous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of waste from tank system or secondary containment system.

(i) If the release was from the tank system, the owner/operator must, within twenty-four hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of dangerous waste to the environment and to allow inspection and repair of the tank system to be performed.

(ii) If the material released was to a secondary containment system, all released materials must be removed within twenty-four hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The owner/operator must immediately conduct a visual inspection of the release and, based upon that inspection:

(i) Prevent further migration of the leak or spill to soils or surface water; and

(ii) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(i) Any release to the environment must be reported to the department and other authorities immediately in accordance with WAC 173-303-145. Any release above the "reportable quantity" must also be reported to the National Response Center pursuant to 40 C.F.R. Part 302.

(ii) Within thirty days (or fifteen days if classified as an emergency) of detection of a release to the environment, a report containing the following information must be submitted to the department:

(A) Likely route of migration of the release;

(B) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(C) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty days, these data must be submitted to the department as soon as they become available;

(D) Proximity to downgradient drinking water, surface water, and populated areas; and

(E) Description of response actions taken or planned.

(F) In the event of an emergency, additional information as required by WAC 173-303-360.

(e) Provision of secondary containment, repair, or closure.

(i) Unless the owner/operator satisfies the requirements of (e)(ii) through (iv) of this subsection, the tank system must be closed in accordance with subsection (8) of this section.

(ii) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(iii) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(iv) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of subsection (4) of this section before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of (f) of this subsection are satisfied. If a component is replaced to comply with the requirements of this subitem, that component must satisfy the requirements for new tank systems or components in subsections (3) and (4) of this section. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with subsection (4) of this section prior to being returned to use.

(f) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with (e) of this subsection, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with WAC 173-303-810 (13)(a) that the repaired system is capable of handling dangerous wastes without release for the intended life of the system. This certification must be submitted to the department within seven days after returning the tank system to use.

Note: See WAC 173-303-320 for the requirements necessary to remedy a failure. Also, 40 C.F.R. Part 302 may require the owner or operator to notify the National Response Center of certain releases.

(8) Closure and post-closure care.

(a) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as dangerous waste, unless WAC 173-303-070 (2)(a) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in WAC 173-303-610 and 173-303-620.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in (a) of this subsection, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (see WAC 173-303-665(6)). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in WAC 173-303-610 and 173-303-620.

(c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of subsection (4)(b) through (f) of this section and is not exempt from the secondary containment requirements in accordance with subsection (4)(g) of this section, then:

(i) The closure plan for the tank system must include both a plan for complying with (a) of this subsection and a contingent plan for complying with (b) of this subsection.

(ii) A contingent post-closure plan for complying with (b) of this subsection must be prepared and submitted as part of the permit application.

(iii) The cost estimates calculated for closure and post-closure care must reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under (a) of this subsection.

(iv) Financial assurance must be based on the cost estimates in (c)(iii) of this subsection.

(v) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, post-closure, and financial responsibility requirements for landfills under this chapter (WAC 173-303-610 and 173-303-620).

(9) Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in tank systems unless:

(i) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under WAC 173-303-090, and 173-303-395 (1)(b) is complied with; or

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

(iii) The tank system is used solely for emergencies.

(b) The owner or operator of a facility which treats or stores ignitable or reactive waste in tanks must locate the tanks in a manner equivalent to the National Fire Protection Association's buffer zone requirements for tanks, contained in ((~~Tables 2-1 through 2-6 of~~)) the publication NFPA-30 *Flammable and Combustible Liquids Code* - ((~~1981~~)) 2012, or as required by state and local fire codes when such codes are more stringent. The owner or operator must also comply with the requirements of WAC 173-303-395 (1)(d).

(10) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank system, unless WAC 173-303-395 (1)(b) is complied with.

(b) Dangerous waste must not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless WAC 173-303-395 (1)(b) is complied with.

(11) Air emission standards. The owner or operator must manage all hazardous waste placed in a tank in accordance with the applicable requirements of 40 C.F.R. Subparts AA, BB, and CC, which are incorporated by reference at WAC 173-303-690 through 173-303-692.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-645 Releases from regulated units. (1) Applicability.

(a)(i) Except as provided in (b) of this subsection, the regulations in this section apply to owners and operators of facilities that treat, store, or dispose of dangerous waste. The owner or operator must satisfy the requirements identified in (a)(ii) of this subsection for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units.

(ii) All solid waste management units must comply with the requirements in WAC 173-303-64620. Regulated units (as defined in WAC 173-303-040) must comply with the requirements of subsections (2) through (12) of this section, in lieu of WAC 173-303-64620, for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The corrective action financial responsibility requirements of WAC 173-303-64620 apply to corrective action regulated units.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this section if:

(i) The owner or operator is exempted under WAC 173-303-600; or

(ii) He operates a unit which the department finds:

(A) Is an engineered structure;

(B) Does not receive or contain liquid waste or waste containing free liquids;

(C) Is designed and operated to exclude liquid, precipitation, and other run-on and runoff;

(D) Has both inner and outer layers of containment enclosing the waste;

(E) Has a leak detection system built into each containment layer;

(F) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods; and

(G) To a reasonable degree of certainty, will not allow dangerous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(iii) The department finds, pursuant to WAC 173-303-655 (8)(d), that the treatment zone of a land treatment unit does not contain levels of dangerous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of WAC 173-303-655(6) has not shown a statistically significant increase in dangerous constituents below the treatment zone during the operating life of the unit. An exemption under this subsection can only relieve an owner or operator of responsibility to meet the requirements of this section during the post-closure care period; or

(iv) The department finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this subsection on assumptions that maximize the rate of liquid migration.

(c) The regulations under this section apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the regulations in this section:

(i) Do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure in accordance with the removal or decontamination limits specified in WAC 173-303-610 (2)(b);

(ii) Apply during the post-closure care period if the owner or operator is conducting a detection monitoring program under subsection (9) of this section; and

(iii) Apply during the compliance period under subsection (7) of this section, if the owner or operator is conducting a compliance monitoring program under subsection (10) of this section, or a corrective action program under subsection (11) of this section.

(d) Regulations in this section may apply to miscellaneous units when necessary to comply with WAC 173-303-680 (2) through (4).

(e) The regulations of this section apply to all owners and operators subject to the requirements of WAC 173-303-800(12), when the department issues either a post-closure permit or an enforceable document (as defined in WAC 173-303-040) at the facility. When the department issues an enforceable document, references in this section to "in the permit" mean "in the enforceable document."

(f) The director may, in an enforceable document, replace all or part of the requirements of this section with alternative requirements for groundwater monitoring and corrective action when he or she determines:

(i) A dangerous waste unit is situated among other solid waste management units or areas of concern, a release has occurred, and both the dangerous waste unit and one or more of the solid waste management units or areas of concern are likely to have contributed to the release; and

(ii) It is not necessary to apply the requirements of this section because the alternative requirements will protect human health and the environment.

(2) Required programs.

(a) Owners and operators subject to this section must conduct a monitoring and response program as follows:

(i) Whenever dangerous constituents under subsection (4) of this section, from a regulated unit are detected at the compliance point under subsection (6) of this section, the owner or operator must institute a compliance monitoring program under subsection (10) of this section. Detected is defined as statistically significant evidence of contamination as described in subsection (9)(f) of this section;

(ii) Whenever the groundwater protection standard under subsection (3) of this section, is exceeded, the owner or operator must institute a corrective action program under subsection (11) of this section. Exceeded is defined as statistically significant evidence of increased contamination as described in subsection (10)(h) of this section. Exceeded is defined as statistically significant evidence of contamination as described in WAC 173-303-645 (10)(d);

(iii) Whenever dangerous constituents under subsection (4) of this section, from a regulated unit exceed concentration limits under subsection (5) of this section, in groundwater between the compliance point under subsection (6) of this section and the downgradient facility property boundary, the owner or operator must institute a corrective action program under subsection (11) of this section; and

(iv) In all other cases, the owner or operator must institute a detection monitoring program under subsection (9) of this section.

(b) The department will specify in the facility permit the specific elements of the monitoring and response program. The department may include one or more of the programs identified in (a) of this subsection, in the facility permit as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the department will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

(3) Groundwater protection standard. The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that dangerous constituents under subsection (4) of this section, detected in the groundwater from a regulated unit do not exceed the concentration limits under subsection (5) of this section, in the uppermost aquifer underlying the waste management area beyond the point of compliance under subsection (6) of this section, during the compliance period under subsection (7) of this section. To the extent practical, the department will establish this groundwater protection standard in the facility permit at the time the permit is issued. If the department determines that an established standard is not protective enough, or if the department decides that it is not practical to establish standards at the time of permit issuance, the department will establish the groundwater protection standard in the facility permit when dangerous constituents have been detected in the groundwater from a regulated unit.

(4) Dangerous constituents.

(a) The department will specify in the facility permit the dangerous constituents to which the groundwater protection standard of subsection (3) of this section, applies. Dangerous constituents are constituents identified in the Appendix "Ground-Water Monitoring List" in *Chemical Testing Methods for Designating Dangerous Waste* which is incorporated at WAC 173-303-110 (3)(c) and (7), and any other constituents not listed there which have caused a waste to be regulated under this chapter, that may be or have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the department has excluded them under (b) of this subsection.

The department may also specify in the permit indicator parameters (e.g., specific conductance, pH, total organic carbon (TOC), total organic halogen (TOX), or heavy metals), waste constituents or reaction products as identified in the detection monitoring program under subsection (9)(a) of this section, that provide a reliable indication of the presence of dangerous constituents in the groundwater.

(b) The department will exclude a constituent on the Appendix "Ground-Water Monitoring List" in *Chemical Testing Methods for Designating Dangerous Waste* which is incorporated at WAC 173-303-110 (3)(c) and (7), or other identified constituent from the list of dangerous constituents specified in the facility permit if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the department will consider the following:

(i) Potential adverse effects on groundwater quality, considering:

(A) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity of groundwater and the direction of groundwater flow;

(D) The proximity and withdrawal rates of groundwater users;

(E) The current and future uses of groundwater in the area;

(F) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) The potential for health risks caused by human exposure to waste constituents;

(H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(I) The persistence and permanence of the potential adverse effects;

(ii) Potential adverse effects on hydraulically-connected surface water quality, considering:

(A) The volume and physical and chemical characteristics of the waste in the regulated unit;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity and quality of groundwater, and the direction of groundwater flow;

(D) The patterns of rainfall in the region;

(E) The proximity of the regulated unit to surface waters;

(F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(H) The potential for health risks caused by human exposure to waste constituents;

(I) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) The persistence and permanence of the potential adverse effects; and

(iii) Any identification of underground sources of drinking water and exempted aquifers made pursuant to chapter 90.48 RCW, chapter 270, Laws of 1983, and other applicable state laws and regulations.

(5) Concentration limits.

(a) The department will specify in the facility permit concentration limits in the groundwater for dangerous constituents established under subsection (4) of this section. The concentration of a dangerous constituent:

(i) Must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or

(ii) For any of the constituents listed in Table 1 of this subsection, must not exceed the respective value given in that table if the background level of the constituent is below the value given in Table 1; or

(iii) Must not exceed an alternate limit established by the department under (b) of this subsection.

Table 1.
Maximum Concentration of Constituents for Groundwater Protection

Constituent	Maximum Concentration[1]
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin	0.0002
Lindane	0.004
Methoxychlor	0.1
Toxaphene	0.005
2,4-D	0.1m
2,4,5-TP Silvex	0.01

[1]Milligrams per liter.

(b) The department will establish an alternate concentration limit for a dangerous constituent if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the department will consider the same factors listed in subsection (4)(b)(i) through (iii) of this section.

(6) Point of compliance.

(a) The department will specify in the facility permit the point of compliance at which the groundwater protection standard of subsection (3) of this section, applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units. Alternatively, the point of compliance may be any closer points identified by the department at the time the permit is issued, considering the risks of the facility, the wastes and constituents managed there, the potential for waste constituents to have already migrated past the alternate compliance point, and the potential threats to ground and surface waters.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(7) Compliance period.

(a) The department will specify in the facility permit the compliance period during which the groundwater protection standard of subsection (3) of this section applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period).

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of subsection (10) of this section.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in (a) of this subsection, the compliance period is extended

until the owner or operator can demonstrate that the groundwater protection standard of subsection (3) of this section, has not been exceeded for a period of three consecutive years.

(8) General groundwater monitoring requirements.

The owner or operator must comply with the requirements of this subsection for any groundwater monitoring program developed to satisfy subsections (9), (10), or (11) of this section.

(a) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(i) Represent the quality of background groundwater that has not been affected by leakage from a regulated unit;

A determination of background groundwater quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(A) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(B) Sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells; and

(ii) Represent the quality of groundwater passing the point of compliance.

(iii) Allow for the detection of contamination when dangerous waste or dangerous constituents have migrated from the waste management area to the uppermost aquifer.

(b) If a facility contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit, provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of dangerous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(c) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative groundwater samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata. Wells must meet the requirements applicable to resource protection wells, which are set forth in chapter 173-160 WAC, "Minimum standards for construction and maintenance of wells."

(d) The groundwater monitoring program must include at a minimum, procedures and techniques for:

(i) Decontamination of drilling and sampling equipment;

(ii) Sample collection;

(iii) Sample preservation and shipment;

(iv) Analytical procedures and quality assurance; and

(v) Chain of custody control.

(e) The groundwater monitoring program must include consistent sampling and analytical methods that ensure reliable groundwater sampling, accurately measure dangerous constituents and indicator parameters in groundwater samples, and provide a reliable indication of groundwater quality below the waste management area.

(f) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

(g) In detection monitoring or where appropriate in compliance monitoring, data on each dangerous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background must be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size must be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which will be specified in the unit permit upon approval by the department. This sampling procedure will be:

(i) A sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(ii) An alternate sampling procedure proposed by the owner or operator and approved by the department.

(h) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent which, upon approval by the department, will be specified in the unit permit. The statistical test chosen must be conducted separately for each dangerous constituent in each well. Where practical quantification limits (pql's) are used in any of the following statistical procedures to comply with (i)(v) of this subsection, the pql must be proposed by the owner or operator and approved by the department. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in (i) of this subsection.

(i) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(ii) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(iii) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(iv) A control chart approach that gives control limits for each constituent.

(v) Another statistical test method submitted by the owner or operator and approved by the department.

(i) Any statistical method chosen under (h) of this subsection for specification in the unit permit must comply with the following performance standards, as appropriate:

(i) The statistical method used to evaluate groundwater monitoring data must be appropriate for the distribution of chemical parameters or dangerous constituents. If the distribution of the chemical parameters or dangerous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(ii) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test must be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period must be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(iii) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values must be proposed by the owner or operator and approved by the department if it finds it to be protective of human health and the environment.

(iv) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be proposed by the owner or operator and approved by the department if it finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(v) The statistical method must account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit (pql) approved by the department under (h) of this subsection that is used in the statistical method must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(vi) If necessary, the statistical method must include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Groundwater monitoring data collected in accordance with (g) of this subsection including actual levels of constituents must be maintained in the facility operating record. The department will specify in the permit when the data must be submitted for review.

(9) Detection monitoring program. An owner or operator required to establish a detection monitoring program under this subsection must, at a minimum, discharge the responsibilities described in this subsection.

(a) The owner or operator must monitor for indicator parameters (e.g., pH, specific conductance, total organic carbon (TOC), total organic halogen (TOX), or heavy metals), waste constituents, or reaction products that provide a reliable indication of the presence of dangerous constituents in groundwater. The department will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(i) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(iv) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(b) The owner or operator must install a groundwater monitoring system at the compliance point, as specified under subsection (6) of this section. The groundwater monitoring system must comply with subsection (8)(a)(ii), (b), and (c) of this section.

(c) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and dangerous constituent specified in the permit pursuant to (a) of this subsection in accordance with subsection (8)(g) of this section. The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under subsection (8)(h) of this section.

(d) The department will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or dangerous constituent specified in the permit under (a) of this subsection in accordance with subsection (8)(g) of this section.

(e) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter of dangerous constituent specified in the permit pursuant to (a) of this subsection at a frequency specified under (d) of this subsection.

(i) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under subsection (8)(h) of this section. These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(ii) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well as the compliance point within a reasonable period of time after completion of sampling. The department will specify in the facility permit what period of time is reasonable after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(g) If the owner or operator determines pursuant to (f) of this subsection that there is statistically significant evidence of contamination for chemical parameters or dangerous constituents specified pursuant to (a) of this subsection at any monitoring well at the compliance point, he or she must:

(i) Notify the department of this finding in writing within seven days. The notification must indicate what chemical parameters or dangerous constituents have shown statistically significant evidence of contamination:

(ii) Immediately sample the groundwater in all monitoring wells and determine whether constituents in the Appendix "Ground-Water Monitoring List" in *Chemical Testing Methods for Designating Dangerous Waste* which is incorporated at WAC 173-303-110 (3)(c) are present, and if so, in what concentration. However, the department, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the "Ground-Water Monitoring List" Appendix and other representative/related waste constituents.

(iii) For any "Ground-Water Monitoring List" Appendix compounds found in the analysis pursuant to (g)(ii) of this subsection, the owner or operator may resample within one month or according to an alternative site-specific schedule approved by the director and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in (g)(ii) of this subsection, the dangerous constituents found during this initial "Ground-Water Monitoring List" Appendix analysis will form the basis for compliance monitoring.

(iv) Within ninety days, submit to the department an application for a permit modification to establish a compliance monitoring program meeting the requirements of subsection (10) of this section. The application must include the following information:

(A) An identification of the concentration of any "Ground-Water Monitoring List" Appendix constituent detected in the groundwater at each monitoring well at the compliance point;

(B) Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of subsection (10) of this section;

(C) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of subsection (10) of this section;

(D) For each dangerous constituent detected at the compliance point, a proposed concentration limit under subsection (5)(a)(i) or (ii) of this section, or a notice of intent to seek an alternate concentration limit under subsection (5)(b) of this section; and

(v) Within one hundred eighty days, submit to the department:

(A) All data necessary to justify an alternate concentration limit sought under subsection (5)(b) of this section; and

(B) An engineering feasibility plan for a corrective action program necessary to meet the requirement of subsection (11) of this section unless:

(I) All dangerous constituents identified under (g)(ii) of this subsection are listed in Table I of subsection (5) of this section and their concentrations do not exceed the respective values given in that Table; or

(II) The owner or operator has sought an alternate concentration limit under subsection (5)(b) of this section for every dangerous constituent identified under (g)(ii) of this subsection.

(vi) If the owner or operator determines, pursuant to (f) of this subsection, that there is a statistically significant difference for chemical parameters or dangerous constituents specified pursuant to (a) of this subsection at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner operator may make a demonstration under this subsection in addition to, or in lieu of, submitting a permit modification application under (g)(iv) of this subsection; however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in (g)(iv) of this subsection unless the demonstration made under this subsection successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this subsection, the owner or operator must:

(A) Notify the department in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this subsection;

(B) Within ninety days, submit a report to the department which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(C) Within ninety days, submit to the department an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

(D) Continue to monitor in accordance with the detection monitoring program established under this section.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he or she must, within ninety days, submit an application for a permit modification to make any appropriate changes to the program.

(10) Compliance monitoring program. An owner or operator required to establish a compliance monitoring program under this section must, at a minimum, discharge the responsibilities described in this subsection.

(a) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under subsection (3) of this section. The department will specify the groundwater protection standard in the facility permit, including:

(i) A list of the dangerous constituents and parameters identified under subsection (4) of this section;

(ii) Concentration limits under subsection (5) of this section for each of those dangerous constituents and parameters;

(iii) The compliance point under subsection (6) of this section; and

(iv) The compliance period under subsection (7) of this section.

(b) The owner or operator must install a groundwater monitoring system at the compliance point as specified under subsection (6) of this section. The groundwater monitoring system must comply with subsection (8)(a)(ii), (b), and (c) of this section.

(c) The department will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with subsection (8)(g) and (h) of this section.

(i) The owner or operator must conduct a sampling program for each chemical parameter or dangerous constituent in accordance with subsection (8)(g) of this section.

(ii) The owner or operator must record groundwater analytical data as measured and in form necessary for the determination of statistical significance under subsection (8)(h) of this section for the compliance period of the facility.

(d) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or dangerous constituent specified in the permit, pursuant to (a) of this subsection, at a frequency specified under (f) of this subsection.

(i) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under subsection (8)(h) of this section. The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with subsection (5) of this section.

(ii) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The department will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(e) The owner or operator must determine the rate and direction of groundwater flow in the uppermost aquifer at least annually.

(f) The department will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with subsection (8)(g) of this section.

(g) Annually, the owner or operator must determine whether additional dangerous waste constituents from the Appendix "Ground-Water Monitoring List" in *Chemical Testing Methods for Designating Dangerous Waste* (which is incorporated at WAC 173-303-110 (3)(c)), which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in (f) of this subsection. To accomplish this, the owner or operator must consult with the department to determine on a case-by-case basis: Which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and the specific constituents from the "Ground-Water Monitoring List" Appendix for which these samples must be analyzed. If the enhanced sampling event indicates that "Ground-Water Monitoring List" Appendix constituents are present in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the department, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the department within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the department within seven days after completion of the initial analysis, and add them to the monitoring list.

(h) If the owner or operator determines, pursuant to (d) of this subsection, that any concentration limits under subsection (5) of this section are being exceeded at any monitoring well at the point of compliance, he must:

(i) Notify the department of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded;

(ii) Submit to the department an application for a permit modification to establish a corrective action program meeting the requirements of subsection (11) of this section, within ninety days, or within sixty days if an engineering feasibility study has been previously submitted to the department under subsection (9)(h)(v) of this section. For regulated units managing EHW, time frames of sixty days and forty-five days, respectively will apply. However, if the department finds that the full extent of the ninety/sixty-day or the sixty/forty-five-day time periods will increase the likelihood to cause a threat to public health, or the environment, it can at its discretion reduce their duration. In specifying shorter limits, the department will consider the following factors:

(A) The physical and chemical characteristics of the dangerous constituents and parameters in the groundwater;

(B) The hydrogeological characteristics of the facility and of the surrounding land;

(C) The rate of movement and direction of flow of the affected groundwater;

(D) The proximity to and withdrawal rates of groundwater users downgradient; and

(E) The current and future uses of groundwater in the concerned area; and

(iii) The application must at a minimum include the following information:

(A) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under (a) of this subsection; and

(B) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this subsection.

(i) If the owner or operator determines, pursuant to (d) of this subsection, that the groundwater concentration limits under this section are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source

other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. In making a demonstration under this subsection, the owner or operator must:

(i) Notify the department in writing within seven days that he intends to make a demonstration under this subsection;

(ii) Within forty-five days, submit a report to the department which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(iii) Within forty-five days, submit to the department an application for a permit modification to make appropriate changes to the compliance monitoring program at the facility; and

(iv) Continue to monitor in accord with the compliance monitoring program established under this section.

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within forty-five days, submit an application for a permit modification to make any appropriate changes to the program.

(11) Corrective action program. An owner or operator required to establish a corrective action program under this section must, at a minimum, discharge the responsibilities described in this subsection.

(a) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under subsection (3) of this section. The department will specify the groundwater protection standard in the facility permit, including:

(i) A list of the dangerous constituents and parameters identified under subsection (4) of this section;

(ii) Concentration limits under subsection (5) of this section, for each of those dangerous constituents and parameters;

(iii) The compliance point under subsection (6) of this section; and

(iv) The compliance period under subsection (7) of this section.

(b) The owner or operator must implement a corrective action program that prevents dangerous constituents and parameters from exceeding their respective concentration limits at the compliance point by removing the dangerous waste constituents and parameters or treating them in place. The permit will specify the specific measures that will be taken.

(c) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The department will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of subsection (10)(i)(ii) of this section.

(d) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under subsection (10) of this section, and must be as effective as that program in determining compliance with the groundwater protection standard under subsection (3) of this section, and in determining the success of a corrective action program under (e) of this subsection, where appropriate.

(e) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any dangerous constituents or parameters under subsection (4) of this section, that exceed concentration limits under subsection (5) of this section, in groundwater between the compliance point under subsection (6) of this section, and the downgradient facility property boundary; and beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. For a facility seeking or required to have a permit, the corrective action measures to be taken must be specified in the permit.

(i) Corrective action measures under this subsection must be initiated at the effective date of the modified permit and completed without time delays considering the extent of contamination.

(ii) Corrective action measures under this subsection may be terminated once the concentration of dangerous constituents and parameters under subsection (4) of this section, is reduced to levels below their respective concentration limits under subsection (5) of this section.

(f) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under (d) of this subsection, that the groundwater protection standard of subsection (3) of this section, has not been exceeded for a period of three consecutive years.

(g) The owner or operator must report in writing to the department on the effectiveness of the corrective action program. The owner or operator must submit these reports semiannually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within forty-five days, submit an application for a permit modification to make any appropriate changes to the program.

(12) Use of the Model Toxics Control Act.

(a) The department may require the owner/operator of a facility to fulfill his corrective action responsibilities under WAC 173-303-645 using an enforceable action issued pursuant to the Model Toxics Control Act, as amended, (chapter 70.105D RCW) and its implementing regulations.

(b) Corrective action requirements imposed by an action issued pursuant to the Model Toxics Control Act will be in compliance with the requirements of WAC 173-303-645 and the requirements of chapter 173-303 WAC to the extent required by RCW 70.105D.030 (2)(d) and WAC 173-340-710.

(c) In the case of facilities seeking or required to have a permit under the provisions of this chapter the department will incorporate corrective action requirements imposed pursuant to the Model Toxics Control Act into permits at the time of permit issuance. Such incorporation will in no way affect the timing or scope of review of the Model Toxics Control Act action.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-64620 Requirements. (1) The owner or operator of a facility must institute corrective action as necessary to protect human health and the environment for all releases of dangerous wastes and dangerous constituents, including releases from all solid waste management units at the facility. Corrective action is required regardless of the time at which waste was managed at the facility or placed in such units and regardless of whether such facilities or units were intended for the management of solid or dangerous waste. Assurances of financial responsibility for such corrective action must be provided.

(2) The owner/operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment. Additionally, as necessary to protect human health and the environment, the department may require the owner/operator to implement on site measures to address releases which have migrated beyond the facility boundary. Assurances of financial responsibility for such corrective action must be provided.

(3) In the case of a facility seeking or required to have a permit under the provisions of chapter 173-303 WAC, corrective action must be specified in the permit. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completion of such corrective action.

(4) At a minimum, corrective actions must be consistent with the following requirements of chapter 173-340 WAC.

(a) As necessary to select a cleanup action consistent with WAC 173-340-360, 173-340-350, state remedial investigation and feasibility study. Information that is adequate to support selection of a cleanup action consistent with WAC 173-340-360 but was developed under a different authority (for example, as part of closure under WAC 173-303-610 or as part of a federally overseen cleanup) may be used.

(b) WAC 173-340-360, selection of cleanup actions.

(c) WAC 173-340-400, implementation of the cleanup action.

(d) WAC 173-340-410, compliance monitoring requirements.

(e) WAC 173-340-420, periodic review.

(f) WAC 173-340-440, institutional controls.

(g) WAC 173-340-700 through 173-340–760, cleanup standards.

(5) At a minimum, financial assurance for corrective actions as required in subsections (1) and (2) of this section must be consistent with the following requirements:

(a) Unless otherwise specified, the definitions and requirements for allowable financial assurance mechanisms as set forth in the current financial assurance rules covering closure and post-closure in this section and as incorporated by reference in 40 C.F.R. 264.141, 264.143, 264.145, and 264.151 will be the definitions and requirements for allowable financial assurance for corrective action purposes. The words "corrective action" are to be substituted for the words "closure," "post closure," "post-closure," or "postclosure" in the above listed regulations as needed to produce this result.

(b) Within thirty days from the effective date of a permit, agreed order or consent decree, the owner or operator shall submit to the department for review and approval a written cost estimate to cover the activities listed in the applicable Scope of Work and Schedule document(s). If the department rejects the cost estimate as submitted, the department shall provide to the owner or operator a revised cost estimate amount that will be the approved cost estimate.

(c) Within thirty days after the department's final approval of the owner or operator's cost estimate amount or the owner or operator's receipt of the department's approved cost estimate amount, the owner or operator shall establish and maintain continuous coverage of financial assurance in the amount of the approved cost estimate and submit the applicable financial assurance documentation. If the department does not accept, reject, or revise the owner or operator's cost estimate within sixty days after submittal, the cost estimate will be deemed approved for purposes of this section.

(d) Adjustments by the department. If the department determines that the timing or content of submission of cost estimates and financial assurance documents are not consistent with the degree and duration of risk associated with the corrective action activities, the department may adjust the level of financial assurance or timing of document submission required under this section as may be necessary to protect human health and the environment. This adjusted level or timing will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from corrective action activities, it may require that the owner or operator of the facility comply with this section. An owner or operator must furnish to the department within a reasonable time, any information which the department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustments of level or type of coverage for a facility that has a per-

mit will be treated as a permit modification under WAC 173-303-830.

(e) If during the course of the corrective action activities the owner or operator is required to submit an additional work plan(s) under the applicable permit, agreed order or consent decree, or to conduct activities related to corrective action not previously part of the original cost estimate, the process outlined in (b) of this subsection shall apply in the submission process of an additional work plan(s) and the resulting additional cost estimate(s).

(f) All cost estimates must be based on the costs to the owner or operator of hiring a third party to complete the work and shall be in accordance with the requirements of WAC 173-303-620.

(g) The owner or operator shall annually adjust all cost estimates for inflation using the procedure outlined in WAC 173-303-620 (3)(c). However, the department may also allow a reduction in the owner or operator's cost estimate for corrective action work actually performed during the previous year.

(h) Acceptable financial assurance mechanisms are trust funds, surety bonds, letters of credit, insurance, the financial test, and the corporate guarantee, consistent with WAC 173-303-620. The department may allow other financial assurance mechanisms if they are consistent with the laws of Washington and if the owner or operator demonstrates to the satisfaction of the department that those mechanisms provide adequate financial assurance.

(i) If the owner or operator is using the financial test or corporate guarantee to meet its financial assurance obligation, the annual inflationary adjustment shall occur within ninety days after the close of the owner's or operator's fiscal year. If the owner or operator is using any mechanism other than the financial test or corporate guarantee, this adjustment shall occur each year within thirty days after the anniversary of the effective date of the permit, agreed order, consent decree, or alternative effective date pursuant to (d) of this subsection.

(j) If the owner or operator seeks to establish financial assurance by using a letter of credit or a surety bond, the owner or operator shall at the same time establish and thereafter maintain a standby trust fund acceptable to the department into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by the department pursuant to regulation.

(k) The owner or operator shall notify the department's site manager or project coordinator and the financial assurance officer by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding, naming the owner or operator as debtor, within ten days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if it is named as debtor as required under the terms of the corporate guarantee.

(l) Once the owner or operator has established financial assurance with an acceptable mechanism as described above, the facility will be deemed to be without the required financial assurance:

(i) In the event of bankruptcy of the trustee or issuing institution; or

(ii) If the authority of the trustee institution to act as trustee has been suspended or revoked; or

(iii) If the authority of the institution issuing the surety bond, letter of credit, or insurance policy has been suspended or revoked.

In the event of bankruptcy of the trustee or a suspension or revocation of the authority of the trustee institution to act as a trustee, the owner or operator must establish a replacement financial assurance mechanism by any means specified in WAC 173-303-620 or other financial instrument as approved by the department within sixty days after such an event.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-64690 Staging piles. The requirements for staging piles in 40 C.F.R. Part 264.554 are incorporated by reference. The word "director" in 40 C.F.R. means "department." Section 264.554 (c)(2) is modified by changing "qualified professional engineer" to "independent qualified registered professional engineer."

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-650 Surface impoundments. (1) Applicability. The regulations in this section apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of dangerous waste.

(2) Design and operating requirements.

(a)(i) Any surface impoundment that is not covered by (j) of this subsection must have a liner for all portions of the impoundment (except for an existing portion of a surface impoundment). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with subsection (6)(a)(i) of this section. For impoundments that will be closed in accordance with subsection (6)(a)(ii) of this section, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(A) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift;

(C) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(D) For EHW management, the owner or operator must submit an engineering report with their permit application under WAC 173-303-806(4) stating the basis for selecting the liner(s). The report must be certified by an independent, qualified registered professional engineer.

(ii) The owner or operator of a new surface impoundment installed after October 31, 1984, and in which liquid EHW is managed must:

(A) Install a double lined system which incorporates the specifications of subsection (3)(a), (b), and (c) of this section; and

(B) Must comply with either the groundwater monitoring requirements of WAC 173-303-645, or the unsaturated zone monitoring requirements of WAC 173-303-655(6).

(b) The owner or operator will be exempted from the requirements of (a) of this subsection, if the department finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any dangerous constituents listed in WAC 173-303-9905, or which otherwise cause his wastes to be regulated under this chapter, into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the department will consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(iv) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

(d) A surface impoundment must be designed so that any flow of waste into the impoundment can be immediately shut off in the event of overtopping or liner failure.

(e) A surface impoundment must be designed to repel birds.

(f) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent their failure. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(g) Earthen dikes must be kept free of:

(i) Perennial woody plants with root systems which could weaken its structural integrity; and

(ii) Burrowing mammals which could weaken its structural integrity or create leaks through burrows.

(h) Earthen dikes must have a protective cover, such as grass, shale or rock to minimize wind and water erosion and to preserve their structural integrity.

(i) The department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this subsection are satisfied.

(j) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system between such liners. "Construction commences" is as defined in WAC 173-303-040 under "existing TSD facility."

(i) The liner system must include:

(A) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of dangerous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of dangerous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of dangerous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners must comply with (a)(i)(A), (B), and (C) of this subsection.

(iii) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of dangerous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of one percent or more;

(B) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-1} cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-4} m^2/sec or more;

(C) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(D) Designed and operated to minimize clogging during the active life and post-closure care period; and

(E) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a

method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(iv) The owner or operator will collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(v) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of groundwater.

(k) The department may approve alternative design or operating practices to those specified in (j) of this subsection if the owner or operator demonstrates to the department that such design and operating practices, together with location characteristics:

(i) Will prevent the migration of any dangerous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal system specified in (j) of this subsection; and

(ii) Will allow detection of leaks of dangerous constituents through the top liner at least as effectively.

(l) The double liner requirement set forth in (j) of this subsection may be waived by the department for any monofill, if:

(i) The monofill contains only dangerous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes dangerous for reasons other than the toxicity characteristic in WAC 173-303-090(8) or the toxicity criteria at WAC 173-303-100(5); and

(ii)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent dangerous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent dangerous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of (j) of this subsection on the basis of a liner designed, constructed, installed, and operated to prevent dangerous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in WAC 173-303-040); and

(C) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with permits under RCRA section 3005(c); or

(iii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any dangerous constituent into groundwater or surface water at any future time.

(m) The owner or operator of any replacement surface impoundment unit is exempt from (j) of this subsection if:

(i) The existing unit was constructed in compliance with the design standards of sections 3004 (o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(ii) There is no reason to believe that the liner is not functioning as designed.

(3) Reserve.

(4) Monitoring and inspection.

(a) During construction and installation, liners (except in the case of existing portions of surface impoundments exempt from subsection (2)(a)(i) of this section) and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(i) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(ii) Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

(b) While a surface impoundment is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(i) Deterioration, malfunctions, or improper operation of overtopping control systems;

(ii) Sudden drops in the level of the impoundment's contents; and

(iii) Severe erosion or other signs of deterioration in dikes or other containment devices.

(c) Prior to the issuance of a permit, and after any extended period of time (at least six months) during which the impoundment was not in service, the owner or operator must obtain a certification from ((~~a~~)) an independent qualified registered professional engineer that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification must establish, in particular, that the dike:

(i) Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

(ii) Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

(d)(i) An owner or operator required to have a leak detection system under subsection (2)(j) or (k) of this section must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(ii) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi annually. If at any time during the post-closure care period the pump

operating level is exceeded at units on quarterly or semiannual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(iii) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the department based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(5) Emergency repairs; contingency plans.

(a) A surface impoundment must be removed from service in accordance with (b) of this subsection when:

(i) Unexpected changes of liquid levels occur; or

(ii) The dike leaks.

(b) When a surface impoundment must be removed from service as required by (a) of this subsection, the owner or operator must:

(i) Immediately shut off the flow or stop the addition of wastes into the impoundment;

(ii) Immediately contain any surface leakage which has occurred or is occurring;

(iii) Immediately stop the leak;

(iv) Take any other necessary steps to stop or prevent catastrophic failure;

(v) Empty the impoundment, if a leak cannot be stopped by any other means; and

(vi) Notify the department of the problem in writing within seven days after detecting the problem.

(c) As part of the contingency plan required in WAC 173-303-340 through 173-303-360, the owner or operator must specify:

(i) A procedure for complying with the requirements of (b) of this subsection; and

(ii) A containment system evaluation and repair plan describing: Testing and monitoring techniques; procedures to be followed to evaluate the integrity of the containment system in the event of a possible failure; description of a schedule of actions to be taken in the event of a possible failure; and the repair techniques and materials (and their availability) to be used in the event of leakage due to containment system failure or deterioration which does not require the impoundment to be removed from service.

(d) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:

(i) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity must be recertified in accordance with subsection (4)(c) of this section;

(ii) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:

(A) For any existing portion of the impoundment, a liner must be installed in compliance with subsection (2)(a)(i) or (3) of this section; and

(B) For any other portion of the impoundment, the repaired liner system must be certified by ((~~a~~)) an independent qualified registered professional engineer as meeting the design specifications approved in the permit.

(e) A surface impoundment that has been removed from service in accordance with the requirements of this section and that is not being repaired must be closed in accordance with the provisions of subsection (6) of this section.

(6) Closure and post-closure care.

(a) At closure, the owner or operator must:

(i) Remove or decontaminate all dangerous waste and dangerous waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with dangerous waste and leachate, and manage them as dangerous waste; or

(ii) If the surface impoundment will be closed as a landfill, except that this option is prohibited if EHW would remain in the closed unit(s):

(A) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(B) Stabilize remaining wastes to a bearing capacity sufficient to support a final cover; and

(C) Cover the surface impoundment with a final cover designed and constructed to:

(I) Provide long-term minimization of the migration of liquids through the closed impoundment with a material that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present;

(II) Function with minimum maintenance;

(III) Promote drainage and minimize erosion or abrasion of the final cover; and

(IV) Accommodate settling and subsidence so that the cover's integrity is maintained.

(b) If some waste residues or contaminated materials are left in place at final closure (except that no EHW may ever be left in place), the owner or operator must comply with all post-closure requirements contained in WAC 173-303-610 (7), (8), (9), and (10), including maintenance and monitoring throughout the post-closure care period (specified in the permit). The owner or operator must:

(i) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(ii) Maintain and monitor the leak detection system in accordance with subsections (2)(j)(((~~ii~~))) (iii)(D) and (E), and (4)(d) of this section, and comply with all other applicable leak detection system requirements of this chapter;

(iii) Maintain and monitor the groundwater monitoring system and comply with all applicable requirements of WAC 173-303-645; and

(iv) Prevent run-on and runoff from eroding or otherwise damaging the final cover.

(c)(i) If an owner or operator plans to close a surface impoundment in accordance with (a)(i) of this subsection, and the impoundment does not comply with the liner requirements of subsection (2)(a)(i) of this section, and is not exempt from them in accordance with subsection (2)(b) of this section, then:

(A) The closure plan for the impoundment under WAC 173-303-610(3) must include both a plan for complying with (a)(i) of this subsection, and a contingent plan for complying

with (a)(ii) of this subsection in case not all contaminated subsoils can be practicably removed at closure; and

(B) The owner or operator must prepare a contingent post-closure plan under WAC 173-303-610(8) for complying with (b) of this subsection in case not all contaminated subsoils can be practicably removed at closure.

(ii) The cost estimates calculated under WAC 173-303-620 (3) and (5) for closure and post-closure care of an impoundment subject to (c) of this subsection must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under (a)(i) of this subsection.

Reserve.

(7) Special requirements for ignitable or reactive waste. Ignitable or reactive waste must not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of WAC 173-303-140 (2)(a), and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(i) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under WAC 173-303-090; and

(ii) WAC 173-303-395 (1)(b) is complied with; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; or

(c) The surface impoundment is used solely for emergencies.

(8) Special requirements for incompatible wastes. Incompatible wastes and materials must not be placed in the same surface impoundment, unless WAC 173-303-395 (1)(b) is complied with.

(9) Special requirements for dangerous wastes F020, F021, F022, F023, F026, and F027.

(a) The wastes F020, F021, F022, F023, F026, or F027 must not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this subsection, and in accord with all other applicable requirements of this section. The factors to be considered are:

(i) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(ii) The attenuative properties of underlying and surrounding soils or other materials;

(iii) The mobilizing properties of other materials co-disposed with these wastes; and

(iv) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The department may determine that additional design, operating, and monitoring requirements are necessary in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

(10) Action leakage rate.

(a) The department must approve an action leakage rate for surface impoundment units subject to WAC 173-303-650 (2)(j) or (k). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under WAC 173-303-650 (4)(d) to an average daily flow rate (gallons per acre per day) for each sump. Unless the department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and if the unit is closed in accordance with WAC 173-303-650 (6)(b), monthly during the post-closure care period when monthly monitoring is required under WAC 173-303-650 (4)(d).

(11) Response actions.

(a) The owner or operator of surface impoundment units subject to subsection (2)(j) or (k) of this section must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in (b) of this subsection.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

(i) Notify the department in writing of the exceedance within seven days of the determination;

(ii) Submit a preliminary written assessment to the department within fourteen days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(iii) Determine to the extent practicable the location, size, and cause of any leak;

(iv) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(v) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(vi) Within thirty days after the notification that the action leakage rate has been exceeded, submit to the department the results of the analyses specified in (b) (iii), (iv), and (v) of this subsection, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in (b)(iii), (iv), and (v) of this subsection, the owner or operator must:

(i) Assess the source of liquids and amounts of liquids by source;

(ii) Conduct a fingerprint, dangerous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(iv) Document why such assessments are not needed.

(12) Air emission standards. The owner or operator must manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of 40 C.F.R. Subparts AA, BB, and CC, which are incorporated by reference at WAC 173-303-690 through 173-303-692.

(13) Existing and newly regulated surface impoundments. The requirements of 3005 (j)(1) and (6) of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, are incorporated by reference. Surface impoundments regulated for the first time by a listing or characteristic adopted after November 8, 1984, must comply with new unit requirements or stop dangerous waste activity by four years after the date of adoption of the new listing or characteristic.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-660 Waste piles. (1) Applicability.

(a) The regulations in this section apply to owners and operators of facilities that store or treat dangerous waste in piles.

(b) The regulations in this section do not apply to owners or operators of waste piles that will be closed with wastes left in place. Such waste piles are subject to regulation under WAC 173-303-665 (Landfills).

(c) The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither runoff nor leachate is generated is not subject to regulation under subsection (2) of this section, or under WAC 173-303-645, provided that:

(i) Liquids or materials containing free liquids are not placed in the pile;

(ii) The pile is protected from surface water run-on by the structure or in some other manner;

(iii) The pile is designed and operated to control dispersal of the waste by wind, by means other than wetting; and

(iv) The pile will not generate leachate through decomposition or other reactions.

(d) Reserve.

(2) Design and operating requirements.

(a) A waste pile (except for an existing portion of a waste pile) must have:

(i) A liner that is designed, constructed, installed and maintained to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner must be:

(A) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(ii) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be:

(A) Constructed of materials that are:

(I) Chemically resistant to the waste managed in the pile and to the leachate expected to be generated; and

(II) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(B) Designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) A liner and leachate collection and removal system must be protected from plant growth which could adversely affect any component of the system.

(c) The owner or operator must submit an engineering report with his permit application stating the basis for selecting the liner required in subsection (2)(a)(i) of this section. The statement must be certified by an independent, qualified registered professional engineer.

(d) The owner or operator will be exempted from the requirements of (a), (b), and (c) of this subsection, if the department finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any dangerous constituents identified under WAC 173-303-645(4) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the department will consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(iv) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(e) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto any portion of the pile during peak discharge from at least a twenty-five-year storm.

(f) The owner or operator must design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a twenty-four-hour, twenty-five-year storm.

(g) Collection and holding facilities (e.g., tanks or basins) associated with run-on and runoff control systems must be emptied or otherwise managed expeditiously and in accordance with this chapter after storms to maintain design capacity of the system.

(h) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(i) The department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this subsection are satisfied.

(j) The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.

(i) The liner system must include:

(A) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of dangerous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of dangerous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of dangerous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec.

(C) The liners must comply with (a)(i), (A), (B), and (C) of this subsection.

(ii) The leachate collection and removal system immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and post-closure care period. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed twelve inches (30.5 cm). The leachate collection and removal system must comply with (j)(iii) (D) and (E) of this subsection.

(iii) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of dangerous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of one percent or more;

(B) Constructed of granular drainage materials with a hydraulic conductivity of 1 x 10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3 x 10^{-5} m^2/sec or more:

(C) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;

(D) Designed and operated to minimize clogging during the active life and post-closure care period; and

(E) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(iv) The owner or operator will collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(v) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of groundwater.

(k) The department may approve alternative design or operating practices to those specified in (j) of this subsection if the owner or operator demonstrates to the department that such design and operating practices, together with location characteristics:

(i) Will prevent the migration of any dangerous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in (c) of this subsection; and

(ii) Will allow detection of leaks of dangerous constituents through the top liner at least as effectively.

(l) Subitem (j) of this subsection does not apply to monofills that are granted a waiver by the department in accordance with WAC 173-303-650 (2)(l).

(m) The owner or operator of any replacement waste pile unit is exempt from (j) of this subsection if:

(i) The existing unit was constructed in compliance with the design standards of section 3004 (o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(ii) There is no reason to believe that the liner is not functioning as designed.

(3) Action leakage rate.

(a) The department must approve an action leakage rate for waste piles subject to subsection (2)(j) or (k) of this section. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the

LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under subsection (5)(c) of this section to an average daily flow rate (gallons per acre per day) for each sump. Unless the department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period.

(4) Response actions.

(a) The owner or operator of waste pile units subject to subsection (2)(j) or (k) of this section must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in (b) of this subsection.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

(i) Notify the department in writing of the exceedance within seven days of the determination;

(ii) Submit a preliminary written assessment to the department within fourteen days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(iii) Determine to the extent practicable the location, size, and cause of any leak;

(iv) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(v) Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and

(vi) Within thirty days after the notification that the action leakage rate has been exceeded, submit to the department the results of the analyses specified in (b) of this subsection and in subsections (3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in (b) (C), (D), and (E) of this subsection, the owner or operator must:

(i)(A) Assess the source of liquids and amounts of liquids by source;

(B) Conduct a fingerprint, dangerous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(ii) Document why such assessments are not needed.

(5) Monitoring and inspection.

(a) During construction or installation, liners (except in the case of existing portions of piles exempt from subsection (2)(a) of this section), and cover systems (e.g., membranes, sheets, coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, foreign materials). Immediately after construction or installation:

(i) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(ii) Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

(b) While a waste pile is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(i) Deterioration, malfunctions, or improper operation of run-on and runoff control systems;

(ii) Proper functioning of wind dispersal control systems; and

(iii) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c) An owner or operator required to have a leak detection system under subsection (2)(j) of this section must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(6) Containment system repairs((—)) - Contingency plans.

(a) Whenever there is any indication of a possible failure of the containment system, that system must be inspected in accordance with the provisions of the containment system evaluation and repair plan required by (d) of this subsection. Indications of possible failure of the containment system include liquid detected in the leachate detection system, evidence of leakage or the potential for leakage in the base, erosion of the base, or apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials.

(b) Whenever there is a positive indication of a failure of the containment system, the waste pile must be removed from service. Indications of positive failure of the containment system include waste detected in the leachate detection system, or a breach (e.g., a hole, tear, crack, or separation) in the base.

(c) If the waste pile must be removed from service as required by (b) of this subsection, the owner or operator must:

(i) Immediately stop adding wastes to the pile;

(ii) Immediately contain any leakage which has occurred or is occurring;

(iii) Immediately cause the leak to be stopped; and

(iv) If the leak cannot be stopped by any other means, remove the waste from the base.

(d) As part of the contingency plan required in WAC 173-303-350, the owner or operator must specify:

(i) A procedure for complying with the requirements of (c) of this subsection; and

(ii) A containment system evaluation and repair plan describing: Testing and monitoring techniques; procedures to

be followed to evaluate the integrity of the containment system in the event of a possible failure; a schedule of actions to be taken in the event of a possible failure; and a description of the repair techniques and materials (and their availability) to be used in the event of leakage due to containment system failure or deterioration which does not require the waste pile to be removed from service. For EHW piles, the owner or operator must submit with his permit application a statement signed by an independent, qualified registered professional engineer of the basis on which the evaluation and repair plan has been established.

(e) No waste pile that has been removed from service pursuant to (b) of this subsection, may be restored to service unless:

(i) The containment system has been repaired; and

(ii) The containment system has been certified by ((~~a~~)) an independent qualified registered professional engineer as meeting the design specifications approved in the permit.

(f) A waste pile that has been removed from service pursuant to (b) of this subsection, and will not be repaired, must be closed in accordance with subsection (9) of this section.

(7) Special requirements for ignitable or reactive waste. Ignitable or reactive waste must not be placed in a waste pile, unless the waste and waste pile satisfy all applicable requirements of WAC 173-303-140 (2)(a), and:

(a) Addition of the waste to an existing pile results in the waste or mixture no longer meeting the definition of ignitable or reactive waste under WAC 173-303-090, and complies with WAC 173-303-395 (1)(b); or

(b)(i) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(ii) The generator complies with WAC 173-303-395 (1)(d).

(8) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials must not be placed in the same pile, unless WAC 173-303-395 (1)(b) is complied with.

(b) A pile of dangerous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device. Piles of incompatible wastes must not be served by the same containment system.

(c) Dangerous waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with WAC 173-303-395 (1)(b).

(9) Closure and post-closure care.

(a) At closure, the owner or operator must remove or decontaminate all dangerous waste, waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them in accordance with this chapter.

(b) If, after removing or decontaminating all residues and making all reasonable efforts regarding removal or decontamination of contaminated components, subsoils, structures, and equipment as required in (a) of this subsection, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated (except that no EHW may ever be left in place), he must close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills, WAC 173-303-665(6).

(c)(i) The owner or operator of a waste pile that does not comply with the liner requirements of subsection (2)(a)(i) of this section, and is not exempt from them in accordance with subsection (1)(c) or (2)(d) of this section, must:

(A) Include in the closure plan for the pile under WAC 173-303-610(3) both a plan for complying with (a) of this subsection, and a contingent plan for complying with (b) of this subsection, in case not all contaminated subsoils can be practicably removed at closure; and

(B) Prepare a contingent post-closure plan under WAC 173-303-610(8) for complying with (b) of this subsection, in case not all contaminated subsoils can be practicably removed at closure.

(ii) The cost estimates calculated under WAC 173-303-620 (3) and (5) for closure and post-closure care of a pile must include the cost of complying with the contingent closure plan and the contingent post-closure plan but are not required to include the cost of expected closure under (a) of this subsection.

(10) Special requirements for dangerous wastes F020, F021, F022, F023, F026, and F027.

(a) Dangerous wastes F020, F021, F022, F023, F026, and F027 must not be placed in waste piles that are not enclosed (as defined in subsection (1)(c) of this section) unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this subsection, and in accord with all other applicable requirements of this chapter. The factors to be considered are:

(i) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(ii) The attenuative properties of underlying and surrounding soils or other materials;

(iii) The mobilizing properties of other materials co-disposed with these wastes; and

(iv) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The department may determine that additional design, operating, and monitoring requirements are necessary in order to reduce the possibility of migration of these wastes to groundwater, to surface water, or air so as to protect human health and the environment.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-665 Landfills. (1) Applicability. The regulations in this section apply to owners and operators of facilities that dispose of dangerous waste in landfills, except as WAC 173-303-600 provides otherwise. No landfill will be permitted to dispose of EHW, except for the Hanford facility under WAC 173-303-700.

(2) Design and operating requirements.

(a) Any landfill that is not covered by (h) of this subsection must have a liner system for all portions of the landfill (except for an existing portion of a landfill). The liner system must have:

(i) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at anytime during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The owner or operator must submit an engineering report with his permit application under WAC 173-303-806(4) stating the basis for selecting the liner(s). The report must be certified by ((~~a licensed~~)) an independent qualified registered professional engineer. The liner must be:

(A) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(ii) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be:

(A) Constructed of materials that are:

(I) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(II) Of sufficient strength and thickness to prevent failure under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(B) Designed and operated to function without clogging through the scheduled closure of the landfill.

(b) The owner or operator will be exempted from the requirements of (a) of this subsection, if the department finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any dangerous constituents into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the department will consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(iv) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a twenty-five-year storm.

(d) The owner or operator must design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a twenty-four-hour, twenty-five-year storm.

(e) Collection and holding facilities (e.g., tanks or basins) associated with run-on and runoff control systems must be emptied or otherwise managed expeditiously and in accordance with this chapter after storms to maintain design capacity of the system.

(f) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(g) The department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this subsection are satisfied.

(h) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that commences reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in WAC 173-303-040 under "existing facility."

(i) The liner system must:

(A) Include a top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of dangerous constituents into such liner during the active life and post-closure care period; and

(B) Include a composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of dangerous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of dangerous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(C) The liners must comply with (a)(i)(A), (B), and (C) of this subsection.

(ii) The leachate collection and removal system immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed twelve inches (30.5 cm). The leachate collection and removal system must comply with (h)(iii) and (iv) of this subsection.

(iii) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of dangerous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this subsection are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of one percent or more;

(B) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more;

(C) Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;

(D) Designed and operated to minimize clogging during the active life and post-closure care period; and

(E) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(iv) The owner or operator will collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(v) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of groundwater.

(i) The department may approve alternative design or operating practices to those specified in (h) of this subsection if the owner or operator demonstrates to the department that such design and operating practices, together with location characteristics:

(i) Will prevent the migration of any dangerous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in (c) of this subsection; and

(ii) Will allow detection of leaks of dangerous constituents through the top liner at least as effectively.

(j) The double liner requirement set forth in (h) of this subsection may be waived by the department for any monofill, if:

(i) The monofill contains only dangerous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes dangerous for reasons other than the toxicity characteristic in WAC 173-303-090(8), with dangerous waste numbers D004 through D017 or the toxicity criteria at WAC 173-303-100(5); and

(ii)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in WAC 173-303-040); and

(C) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with permits under RCRA 3005(c); or

(D) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any dangerous constituent into groundwater or surface water at any future time.

(k) The owner or operator of any replacement landfill unit is exempt from (h) of this subsection if:

(i) The existing unit was constructed in compliance with the design standards of section 3004 (o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(ii) There is no reason to believe that the liner is not functioning as designed.

(3) Reserve.

(4) Monitoring and inspection.

(a) During construction or installation, liners (except in the case of existing portions of landfills exempt from subsection (2)(a) of this section), and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(i) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(ii) Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

(b) While a landfill is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(i) Deterioration, malfunctions, or improper operation of run-on and runoff control systems;

(ii) Proper functioning of wind dispersal control systems; and

(iii) The presence of leachate in and proper functioning of leachate collection and removal systems.

(c)(i) An owner or operator required to have a leak detection system under subsection (2)(h) or (j) of this section must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(ii) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semiannually. If at any time during the post-closure care period the pump

operating level is exceeded at units on quarterly or semiannual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(iii) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the department based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(5) Surveying and recordkeeping. The owner or operator of a landfill must maintain the following items in the operating record required under WAC 173-303-380:

(a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location of each dangerous waste type within each cell.

(6) Closure and post-closure care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(i) Provide long-term minimization of migration of liquids through the closed landfill;

(ii) Function with minimum maintenance;

(iii) Promote drainage and minimize erosion or abrasion of the cover;

(iv) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(v) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in WAC 173-303-610 (7), (8), (9), and (10) including maintenance and monitoring throughout the post-closure care period. The owner or operator must:

(i) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(ii) Maintain and monitor the leak detection system in accordance with subsections (2)(h) and (4)(c) of this section, where such a system is present between double liner systems;

(iii) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(iv) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of WAC 173-303-645;

(v) Prevent run-on and runoff from eroding or otherwise damaging the final cover; and

(vi) Protect and maintain surveyed benchmarks used in complying with subsection (5) of this section.

(c) Reserve.

(7) Special requirements for incompatible wastes. Incompatible wastes, or incompatible wastes and materials must not be placed in the same landfill cell, unless WAC 173-303-395 (1)(b) is complied with.

(8) Action leakage rate.

(a) The department must approve an action leakage rate for landfill units subject to subsection (2)(h) or (j) of this section. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding l foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under subsection (2)(h) of this section to an average daily flow rate (gallons per acre per day) for each sump. Unless the department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under subsection (9) of this section.

(9) Response actions.

(a) The owner or operator of landfill units subject to subsection (2)(h) or (j) of this section must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in (b) of this subsection.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

(i) Notify the department in writing of the exceedance within seven days of the determination;

(ii) Submit a preliminary written assessment to the department within fourteen days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(iii) Determine to the extent practicable the location, size, and cause of any leak;

(iv) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(v) Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and

(vi) Within thirty days after the notification that the action leakage rate has been exceeded, submit to the department the results of the analyses specified in (b)(iii), (iv), and (v) of this subsection, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the department a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in (b)(iii), (iv), and (v) of this subsection, the owner or operator must:

(i) Assess the source of liquids and amounts of liquids by source;

(ii) Conduct a fingerprint, dangerous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(iv) Document why such assessments are not needed.

(10) Special requirements for ignitable or reactive waste.

(a) Except as provided in subsection (8)(b) of this section, and in WAC 173-303-161, ignitable or reactive waste must not be placed in a landfill, unless the waste and landfill meet all applicable requirements for owners and operators of dangerous waste treatment, storage and disposal facilities contained in this chapter, and:

(i) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under WAC 173-303-090 (5) or (7); and

(ii) WAC 173-303-395(1) is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in WAC 173-303-140 (2)(a), ignitable wastes in containers may be landfilled without meeting the requirements of (a) of this subsection, provided that the wastes are disposed of in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes must be disposed of in nonleaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other noncombustible material to minimize the potential for ignition of the wastes; and must not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

(11) Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous wastes F020, F021, F022, F023, F026, and F027 must not be placed in a landfill unless the owner or operator operates the landfill in accord with a management plan for these wastes that is approved by the department pursuant to the standards set out in this subsection, and in accord with all other applicable requirements of this section. The factors to be considered are:

(i) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(ii) The attenuative properties of underlying and surrounding soils or other materials;

(iii) The mobilizing properties of other materials co-disposed with these wastes; and

(iv) The effectiveness of additional treatment, design, or monitoring requirements.

(b) The department may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

(12) Special requirements for containers. Unless they are very small, such as an ampule, containers must be either:

(a) At least ninety percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

(13) Disposal of liquid waste. Special requirements for bulk and containerized liquids are at WAC 173-303-140 (4)(b).

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-800 Permit requirements for dangerous waste management facilities. (1) The purpose of WAC 173-303-800 through 173-303-840 is to establish the requirements for permits which will allow a dangerous waste facility to operate without endangering the public health and the environment.

(2) The owner/operator of a dangerous waste facility that transfers, treats, stores, or disposes (TSD) or recycles dangerous waste must, when required by this chapter, obtain a permit in accordance with WAC 173-303-800 through 173-303-840 covering the active life, closure period, groundwater protection compliance period, and for any regulated unit (as defined in WAC 173-303-040) or for any facility which at closure does not meet the removal or decontamination limits of WAC 173-303-610 (2)(b), post-closure care period, unless they demonstrate closure by removal or decontamination as provided under WAC 173-303-800 (9) and (10), or obtain an enforceable document in lieu of a post-closure permit, as provided under subsection (12) of this section. If a post-closure permit is required, the permit must address applicable groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of this chapter. The denial of a permit for the active life of a dangerous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(3) TSD facility permits will be granted only if the objectives of the siting and performance standards set forth in WAC 173-303-282 and 173-303-283 are met.

(4) Permits will be issued according to the requirements of all applicable TSD facility standards.

(5) The owner/operator of a TSD facility is responsible for obtaining all other applicable federal, state, and local permits authorizing the development and operation of the TSD facility.

(6) The terms used in regard to permits which are not defined in WAC 173-303-040 have the same meanings as set forth in 40 C.F.R. 270.2.

(7) Exemptions.

(a) A permit for an on-site cleanup action may be exempted as provided in a consent decree or order signed by the department and issued pursuant to chapter 70.105D RCW.

(b) A permit is not required for an on-site cleanup action performed by the department pursuant to chapter 70.105D RCW.

(c) Further exemptions.

(i) A person is not required to obtain a dangerous waste permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) A discharge of a dangerous waste;

(B) An imminent and substantial threat of a discharge of dangerous waste;

(C) A discharge of a material that, when discharged, becomes a dangerous waste;

(D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in WAC 173-303-040.

(E) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(ii) Any person who continues or initiates dangerous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(iii) Universal waste handlers and universal waste transporters (as defined in WAC 173-303-040) handling the wastes listed below are not required to obtain a dangerous waste permit. These handlers are subject to regulation under WAC 173-303-573, when handling the below listed universal wastes.

(A) Batteries as described in WAC 173-303-573(2);

(B) Mercury-containing equipment as described in WAC 173-303-573(3); and

(C) Lamps as described in WAC 173-303-573(5).

(8) Each permit issued under this chapter will contain terms and conditions as the department determines necessary to protect human health and the environment.

(9) Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under 40 C.F.R. Part 265 standards as referenced by WAC 173-303-400 must obtain a post-closure permit unless they can demonstrate to the department that the closure met the standards for closure by removal or decontamination in WAC 173-303-650(6), 173-303-655(8), or 173-303-660(9), as appropriate, and such removal or decontamination must assure that the levels of dangerous waste or dangerous waste constituents or residues do not exceed standards for closure at 40 C.F.R. Part 264.111, as appropriate. The demonstration may be made in the following ways:

(a) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that 40 C.F.R. Part 264.111 standards for closure by removal were met. If the department believes that 40 C.F.R. Part 264.111 standards were met, the department will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in subsection (10) of this section.

(b) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the department for a determination that a post-closure permit is not required because the closure met the applicable 40 C.F.R. Part 264.111 closure standards.

(i) The petition must include data demonstrating that standards for closure by removal or decontamination were met, or it must demonstrate that the unit closed under chapter 173-303 WAC requirements that met or exceeded the applicable 40 C.F.R. Part 264.111 closure-by-removal standard.

(ii) The department will approve or deny the petition according to the procedures outline in subsection (10) of this section.

(10) Procedures for closure equivalency determination.

(a) If a facility owner/operator seeks an equivalency demonstration under subsection (9) of this section, the department will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within thirty days from the date of the notice. The department will also, in response to a request or at the discretion of the department, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the 40 C.F.R. Part 265 closure, as referenced by WAC 173-303-400, to a 40 C.F.R. Part 264.111 closure. The department will give public notice of the hearing at least thirty days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(b) The department will determine whether the 40 C.F.R. Part 265 closure met 40 C.F.R. Part 264.111 closure by removal or decontamination requirements within ninety days of its receipt. If the department finds that the closure did not meet the applicable 40 C.F.R. Part 264.111 standards, the department will provide the owner/operator with a written statement of the reasons why the closure failed to meet 40 C.F.R. Part 264.111 standards. The owner/operator may submit additional information in support of an equivalency demonstration within thirty days after receiving such written statement. The department will review any additional information submitted and make a final determination within sixty days.

(c) If the department determines that the facility did not close in accordance with 40 C.F.R. Part 264.111 standards for closure by removal, the facility is subject to post-closure permitting requirements.

(11) The department may require a permittee or an applicant to submit information in order to establish permit conditions under subsection (8) of this section and WAC 173-303-806 (11)(d).

(12) Enforceable documents for post-closure care. At the discretion of the department, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of 40 C.F.R. 265.121 as incorporated by reference in WAC 173-303-400 (3)(a). "Enforceable document" has the same meaning as defined in WAC 173-303-040.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-806 Final facility permits. (1) Applicability. This section applies to all dangerous waste facilities required to have a final facility permit. The final facility permit requirements are applicable to:

(a) Final status TSD facilities; and

(b) Certain recycling facilities that are not exempt from the permit requirements.

(2)(a) Application. Any person subject to the permit requirements of this section who intends to operate a new TSD facility must comply with WAC 173-303-281 and apply for a final facility permit. The department may, at any time, require the owner or operator of an existing TSD facility to apply for a final facility permit. Such owner or operator will be allowed one hundred eighty days to submit his application; the department may extend the length of the application period if it finds that there are good reasons to do so. The owner or operator of an existing TSD facility may voluntarily apply for a final facility permit at any time. Any person seeking a final facility permit must complete, sign, and submit an application to the department. An application must consist of a Part A permit form (which can be obtained from the department), and the contents of Part B as specified in subsection (4) of this section. The requirements for the contents of a part A permit application are at WAC 173-303-803(3).

(b) Persons covered by permits by rule (WAC 173-303-802) need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in WAC 173-303-804. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in WAC 173-303-809.

(3) Effective regulations. A final facility permit will include all applicable requirements of this chapter which are in effect on the date that the permit is issued by the department. WAC 173-303-840(7) provides a means for reopening permit proceedings at the discretion of the department where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. Any other changes to the final facility permit will be in accordance with the permit modification requirements of WAC 173-303-830.

(4) Contents of Part B. Part B of a permit application must consist of the information required in (a) through (m) of this subsection.

(a) General requirements. Part B of the permit application consists of the general information requirements of this subsection, and the specific information requirements in (b) through (h) of this subsection as applicable to the facility. The Part B information requirements presented in (a) through (h) of this subsection, reflect the standards promulgated in WAC 173-303-600. These information requirements are necessary in order for the department to determine compliance with WAC 173-303-600 through 173-303-670. If owners and operators of TSD facilities can demonstrate that the information prescribed in Part B cannot be provided to the extent required, the department may make allowance for submission of such information on a case-by-case basis. Information required in Part B must be submitted to the department and signed in accordance with requirements in WAC 173-303-810(12). Certain technical data, such as design drawings and specifications, and engineering studies must be certified by a registered professional engineer. For post-closure permits, only the information specified in WAC 173-303-806 (4)(o) is required in part B of the permit application. The following information is required for all TSD facilities, except as WAC 173-303-600(3) provides otherwise.

(i) A general description of the facility.

(ii) Chemical, biological, and physical analyses of the dangerous waste and hazardous debris to be handled at the facility. At a minimum, these analyses must contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with WAC 173-303-600.

(iii) A copy of the waste analysis plan required by WAC 173-303-300(5) and, if applicable WAC 173-303-300 (5)(g).

(iv) A description of the security procedures and equipment required by WAC 173-303-310, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(v) A copy of the general inspection schedule required by WAC 173-303-320(2): Include where applicable, as part of the inspection schedule, specific requirements in WAC 173-303-395 (1)(d), 173-303-630(6), 173-303-640 (4)(a)(i) and (6), 173-303-650(4), 173-303-655(4), 173-303-660 (4) and (5), 173-303-665(4), 173-303-670(7), and 173-303-680(3), and 40 C.F.R. 264.1033, 264.1035, 264.1052, 264.1053, 264.1058, 264.1064, 264.1067, 264.1084, 264.1085, 264.1086, and 264.1088.

(vi) A justification of any request for a waiver(s) of the preparedness and prevention requirements of WAC 173-303-340, or a description of the procedures used to comply with these requirements.

(vii) A copy of the contingency plan required by WAC 173-303-350: Include, where applicable, as part of the contingency plan, specific requirements in WAC 173-303-640(7), 173-303-650(5) and 173-303-660(6).

(viii) A description of procedures, structures, or equipment used at the facility to:

(A) Prevent hazards and contain spills in unloading/loading operations (for example, ramps, berms, pavement, special forklifts);

(B) Prevent runoff from dangerous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(C) Prevent contamination of water supplies;

(D) Mitigate effects of equipment failure and power outages;

(E) Prevent undue exposure of personnel to dangerous waste (for example, protective clothing); and

(F) Prevent releases to the atmosphere.

(ix) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with WAC 173-303-395 including documentation demonstrating compliance with WAC 173-303-395 (1)(c).

(x) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access

road surfacing and load bearing capacity; show traffic control signals).

(xi) Seismic risk consideration. The owner/operator of a proposed facility or expansion of an existing facility must identify the seismic risk zone in which the facility is intended to be located. Where state or local maps are not available, United States Geological Survey Open File Report number 82-1033 may be used to identify seismic risk zones. The owner/operator must demonstrate that the facility can and will be designed to resist seismic ground motion and that the design is sufficient to withstand the maximum horizontal acceleration of a design earthquake specified in the demonstration.

(xii) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the TSD facility in a safe manner as required to demonstrate compliance with WAC 173-303-330. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in WAC 173-303-330 (1)(d).

(xiii) A copy of the closure plan and, where applicable, the post-closure plan required by WAC 173-303-610 (3) and (8). Include, where applicable, as part of the plans, specific requirements in WAC 173-303-630(10), 173-303-640(8), 173-303-650(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), 173-303-670(8), and 173-303-680 (2) and (4).

(xiv) For dangerous waste disposal units that have been closed, documentation that notices required under WAC 173-303-610(10) have been filed.

(xv) The most recent closure cost estimate for the facility prepared in accordance with WAC 173-303-620(3) and a copy of the documentation required to demonstrate financial assurance under WAC 173-303-620(4). For a new facility, a copy of the required documentation may be submitted sixty days prior to the initial receipt of dangerous wastes, if that is later than the submission of the Part B.

(xvi) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with WAC 173-303-620(5) plus a copy of the documentation required to demonstrate financial assurance under WAC 173-303-620(6). For a new facility, a copy of the required documentation may be submitted sixty days prior to the initial receipt of dangerous wastes, if that is later than the submission of the Part B.

(xvii) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of WAC 173-303-620(8). For a new facility, documentation showing the amount of insurance meeting the specification of WAC 173-303-620 (8)(a) and, if applicable, WAC 173-303-620 (8)(b), that the owner or operator plans to have in effect before initial receipt of dangerous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in WAC 173-303-620 (8)(c).

(xviii) A topographic map showing a distance of one thousand feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of TSD facilities located in mountainous areas should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

(A) Map scale and date;

(B) One hundred-year flood plain area;

(C) Surface waters including intermittent streams;

(D) Surrounding land uses (residential, commercial, agricultural, recreational);

(E) A wind rose (i.e., prevailing windspeed and direction);

(F) Orientation of the map (north arrow);

(G) Legal boundaries of the TSD facility site;

(H) Access control (fences, gates);

(I) Injection and withdrawal wells both on-site and off-site;

(J) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.);

(K) Barriers for drainage or flood control; and

(L) Location of operational units within the TSD facility site, where dangerous waste is (or will be) treated, stored, or disposed (include equipment clean-up areas).

(Note - For large TSD facilities the department will allow the use of other scales on a case-by-case basis.)

(xix) Applicants may be required to submit such information as may be necessary to enable the department to carry out its duties under other state or federal laws as required.

(xx) Additional information requirements. The following additional information regarding protection of groundwater is required from owners or operators of dangerous waste facilities containing a regulated unit except as otherwise provided in WAC 173-303-645 (1)(b):

(A) A summary of the groundwater monitoring data obtained during the interim status period under 40 C.F.R. 265.90 through 265.94, where applicable;

(B) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow direction and rate, and the basis for such identification (that is, the information obtained from hydrogeologic investigations of the facility area);

(C) On the topographic map required under (a)(xviii) of this subsection, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under WAC 173-303-645(6), the proposed location of groundwater monitoring wells as required under WAC 173-303-645(8), and, to the extent possible, the information required in (a)(xx)(B) of this subsection;

(D) A description of any plume of contamination that has entered the groundwater from a regulated unit at the time that the application was submitted that:

(I) Delineates the extent of the plume on the topographic map required under (a)(xviii) of this subsection;

(II) Identifies the concentration of each constituent throughout the plume or identifies the maximum concentra-

tions of each constituent in the plume. (Constituents are those listed in Appendix "Ground-Water Monitoring List" in *Chemical Testing Methods for Designating Dangerous Waste* which is incorporated at WAC 173-303-110 (3)(c) and (7), and any other constituents not listed there which have caused a managed waste to be regulated under this chapter.);

(E) Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of WAC 173-303-645(8);

(F) If the presence of dangerous constituents has not been detected in the groundwater at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of WAC 173-303-645(9). This submission must address the following items specified under WAC 173-303-645(9):

(I) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of dangerous constituents in the groundwater;

(II) A proposed groundwater monitoring system;

(III) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(IV) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating groundwater monitoring data;

(G) If the presence of dangerous constituents has been detected in the groundwater at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of WAC 173-303-645(10). The owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of WAC 173-303-645(11) except as provided in WAC 173-303-645 (9)(h)(v). Alternatively, the owner or operator can obtain written authorization in advance from the department to submit a proposed permit schedule for development and submittal of such information. To demonstrate compliance with WAC 173-303-645(10), the owner or operator must address the following items:

(I) A description of the wastes previously handled at the facility;

(II) A characterization of the contaminated groundwater, including concentrations of dangerous constituents and parameters;

(III) A list of constituents and parameters for which compliance monitoring will be undertaken in accordance with WAC 173-303-645 (8) and (10);

(IV) Proposed concentration limits for each dangerous constituent and parameter, based on the criteria set forth in WAC 173-303-645 (5)(a), including a justification for establishing any alternate concentration limits;

(V) Detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of WAC 173-303-645(8); and

(VI) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating groundwater monitoring data; and

(H) If dangerous constituents or parameters have been measured in the groundwater which exceed the concentration limits established under WAC 173-303-645(5), Table 1, or if groundwater monitoring conducted at the time of permit application under 40 C.F.R. 265.90 through 265.94 at the waste boundary indicates the presence of dangerous constituents from the facility in groundwater over background concentrations, the owner or operator must submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of WAC 173-303-645(11). However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the department that alternate concentration limits will protect human health and the environment after considering the criteria listed in WAC 173-303-645(5). An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of WAC 173-303-645 (10) and (a)(xx)(F) of this subsection. To demonstrate compliance with WAC 173-303-645(11), the owner or operator must address, at a minimum, the following items:

(I) A characterization of the contaminated groundwater, including concentrations of dangerous constituents and parameters;

(II) The concentration limit for each dangerous constituent and parameter found in the groundwater as set forth in WAC 173-303-645(5);

(III) Detailed plans and an engineering report describing the corrective action to be taken;

(IV) A description of how the groundwater monitoring program will demonstrate the adequacy of the corrective action; and

(V) The permit may contain a schedule for submittal of the information required in (a)(xx)(H)(III) and (IV) of this subsection, provided the owner or operator obtains written authorization from the department prior to submittal of the complete permit application.

(xxi) Contingent groundwater protection program. The following actions are required for owners or operators of proposed land-based facilities and may be required for owners/operators of existing land-based facilities, except as provided in WAC 173-303-645 (1)(b).

(A) Contingent groundwater protection program. The owner or operator must develop a contingent groundwater protection program. The purpose of this program will be to prevent the migration of dangerous waste or dangerous waste constituents from waste management units to the nearest hydraulically downgradient receptor at any time during the life of the facility. For the purposes of this subsection, the downgradient receptor will be the facility property line, perennial surface water or domestic well, whichever is nearest to the dangerous waste management unit. The contingent groundwater protection program must at a minimum:

(I) Define the local and regional hydrogeologic characteristics. The contingent groundwater protection program must be based on a sufficient understanding of site geology, hydrology, and other factors to allow evaluation of its adequacy by the department. Site characterization must be per-

formed in sufficient detail to provide, at a minimum, the following information: Site geostratigraphy; site hydrostratigraphy; identification of aquifers, aquitards, and aquicludes; flow models for each stratum (i.e., porus media or fracture flow); the distribution of vertical and horizontal hydraulic conductivity; effective porosity; horizontal and vertical hydraulic gradients; groundwater travel time to receptors; and heterogeneity for each stratigraphic unit. Site interpretative models must include ranges of tested values: The provisions of WAC 173-303-806 (4)(a)(xx) and 173-303-645, must be used as guidance in the development of the contingent groundwater protection program.

(II) Identify the range of potential release scenarios that could occur during facility operation and the post-closure care period. The scenarios must incorporate the intended design(s) of the dangerous waste management unit(s), wastes to be placed in the dangerous waste management unit(s), waste and leachate chemistry, waste, and soil and rock geochemical interactions, and the results of site characterization pursuant to WAC 173-303-806 (4)(a)(xx) and (xxi);

(III) Include specific physical action to be taken if dangerous waste or dangerous waste constituents are detected in one or more of the monitoring wells. The physical actions must be based upon engineering feasibility studies describing remedial actions established from site specific conditions and waste features. Such actions may include installation of a pump and treat system between the monitoring well and the receptor or installation of a section of slurry wall to decrease groundwater travel times. The description of the systems must also provide how the remediation system will achieve cleanup, its efficiency, and the time frames involved;

(IV) Incorporate the design, construction, and sampling methods outlined in WAC 173-303-645 (8)(c), (d), (e), (f), and (g);

(V) Demonstrate to the satisfaction of the department that the owner/operator of the dangerous waste management facility has the financial capability to implement the proposed groundwater protection plan; and

(VI) Include reporting procedures to the department.

(B) The response actions identified in WAC 173-303-806 (4)(a)(xxi)(A)(III) must be activated if the presence of dangerous waste or dangerous waste constituents have been detected at the point of compliance in accordance with WAC 173-303-645 (9)(g), and must continue until the concentration of dangerous waste or dangerous waste constituents under WAC 173-303-645(4) are reduced to levels below their respective concentration limits specified in WAC 173-303-645(5).

(C) If the owner/operator does not demonstrate that the groundwater protection program will prevent the migration of dangerous waste or its constituents to the nearest receptor, the department will require corrections to be made in the protection program, increase setbacks from the nearest receptor, or deny the permit.

(xxii) Additional requirements for incineration facilities. The following actions regarding the protection of human health and the environment must be taken by owners/operators of proposed hazardous waste incineration facilities and may be required for owners or operators of existing incineration facilities.

(A) Ambient monitoring program. The owner/operator will be required to develop an ambient monitoring program. The purpose of this ambient monitoring program will be to: Gather baseline environmental information characterizing on-site and off-site environmental conditions prior to facility operation; and, to identify and measure changes in the environment which may be linked to the construction and operation of the facility. The ambient monitoring program must, at a minimum:

(I) Include a characterization of facility emission sources and pathways of contaminant transport.

(II) Characterize local and regional ecosystems, including agricultural, and their sensitivity to the potential contaminants from the facility.

(III) Incorporate the findings of the environmental impact statement's health risk assessment and/or other assessments specific to the proposal or available to the scientific community regarding emissions from dangerous waste management facilities and their potential human health and environmental effects.

(IV) Identify sensitive indicator plants and animals for biomonitoring, identify specific chemical constituents of concern, sampling locations, sampling frequency, sampling and analytical methods, chain of custody procedures, quality assurance/quality control procedures, reporting times, recordkeeping procedures, and data evaluation procedures.

(B) Environmental review procedures. The owner/operator must establish procedures to allow for public review of facility operation and all monitoring data required by the facility's permit. In developing this process, the owner/operator must, at a minimum:

(I) Coordinate this effort with the public and interested local organizations;

(II) Identify the informational needs of the community and develop a public information process which meets these needs; and

(III) Develop procedures allowing full access by the public to all monitoring data required by the permit.

(C) Impact mitigation plan. Prior to the department issuing a permit, the owner/operator must submit an impact mitigation plan which demonstrates to the satisfaction of the department that the owner/operator will mitigate all probable significant adverse impacts, including economic, due to facility location and operations. The owner/operator must use as a basis for identifying probable significant adverse economic impacts those probable economic impacts identified during a public review process, such as the environmental impact statement scoping process, if applicable.

The plan must include, but is not limited to, a description of what the owner/operator will do to reduce or prevent any probable significant impacts before they occur, to mitigate such impacts should they occur, and to ensure the owner/operator has and will have the financial capability to implement such preventative and mitigative measures. Mitigation measures may include, as an element, financial compensation to adversely affected parties.

This plan may be submitted with environmental reports the department requires for compliance with the State Environmental Policy Act, with the written citizen proponent negotiation report and agreements, or with the Part B permit

application. If the plan does not demonstrate that the owner/operator is capable of adequately mitigating the identified probable significant adverse economic impacts, the department will require modification of the plan or of the proposed facility location, or will deny the permit application. The department must be satisfied with the plan prior to the issuance of the permit.

(xxiii) Information requirements for solid waste management units.

(A) The following information is required for each solid waste management unit:

(I) The location of the unit on the topographic map required under (a)(xviii) of this subsection.

(II) Designation of type of unit.

(III) General dimensions and structural description (supply any available drawings).

(IV) Time frame over which the unit was operated.

(V) Specification of all wastes that have been managed in the unit, to the extent available.

(B) The owner/operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of dangerous wastes or dangerous constituents from such unit or units.

(C) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, landsurface, and subsurface strata, surface water, or air, which may include the installation of wells, where the department determines it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

WAC 173-303-806 (4)(a)(xxiv):

(xxiv) Information requirements for known releases.

(A) In order to provide for corrective action necessary to protect human health and the environment, the following information is required for all known significant releases of dangerous waste and dangerous constituents (as defined by WAC 173-303-64610(4)) at, and from, the facility. A significant release is a release which has affected or has the potential to affect human health or the environment at or beyond the facility.

(I) The location of the release on the topographic map required under (a)(xviii) of this subsection.

(II) General dimensions of the release and any relevant structural description. For example, if the release is from a storage tank, provide a structural description of the tank. Supply any available drawings.

(III) Time frame over which the release occurred.

(IV) Specification of all dangerous waste or dangerous constituents (as defined by WAC 173-303-64610(4)) present in the release, to the extent available.

(xxv) A summary of the preapplication meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under WAC 173-303-281 (3)(c).

(xxvi) For land disposal facilities, if a case-by-case extension has been approved under 40 C.F.R. 268.5 or a petition has been approved under 40 C.F.R. 268.6, a copy of the notice of approval for the extension or petition is required.

(b) Specific Part B information requirements for containers. Except as otherwise provided in WAC 173-303-600(3), owners or operators of facilities that store containers of dangerous waste must provide the following additional information:

(i) A description of the containment system to demonstrate compliance with WAC 173-303-630(7). Show at least the following:

(A) Basic design parameters, dimensions, and materials of construction including allowance for a twenty-five-year, twenty-four-hour storm;

(B) How the design promotes positive drainage control or how containers are kept from contact with standing liquids in the containment system;

(C) Capacity of the containment system relative to the volume of the largest container to be stored;

(D) Provisions for preventing or managing run-on;

(E) How accumulated liquids can be analyzed and removed to prevent overflow; and

(F) A description of the building or other protective covering for EHW containers;

(ii) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with WAC 173-303-630 (7)(c), including:

(A) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(B) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids;

(iii) A description of the procedures for labeling containers;

(iv) Sketches, drawings, or data demonstrating compliance with WAC 173-303-630(8) (location of buffer zone and containers holding ignitable or reactive wastes) and WAC 173-303-630 (9)(c) (location of incompatible wastes), where applicable;

(v) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with WAC 173-303-630 (9)(a) and (b), and 173-303-395 (1)(b) and (c); and

(vi) Information on air emission control equipment as required in (m) of this subsection.

(c) Specific Part B information requirements for tanks. Except as otherwise provided in WAC 173-303-600(3), owners and operators of facilities that use tanks to store or treat dangerous waste must provide the following information:

(i) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer as to the structural integrity and suitability for handling dangerous waste of each tank system, as required under WAC 173-303-640 (2) and (3);

(ii) Dimensions and capacity of each tank;

(iii) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents);

(iv) A diagram of piping, instrumentation, and process flow for each tank system;

(v) A description of materials and equipment used to provide external corrosion protection, as required under WAC 173-303-640 (3)(a)(iii)(B);

(vi) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with WAC 173-303-640 (3)(b), (c), (d), and (e);

(vii) Detailed plans and a description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of WAC 173-303-640 (4)(a), (b), (c), (d), (e), and (f);

(viii) For tank systems for which a variance from the requirements of WAC 173-303-640(4) is sought (as provided by WAC 173-303-640 (4)(g)):

(A) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any dangerous waste or dangerous constituents into the groundwater or surface water during the life of the facility; or

(B) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment.

(ix) Description of controls and practices to prevent spills and overflows, as required under WAC 173-303-640 (5)(b);

(x) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of WAC 173-303-640 (9) and (10);

(xi) A description of the marking and/or labeling of tanks;

(xii) Tank design to prevent escape of vapors and emissions of acutely or chronically toxic (upon inhalation) EHW; and

(xiii) Information on air emission control equipment as required in (m) of this subsection.

(d) Specific Part B information requirements for surface impoundments. Except as otherwise provided in WAC 173-303-600(3), owners and operators of facilities that store, treat, or dispose of dangerous waste in surface impoundments must provide the following additional information:

(i) A list of the dangerous wastes placed or to be placed in each surface impoundment;

(ii) Detailed plans and an engineering report describing how the surface impoundment is designed, and is or will be constructed, operated and maintained to meet the requirements of WAC 173-303-650 (2)(j), (10), (11), and 173-303-335, addressing the following items:

(A) The liner system (except for an existing portion of a surface impoundment), including the certification required by WAC 173-303-650 (2)(a)(i)(D) for EHW management. If an exemption from the requirement for a liner is sought as provided by WAC 173-303-650 (2)(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any dangerous constituents into the groundwater or surface water at any future time;

(B) Prevention of overtopping;

(C) Structural integrity of dikes;

(D) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of WAC 173-303-650 (2)(j). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by WAC 173-303-650 (2)(k), (l), or (m), submit appropriate information;

(E) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(F) The construction quality assurance (CQA) plan if required under WAC 173-303-335; and

(G) Proposed action leakage rate, with rationale, if required under WAC 173-303-650(10), and response action plan, if required under WAC 173-303-650(11).

(iii) Reserve.

(iv) A description of how each surface impoundment, including the double liner system, leak detection system, cover systems and appurtenances for control of overtopping, will be inspected in order to meet the requirements of WAC 173-303-650 (4)(a), (b), and (d). This information should be included in the inspection plan submitted under (a)(v) of this subsection;

(v) A certification by ((~~a~~)) an independent qualified registered professional engineer which attests to the structural integrity of each dike, as required under WAC 173-303-650 (4)(c). For new units, the owner or operator must submit a statement by ((~~a~~)) an independent qualified registered professional engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;

(vi) A description of the procedure to be used for removing a surface impoundment from service, as required under WAC 173-303-650 (5)(b) and (c). This information should be included in the contingency plan submitted under (a)(vii) of this subsection;

(vii) A description of how dangerous waste residues and contaminated materials will be removed from the unit at closure, as required under WAC 173-303-650 (6)(a)(i). For any wastes not to be removed from the unit upon closure, the owner or operator must submit detailed plans and an engineering report describing how WAC 173-303-650 (6)(a)(ii) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under (a)(xiii) of this subsection;

(viii) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how WAC 173-303-650(7) will be complied with;

(ix) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how WAC 173-303-650(8) will be complied with;

(x) Where applicable, a waste management plan for Dangerous Waste Nos. F020, F021, F022, F023, F026, or F027 describing how the surface impoundment is or will be designed to meet the requirements of WAC 173-303-650(9); and

(xi) Information on air emission control equipment as required in (m) of this subsection.

(e) Specific Part B information requirements for waste piles. Except as otherwise provided in WAC 173-303-600(3),

owners and operators of facilities that store or treat dangerous waste in waste piles must provide the following additional information:

(i) A list of dangerous wastes placed or to be placed in each waste pile;

(ii) If an exemption is sought to WAC 173-303-660(2), and 173-303-645 as provided by WAC 173-303-660 (1)(c), an explanation of how the standards of WAC 173-303-660 (1)(c) will be complied with;

(iii) Detailed plans and an engineering report describing how the waste pile is designed, and is or will be constructed, operated, and maintained to meet the requirements of WAC 173-303-335, 173-303-660 (2)(j), (11) and (12), addressing the following items:

(A)(I) The liner system (except for an existing portion of a pile) if the waste pile must meet the requirements of WAC 173-303-660(2), including the ((~~licensed~~)) independent qualified registered professional engineer's certification when required by WAC 173-303-660 (2)(c). If an exemption from the requirement for a liner is sought, as provided by WAC 173-303-660 (2)(d), submit detailed plans and engineering and hydrogeologic reports, as applicable, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any dangerous constituents into the groundwater or surface water at any future time;

(II) The double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of WAC 173-303-660 (2)(j). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by WAC 173-303-660 (2)(k), (l), or (m), submit appropriate information;

(III) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(IV) The construction quality assurance (CQA) plan if required under WAC 173-303-335;

(V) Proposed action leakage rate, with rationale, if required under WAC 173-303-660(3), and response action plan, if required under WAC 173-303-660(4);

(B) Control of run-on;

(C) Control of runoff;

(D) Management of collection and holding units associated with run-on and runoff control systems; and

(E) Control of wind dispersal of particulate matter, where applicable;

(iv) Reserve.

(v) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system and appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of WAC 173-303-660(5). This information should be included in the inspection plan submitted under (a)(v) of this subsection. If an exemption is sought to WAC 173-303-645 pursuant to WAC 173-303-660(4), describe in the inspection plan how the inspection requirements of WAC 173-303-660 (4)(a)(iii) will be complied with;

(vi) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(vii) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of WAC 173-303-660(7) will be complied with;

(viii) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how WAC 173-303-660(8) will be complied with;

(ix) A description of how dangerous waste, waste residues and contaminated materials will be removed from the waste pile at closure, as required under WAC 173-303-660 (9)(a). For any waste not to be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how WAC 173-303-665 (6)(a) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under (a)(xiii) of this subsection;

(x) Where applicable, a waste management plan for Dangerous Waste Nos. F020, F021, F022, F023, F026, or F027 describing how a waste pile that is not enclosed (as defined in WAC 173-303-660 (1)(c)) is or will be designed, constructed, operated, and maintained to meet the requirements of WAC 173-303-660(10).

(f) Specific Part B information requirements for incinerators. Except as WAC 173-303-670(1) and subsection (4)(f)(v) of this section provide otherwise, owners and operators of facilities that incinerate dangerous waste must fulfill the informational requirements of (f) of this subsection.

(i) When seeking an exemption under WAC 173-303-670 (1)(b) (ignitable or reactive wastes only):

(A) Documentation that the waste is listed as a dangerous waste in WAC 173-303-080, solely because it is ignitable; or

(B) Documentation that the waste is listed as a dangerous waste in WAC 173-303-080, solely because it is reactive for characteristics other than those listed in WAC 173-303-090 (7)(a)(iv) and (v), and will not be burned when other dangerous wastes are present in the combustion zone; or

(C) Documentation that the waste is a dangerous waste solely because it possesses the characteristic of ignitability, as determined by the tests for characteristics of dangerous waste under WAC 173-303-090; or

(D) Documentation that the waste is a dangerous waste solely because it possesses the reactivity characteristics listed in WAC 173-303-090 (7)(a)(i), (ii), (iii), (vi), (vii), and (viii), and that it will not be burned when other dangerous wastes are present in the combustion zone.

(ii) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with WAC 173-303-807.

(iii) In lieu of a trial burn, the applicant may submit the following information;

(A) An analysis of each waste or mixture of wastes to be burned including:

(I) Heating value of the waste in the form and composition in which it will be burned;

(II) Viscosity (if applicable), or description of physical form of the waste, and specific gravity of the waste;

(III) An identification of any dangerous organic constituents listed in WAC 173-303-9905 or, if not listed, which cause the waste(s) to be regulated, which are present in the waste to be burned, except that the applicant need not analyze for constituents which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in WAC 173-303-110 (3)(a), or their equivalent as approved by the department;

(IV) An approximate quantification of the dangerous constituents identified in the waste, within the precision produced by the analytical methods specified in WAC 173-303-110 (3)(a); and

(V) A quantification of those dangerous constituents in the waste which may be designated as principal organic dangerous constituents (PODC's) based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in WAC 173-303-670(4);

(B) A detailed engineering description of the incinerator, including:

(I) Manufacturer's name and model number of incinerator;

(II) Type of incinerator;

(III) Linear dimension of incinerator unit including cross sectional area of combustion chamber;

(IV) Description of auxiliary fuel system (type/feed);

(V) Capacity of prime mover;

(VI) Description of automatic waste feed cutoff system(s);

(VII) Stack gas monitoring and pollution control monitoring system;

(VIII) Nozzle and burner design;

(IX) Construction materials; and

(X) Location and description of temperature, pressure, and flow indicating devices and control devices;

(C) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in (f)(iii)(A) of this subsection. This analysis should specify the principal organic dangerous constituents (PODC's) which the applicant has identified in the waste for which a permit is sought, and any differences from the PODC's in the waste for which burn data are provided;

(D) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available;

(E) A description of the results submitted from any previously conducted trial burn(s) including:

(I) Sampling and analysis techniques used to calculate performance standards in WAC 173-303-670(4); and

(II) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement);

(F) The expected incinerator operation information to demonstrate compliance with WAC 173-303-670 (4) and (6), including:

(I) Expected carbon monoxide (CO) level in the stack exhaust gas;

(II) Waste feed rate;

(III) Combustion zone temperature;

(IV) Indication of combustion gas velocity;

(V) Expected stack gas volume, flow rate, and temperature;

(VI) Computed residence time for waste in the combustion zone;

(VII) Expected hydrochloric acid removal efficiency;

(VIII) Expected fugitive emissions and their control procedures; and

(IX) Proposed waste feed cutoff limits based on the identified significant operating parameters;

(G) Such supplemental information as the department finds necessary to achieve the purposes of this subsection;

(H) Waste analysis data, including that submitted in (f)(iii)(A) of this subsection, sufficient to allow the department to specify as permit principal organic dangerous constituents (permit PODC's) those constituents for which destruction and removal efficiencies will be required; and

(I) Test protocols and sampling and analytical data to demonstrate the designation status under WAC 173-303-070 of:

(I) Incinerator ash residues, if any; and

(II) Residues from the air pollution control devices.

(iv) The department will approve a permit application without a trial burn if the department finds that:

(A) The wastes are sufficiently similar; and

(B) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under WAC 173-303-670(6)) operating conditions that will ensure that the performance standards in WAC 173-303-670(4) will be met by the incinerator.

(v) When an owner or operator of a dangerous waste incineration unit becomes subject to dangerous waste permit requirements after October 12, 2005, or when an owner or operator of an existing dangerous waste incinerator unit demonstrates compliance with the air emission standards and limitations in 40 C.F.R. part 63, subpart EEE (that is, by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 C.F.R. 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of 40 C.F.R. part 63, subpart EEE), the requirements of this subsection do not apply, except those provisions the department determines are necessary to ensure compliance with WAC 173-303-670 (6)(a) and (c) if you elect to comply with 40 C.F.R. 270.235 (a)(1)(i), which is incorporated by reference at WAC 173-303-841, to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the department may apply the provisions of this subsection, on a case-by-case basis, for purposes of information collection in accordance with WAC 173-303-800(11) and 173-303-815 (2)(b)(ii). Note that 40 C.F.R. part 63 subpart EEE is incorporated by reference at WAC 173-400-075 (5)(a). If you are subject to 40 C.F.R. Part

63 you must get an air permit from ecology or the local air authority.

(g) Specific Part B information requirements for land treatment facilities. Except as otherwise provided in WAC 173-303-600(3), owners and operators of facilities that use land treatment to dispose of dangerous waste must provide the following additional information:

(i) A description of plans to conduct a treatment demonstration as required under WAC 173-303-655(3). The description must include the following information:

(A) The wastes for which the demonstration will be made and the potential dangerous constituents in the waste;

(B) The data sources to be used to make the demonstration (e.g., literature, laboratory data, field data, or operating data);

(C) Any specific laboratory or field test that will be conducted, including:

(I) The type of test (e.g., column leaching, degradation);

(II) Materials and methods, including analytical procedures;

(III) Expected time for completion; and

(IV) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(ii) A description of a land treatment program, as required under WAC 173-303-655(2). This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items:

(A) The wastes to be land treated;

(B) Design measures and operating practices necessary to maximize treatment in accordance with WAC 173-303-655 (4)(a) including:

(I) Waste application method and rate;

(II) Measures to control soil pH;

(III) Enhancement of microbial or chemical reactions; and

(IV) Control of moisture content;

(C) Provisions for unsaturated zone monitoring, including:

(I) Sampling equipment, procedures, and frequency;

(II) Procedures for selecting sampling locations;

(III) Analytical procedures;

(IV) Chain of custody control;

(V) Procedures for establishing background values;

(VI) Statistical methods for interpreting results; and

(VII) The justification for any dangerous constituents recommended for selection as principal dangerous constituents, in accordance with the criteria for such selection in WAC 173-303-655 (6)(a);

(D) A list of dangerous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to WAC 173-303-300;

(E) The proposed dimensions of the treatment zone;

(iii) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of WAC 173-303-655(4). This submission must address the following items:

(A) Control of run-on;

(B) Collection and control of runoff;

(C) Minimization of runoff of dangerous constituents from the treatment zone;

(D) Management of collection and holding facilities associated with run-on and runoff control systems;

(E) Periodic inspection of the unit. This information should be included in the inspection plan submitted under (a)(v) of this subsection; and

(F) Control of wind dispersal of particulate matter, if applicable;

(iv) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under WAC 173-303-655(5) will be conducted including:

(A) Characteristics of the food-chain crop for which the demonstration will be made;

(B) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(C) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(D) Characteristics of the comparison crop including the location and conditions under which it was or will be grown; and

(E) If cadmium is present in the land treated waste, a description of how the requirements of WAC 173-303-655 (5)(b) will be complied with;

(v) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under WAC 173-303-655 (8)(a)(viii) and (c)(ii). This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under (a)(xiii) of this subsection;

(vi) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of WAC 173-303-655(9) will be complied with; and

(vii) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how WAC 173-303-655(10) will be complied with.

(viii) Where applicable, a waste management plan for Dangerous Waste Nos. F020, F021, F022, F023, F026, or F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of WAC 173-303-655(12). This submission must address the following items as specified in WAC 173-303-655(12):

(A) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(B) The attenuative properties of underlying and surrounding soils or other materials;

(C) The mobilizing properties of other materials codisposed with these wastes; and

(D) The effectiveness of additional treatment, design, or monitoring techniques.

(h) Specific Part B information requirements for landfills. Except as otherwise provided in WAC 173-303-600(3), owners and operators of facilities that dispose of dangerous

waste in landfills must provide the following additional information;

(i) A list of the dangerous wastes placed or to be placed in each landfill or landfill cell;

(ii) Detailed plans and an engineering report describing how the landfill is designed, and is or will be constructed, operated and maintained to comply with the requirements of WAC 173-303-335, 173-303-665 (2), (8) and (9) addressing the following items:

(A)(I) The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of WAC 173-303-665 (2)(a), including the ((~~licensed~~)) independent qualified registered professional engineer's certification required by WAC 173-303-665 (2)(a)(i). If an exemption from the requirements for a liner and a leachate collection and removal system is sought, as provided by WAC 173-303-665 (2)(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any dangerous constituent into the groundwater or surface water at any future time;

(II) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of WAC 173-303-665 (2)(h). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by WAC 173-303-665 (2)(j), (k) or (l), submit appropriate information;

(III) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(IV) The construction quality assurance (CQA) plan if required under WAC 173-303-335;

(V) Proposed action leakage rate, with rationale, if required under WAC 173-303-665(8), and response action plan, if required under 173-303-665(9);

(B) Control of run-on;

(C) Control of runoff;

(D) Management of collection and holding facilities associated with run-on and runoff control systems; and

(E) Control of wind dispersal of particulate matter, where applicable;

(iii) Reserve.

(iv) A description of how each landfill, including the double liner system, leachate collection and removal system, cover systems, and appurtenances for control for run-on and runoff will be inspected in order to meet the requirements of WAC 173-303-665(4). This information must be included in the inspection plan submitted under (a)(v) of this subsection;

(v) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with WAC 173-303-665 (6)(a), and a description of how each landfill will be maintained and monitored after closure in accordance with WAC 173-303-665 (6)(b) and (c). This information should be included in the closure and post-closure plans submitted under (a)(xiii) of this subsection;

(vi) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how WAC 173-303-665(7) will be complied with;

(vii) A description of how each landfill will be designed and operated in order to comply with WAC 173-303-140.

(i) Specific Part B information requirements for miscellaneous units. Except as otherwise provided in WAC 173-303-680(1), owners and operators of facilities that treat, store, or dispose of dangerous waste in miscellaneous units must provide the following additional information:

(i) A detailed description of the unit being used or proposed for use, including the following:

(A) Physical characteristics, materials of construction, and dimensions of the unit;

(B) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of WAC 173-303-680 (2) and (3); and

(C) For disposal units, a detailed description of the plans to comply with the post-closure requirements of WAC 173-303-680(4).

(ii) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of WAC 173-303-680(2). If the applicant can demonstrate that he does not violate the environmental performance standards of WAC 173-303-680(2) and the department agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(iii) Information on the potential pathways of exposure of humans or environmental receptors to dangerous waste or dangerous constituents and on the potential magnitude and nature of such exposures.

(iv) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(v) Any additional information determined by the department to be necessary for evaluation of compliance of the unit with the environmental performance standards of WAC 173-303-680(2).

(j) Specific Part B information requirements for process vents. Except as otherwise provided in WAC 173-303-600(3), owners and operators of facilities that have process vents to which WAC 173-303-690 applies must provide the following additional information:

(i) For facilities that cannot install a closed-vent system and control device to comply with the provisions of WAC 173-303-690 on the effective date that the facility becomes subject to the provisions of WAC 173-303-690 or 40 C.F.R. 265 Subpart AA incorporated by reference at WAC 173-303-400 (3)(a), an implementation schedule as specified in 40 C.F.R. section 264.1033 (a)(2).

(ii) Documentation of compliance with the process vent standards in 40 C.F.R. section 264.1032, including:

(A) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the

facility of each affected unit (e.g., identify the dangerous waste management units on a facility plot plan).

(B) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(C) Information and data used to determine whether or not a process vent is subject to the requirements of 40 C.F.R. section 264.1032.

(iii) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of 40 C.F.R. 264.1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in 40 C.F.R. 264.1035 (b)(3).

(iv) Documentation of compliance with 40 C.F.R. 264.1033, including:

(A) A list of all information references and sources used in preparing the documentation.

(B) Records, including the dates, of each compliance test required by 40 C.F.R. 264.1033(k).

(C) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference at WAC 173-303-110 (3)(g)(viii)) or other engineering texts acceptable to the department that present basic control device ((~~design~~)) information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in 40 C.F.R. 264.1035 (b)(4)(iii).

(D) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the dangerous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(E) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of 40 C.F.R. 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

(k) Specific Part B information requirements for equipment. Except as otherwise provided in WAC 173-303-600(3), owners and operators of facilities that have equipment to which WAC 173-303-691 applies must provide the following additional information:

(i) For each piece of equipment to which WAC 173-303-691 applies:

(A) Equipment identification number and dangerous waste management unit identification.

(B) Approximate locations within the facility (e.g., identify the dangerous waste management unit on a facility plot plan).

(C) Type of equipment (e.g., a pump or pipeline valve).

(D) Percent by weight total organics in the hazardous waste stream at the equipment.

(E) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(F) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(ii) For facilities that cannot install a closed-vent system and control device to comply with the provisions of WAC 173-303-691 on the effective date that the facility becomes subject to the provisions of WAC 173-303-691 or 40 C.F.R. Part 265 Subpart BB incorporated by reference at WAC 173-303-400 (3)(a), an implementation schedule as specified in 40 C.F.R. 264.1033 (a)(2).

(iii) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in 40 C.F.R. section 264.1035 (b)(3).

(iv) Documentation that demonstrates compliance with the equipment standards in 40 C.F.R. sections 264.1052 to 264.1059. This documentation will contain the records required under 40 C.F.R. 264.1064. The department may request further documentation before deciding if compliance has been demonstrated.

(v) Documentation to demonstrate compliance with 40 C.F.R. section 264.1060 will include the following information:

(A) A list of all information references and sources used in preparing the documentation.

(B) Records, including the dates, of each compliance test required by 40 C.F.R. 264.1033(j).

(C) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "ATPI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in WAC 173-303-110 (3)(g)(viii)) or other engineering texts acceptable to the department that present basic control device ((~~design~~)) information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in 40 C.F.R. 264.1035 (b)(4)(iii).

(D) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the dangerous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(E) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

(l) Special Part B information requirements for drip pads.

Except as otherwise provided by WAC 173-303-600(3), owners and operators of dangerous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

(i) A list of hazardous wastes placed or to be placed on each drip pad.

(ii) If an exemption is sought to WAC 173-303-645, as provided by WAC 173-303-645(1), detailed plans and an engineering report describing how the requirements of WAC 173-303-645 (1)(b) will be met.

(iii) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of WAC 173-303-675(4), including the as-built drawings and specifications. This submission must address the following items as specified in WAC 173-303-675(2):

(A) The design characteristics of the drip pad;

(B) The liner system;

(C) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(D) Practices designed to maintain drip pads;

(E) The associated collection system;

(F) Control of run-on to the drip pad;

(G) Control of runoff from the drip pad;

(H) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(I) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.

(J) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(K) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;

(L) Provisions for ensuring that collection and holding units associated with the run-on and runoff control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(M) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.

(N) A description of how each drip pad, including appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of WAC 173-303-675(4). This information should be included in the inspection plan submitted under (a)(v) of this subsection.

(O) A certification signed by an independent qualified, registered professional engineer, stating that the drip pad design meets the requirements of WAC 173-303-675 (4)(a) through (f).

(P) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under WAC 173-303-675 (6)(a). For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how WAC 173-303-665(6) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under (a)(xiii) of this subsection.

(m) Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers (Subpart CC) at 40 C.F.R. 270.27 are incorporated by reference.

(n) When an owner or operator of a cement ((~~or~~)) kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 C.F.R. part 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 C.F.R. 63.1207(j) and 63.1210(b) documenting compliance with all applicable requirements of part 63, subpart EEE), the requirements of this subsection do not apply, except those provisions the director determines are necessary to ensure compliance with 40 C.F.R. 266.102 (e)(1) and 266.102 (e)(2)(iii) if you elect to comply with 40 C.F.R. 270.235 (a)(1)(i), which is incorporated by reference at WAC 173-303-841, to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the director may apply the provisions of this subsection, on a case-by-case basis, for purposes of information collection in accordance with WAC 173-303-800(11) and 173-303-815 (2)(b)(ii).

(o) For post-closure permits, the owner or operator is required to submit only the information specified in (a)(i), (iv), (v), (vi), (xi), (xiii), (xiv), (xvi), (xviii), (xx), (xxiii) of this subsection, unless the department determines that additional information from (a), (c), (d), (e), (g), and (h) of this subsection is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in WAC 173-303-800(12).

(5) Construction. A person may begin physical construction of a new facility, or of new portions of an existing facility if the new portions would amount to reconstruction under interim status (WAC 173-303-805(7)), only after complying with WAC 173-303-281, submitting Part A and Part B of the permit application and receiving a final facility permit. All permit applications must be submitted at least one hundred eighty days before physical construction is expected to begin.

(6) Reapplications. Any dangerous waste facility with an effective final facility permit must submit a new application one hundred eighty days prior to the expiration date of the effective permit, unless the department grants a later date provided that such date will never be later than the expiration date of the effective permit.

Note: See public notice requirements at WAC 173-303-281(5).

(7) Continuation of expiring permits.

(a) When the owner/operator submits a timely application for a final facility permit and the application is determined by the department to be complete pursuant to subsection (8) of this section, the facility is allowed to continue operating under the expiring or expired permit until the effective date of the new permit.

(b) When the facility is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any of the following:

(i) Initiate enforcement action based upon the permit which has been continued;

(ii) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(iii) Issue a new permit with appropriate conditions; and/or

(iv) Take other actions authorized by this chapter.

(8) Completeness. The department will not issue a final facility permit before receiving a complete application, except for permits by rule or emergency permits. An application for a permit is complete when the department receives an application form and any supplemental information which are completed to the department's satisfaction. The department may consider an application for a permit to be complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection (12) of this section. The department may deny a permit for the active life of a dangerous waste management facility or unit before receiving a complete application for a permit.

(9) Recordkeeping. Applicants must keep records of all data used to complete the permit applications, and any supplemental information submitted to the department for a period of at least three years from the date the application is signed.

(10) General permit conditions. All final facility permits will contain general permit conditions described in WAC 173-303-810.

(11) Permit duration.

(a) Final facility permits will be effective for a fixed term not to exceed ten years.

(b) The department may issue any final facility permit for a duration that is less than the full allowable term.

(c) The term of a final facility permit will not be extended beyond ten years, unless otherwise authorized under subsection (7) of this section.

(d) Each permit for a land disposal facility will be reviewed by the department five years after the date of permit issuance or reissuance and will be modified as necessary, as provided in WAC 173-303-830(3).

(12) Exposure information. Any part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes dangerous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to dangerous wastes or dangerous constituents through releases related to the unit. At a minimum, such information must address:

(a) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(b) The potential pathways of human exposure to dangerous waste or constituents resulting from the releases described under (a) of this subsection; and

(c) The potential magnitude and nature of the human exposure resulting from such releases.

(13) Grounds for denial. A permit application will be denied pursuant to the procedures in WAC 173-303-840 if it is determined that the proposed location and/or activity endangers public health and the environment as demonstrated by the permit applicant's failure to satisfy the performance standards of WAC 173-303-283.

(14) Permit changes. All final facility permits will be subject to the requirements of permit changes, WAC 173-303-830.

(15) Procedures for decision making. Issuance of final facility permits will be subject to the procedures for decision making described in WAC 173-303-840.

(16) Other requirements for final recycling facility permits. In lieu of issuing a final recycling facility permit, the department may, after providing opportunity for public comment in accordance with WAC 173-303-840, defer to a permit already issued under other statutory authority administered by the department (such as the State Water Pollution Control Act, chapter 90.48 RCW, the State Clean Air Act, chapter 70.94 RCW, etc.) which incorporates the requirements of this section, and WAC 173-303-500 through 173-303-525 for recycling facilities.

(17)(a) If the department concludes, based on one or more of the factors listed in (a)(i) through (ix) of this subsection, that compliance with the standards of 40 C.F.R. part 63, subpart EEE alone may not be protective of human health or the environment, the department will require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The department may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

The department will base the evaluation of whether compliance with the standards of 40 C.F.R. part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose

significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) Volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(ix) Such other factors as may be appropriate.

(b) Reserved.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-810 General permit conditions. (1) Purpose and applicability. This section sets forth the general permit conditions that are applicable to all permits, except interim status permits and permits by rule, to assure compliance with this chapter. If the conditions of this section are incorporated in a permit by reference, a specific citation to this section must be given in the permit.

(2) Duty to comply. The permittee must comply with all conditions of his permit. Any permit noncompliance constitutes a violation and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee need not comply with the conditions of his permit to the extent and for the duration such noncompliance is authorized in an emergency permit.

(3) Duty to reapply. If the permittee wishes to continue an activity regulated by the permit after its expiration date, the permittee must apply for and obtain a new permit.

(4) Duty to halt or reduce activity. A permittee who has not complied with his permit, and who subsequently is subject to enforcement actions, may not argue that it would have been necessary to halt or reduce the permitted activities in order to maintain compliance with the conditions of the permit.

(5) Duty to mitigate. The permittee must take all steps required by the department to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(6) Proper operation and maintenance. The permittee must at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(7) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, notification of planned changes, or anticipated noncompliance, does not stay any permit condition.

(8) Effect of a permit.

(a) Compliance with a final facility permit during its term constitutes compliance for the purpose of enforcement with chapter 173-303 WAC except for permit modifications and those requirements not included in the permit that:

(i) Become effective by statute;

(ii) Are adopted under 40 C.F.R. Part 268 restricting the placement of dangerous waste in or on the land;

(iii) Are adopted under WAC 173-303-650 through 173-303-665 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of WAC 173-303-830 Class [1]1 permit modifications; or

(iv) Are adopted under 40 C.F.R. Subparts AA, BB, or CC which are incorporated by reference at WAC 173-303-400 (3)(a) limiting air emissions.

(b) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in WAC 173-303-830 (3) and (5), or the permit may be modified upon the request of the permittee as set forth in WAC 173-303-830(4).

(c) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

((~~(c)~~)) (d) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local laws or regulations.

(9) Duty to provide information. The permittee must furnish to the department, within a reasonable time, any information which it may request to determine whether cause exists for modifying, revoking and reissuing, or terminating a permit, or to determine compliance with a permit. The permittee must also furnish to the department, upon request, copies of records required to be kept by the permit.

(10) Inspection and entry. The permittee must allow representatives of the department, upon the presentation of proper credentials, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by chapter 173-303 WAC, any substances or parameters at any location.

(11) Monitoring and monitoring records.

(a) Reserve.

(b) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(c) The permittee must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by WAC 173-303-380 (1)(q), and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the department at any time.

(d) Records of monitoring information must include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(e) The permittee must maintain records from all groundwater monitoring wells and associated groundwater surface elevations for the active life of the facility, and for disposal facilities for the post-closure period as well.

(12) Signatory requirement. All applications, reports, or information submitted to the department must be signed in accordance with this subsection and must be certified according to subsection (13) of this section.

(a) Applications. When a dangerous waste facility is owned by one person, but is operated by another person, then the operator will be the permit applicant and responsible for developing the permit application and all accompanying materials, except that the owner must also sign and certify the permit application. Permit applications must be signed as follows:

(i) For a corporation: By a responsible corporate officer. For the purposes of this subsection, a responsible corporate officer means:

(A) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(B) The manager of one or more manufacturing, production or operating facilities employing more than two hundred fifty persons or having gross annual sales or expenditures exceeding twenty-five million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(ii) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

(iii) For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes:

(A) The chief executive officer of the agency; or

(B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(b) Reports. All reports required by permits and other information requested by the department must be signed by a person described in (a) of this subsection, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) The authorization is made in writing by a person described in (a) of this subsection;

(ii) The authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(iii) The written authorization is submitted to the department.

(c) Changes to authorization. If an authorization under (b) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of (b) of this subsection must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(13) Certification.

(a) Except as provided in (b) of this subsection, any person signing the documents required under (a) or (b) of subsection (12) of this section must make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(b) When a dangerous waste facility is owned by one person, but is operated by another person, then the permit application must be certified as follows:

(i) The operator must make the certification described under (a) of this subsection; and

(ii) The owner must make the following certification:

"I certify under penalty of law that I own the real property described in, and am aware of the contents of, this permit application, and that I have received a copy of this application. As owner of the real property, I understand that I am responsible for complying with any requirements of chapter 173-303 WAC with which only I am able to comply, and that there are significant penalties for failure to comply with such requirements."

(14) Reporting. The following reports must be provided:

(a) Planned changes. The permittee must give notice to the department as soon as possible of any planned physical

alterations or additions to the permitted facility. For a new TSD facility and for a facility being modified, the permittee may not treat, store, or dispose of dangerous waste in the new or modified portion of the facility until:

(i) The permittee has submitted to the department by certified mail ((~~or~~)), hand delivery or other means that establish proof of receipt (including applicable electronic means), a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and either

(Note: In certifying construction or modification, the independent qualified registered professional engineer is responsible only for certifying those portions of the facility which are identified in chapter 173-303 WAC as specifically requiring certification by an independent qualified registered professional engineer.)

(ii) The department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(iii) Within fifteen days of the date of submission of the letter, the permittee has not received notice from the department of its intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of dangerous waste.

(b) Anticipated noncompliance. The permittee must give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of dangerous waste; and for a facility being modified, the permittee may not treat, store, or dispose of dangerous waste in the modified portion of the facility except as provided in WAC 173-303-830(4).

(c) Transfers. The permit is not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

(d) Monitoring reports. Monitoring results (including monitoring of the facility's impacts as required by the applicable sections of this chapter) must be reported at the intervals specified elsewhere in the permit.

(e) Compliance schedules. Reports of permit compliance or noncompliance or any progress reports on interim and final permit requirements contained in any compliance schedule must be submitted no later than fourteen days following each scheduled date.

(f) Immediate reporting. The permittee must immediately report any noncompliance which may endanger health or the environment. Information must be provided orally to the department as soon as the permittee becomes aware of the circumstances. A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances provided that the department may waive the written submission requirement in favor of a written report, to be submitted within fifteen days. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

Information which must be reported immediately must include:

(i) Release of dangerous waste that may cause an endangerment to drinking water supplies or ground or surface waters;

(ii) Any information of a release or discharge of dangerous waste, fire, or explosion from the permitted facility which could threaten the environment or human health outside the facility;

(iii) The following description of any such occurrence:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

(g) Other noncompliance. The permittee must report all instances of noncompliance not reported under (d), (e), and (f) of this subsection, at the time monitoring reports are submitted. The reports must contain the information listed in (f) of this subsection.

(h) Other information. Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, he must promptly submit this information.

(i) Other reports. In addition, the following reports are required when appropriate:

(i) Manifest discrepancy report as required by WAC 173-303-370(5);

(ii) Unmanifested waste report as required by WAC 173-303-390(1); and

(iii) Annual report as required by WAC 173-303-390(2).

(15) Confidentiality.

(a) Information submitted by the owner/operator of a facility identified as confidential will be treated in accordance with chapter 42.17 RCW and RCW 43.21A.160.

(b) Proprietary information can be held confidential if:

(i) The processes are unique to the owner/operator's business or the owner/operator's competitive position may be adversely affected if the information is released to the public or to a competitor; and

(ii) The director determines that granting the owner/operator's request is not detrimental to the public interest and is in accord with the policies and purposes of chapter 43.21A RCW.

(c) Claims of confidentiality for permit application information must be substantiated at the time the application is submitted and in the manner prescribed in the application instructions. Claims of confidentiality for the name and address of any permit applicant will be denied.

(d) If a submitter does not provide substantiation, the department will notify the owner/operator by certified mail of the requirement to do so. If the department does not receive the substantiation within ten days after the submitter receives

the notice, the department will place the unsubstantiated information in the public file.

(e) The department will determine if the owner/operator's request meets the confidential information criteria.

(16) General permit conditions. Information repository. The director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in WAC 173-303-281 (6)(b). The information repository will be governed by the provisions in WAC 173-303-281 (6)(c) through (f).

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-811 Permits for boilers and industrial furnaces burning hazardous waste. The introductory paragraph of 40 C.F.R. 270.66 is incorporated by reference. It applies to an owner or operator of a cement ((~~or~~)) kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that demonstrates compliance with the air emission standards and limitations in 40 C.F.R. part 63, subpart EEE.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-830 Permit changes. (1) Purpose and applicability. This section describes the types of permit changes that may be made to all permits issued by the director. This section does not apply to permits by rule or interim status permits.

(2) Transfer of permits.

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under (b) of this subsection or subsection (3) of this section) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the director in accordance with subsection (4) of this section. The new owner or operator must submit a revised permit application no later than ninety days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the director. When a transfer of ownership or operational control occurs, the old owner or operator must comply with the requirements of WAC 173-303-620 (Financial requirements) until the new owner or operator has demonstrated that he or she is complying with the financial requirements. The new owner or operator must demonstrate compliance with the financial requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the director by the new owner or operator of compliance with the financial requirements, the director will notify the old owner or operator that he or she no longer needs to comply with the financial requirements as of the date of demonstration.

(3) Modification or revocation and reissuance of permits. When the director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for revocation and reissuance, or conducts a review of the permit file), the director may determine whether or not one or more of the causes listed in (a) and (b) of this subsection for modification or revocation and reissuance or both exist. If cause exists, the director may modify or revoke and reissue the permit accordingly, subject to the limitations of (c) of this subsection, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. All other aspects of the existing permit remain in effect for the duration of the unmodified permit. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. During any revocation and reissuance proceeding, the permittee must comply with all conditions of the existing permit until a new final permit is reissued. If cause does not exist under this subsection, the director will not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the director will approve or deny the request according to the procedures of subsection (4) of this section. Otherwise, a draft permit must be prepared and public review provided in accordance with WAC 173-303-840.

(a) Causes for modification. The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees:

(i) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit;

(ii) Information. Permits may be modified during their terms if the director receives information that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of different permit conditions at the time of issuance;

(iii) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through adoption of new or amended standards or regulations or by judicial decision after the permit was issued.

(iv) Compliance schedules. The director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy;

(v) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the director under 173-303-806 (11)(d), the director will modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in this chapter.

(b) Causes for modification or revocation and reissuance. The following are causes to modify, or alternatively, revoke and reissue a permit:

(i) Cause exists for termination under WAC 173-303-830(5) for final facility permits, and the director determines

that modification or revocation and reissuance is appropriate; or

(ii) The director has received notification of a proposed transfer of the permit.

(c) Reserve.

(4) Permit modification at the request of the permittee.

(a) Class 1 modifications.

(i) Except as provided in (a)(ii) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of this section under the following conditions:

(A) The permittee must notify the director concerning the modification by certified mail or other means that establish proof of ((~~delivery~~)) receipt (including applicable electronic means) within seven calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide the applicable information required by WAC 173-303-805, 173-303-806, 173-303-807, and 173-303-808.

(B) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the director in accordance with WAC 173-303-840 (3)(e)(i)(D), and the appropriate units of state and local government, as specified in WAC 173-303-840 (3)(e)(i)(E). This notification must be made within ninety calendar days after the change is put into effect. For the Class 1 modifications that require prior director approval, the notification must be made within ninety calendar days after the director approves the request.

(C) Any person may request the director to review, and the director may for cause reject, any Class 1 modification. The director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(ii) Class 1 permit modifications identified in Appendix I by [1]1 may be made only with the prior written approval of the director.

(iii) For a Class 1 permit modification, the permittee may elect to follow the procedures in (b) of this subsection for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the director of this decision in the notice required in (b)(i) of this subsection.

(b) Class 2 modifications.

(i) For Class 2 modifications, listed in Appendix I of this section, the permittee must submit a modification request to the director that:

(A) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) Identifies that the modification is a Class 2 modification;

(C) Explains why the modification is needed; and

(D) Provides the applicable information required by WAC 173-303-805, 173-303-806, 173-303-807, and 173-303-808.

(ii) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the director and to the appropriate units of state and local government as specified in WAC 173-303-840 (3)(e)(i)(E) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the director evidence of the mailing and publication. The notice must include:

(A) Announcement of a sixty-day comment period, in accordance with (b)(v) of this subsection, and the name and address of a departmental contact to whom comments must be sent;

(B) Announcement of the date, time, and place for a public meeting held in accordance with (b)(iv) of this subsection;

(C) Name and telephone number of the permittee's contact person;

(D) Name and telephone number of a departmental contact person;

(E) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the department of ecology contact person."

(iii) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(iv) The permittee must hold a public meeting no earlier than fifteen days after the publication of the notice required in (b)(ii) of this subsection and no later than fifteen days before the close of the sixty-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(v) The public will be provided sixty days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the department of ecology contact identified in the public notice.

(vi)(A) No later than ninety days after receipt of the notification request, the director must:

(I) Approve the modification request, with or without changes, and modify the permit accordingly;

(II) Deny the request;

(III) Determine that the modification request must follow the procedures in (c) of this subsection for Class 3 modifications for the following reasons:

(AA) There is significant public concern about the proposed modification; or

(BB) The complex nature of the change requires the more extensive procedures of Class 3;

(IV) Approve the request, with or without changes, as a temporary authorization having a term of up to one hundred eighty days; or

(V) Notify the permittee that he or she will decide on the request within the next thirty days.

(B) If the director notifies the permittee of a thirty-day extension for a decision, the director must, no later than one hundred twenty days after receipt of the modification request:

(I) Approve the modification request, with or without changes, and modify the permit accordingly;

(II) Deny the request; or

(III) Determine that the modification request must follow the procedures in (c) of this subsection for Class 3 modifications for the following reasons:

(AA) There is significant public concern about the proposed modification; or

(BB) The complex nature of the change requires the more extensive procedures of Class 3.

(IV) Approve the request, with or without changes, as a temporary authorization having a term of up to one hundred eighty days.

(C) If the director fails to make one of the decisions specified in (b)(vi)(B) of this subsection by the one hundred twentieth day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to one hundred eighty days, without formal departmental action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 C.F.R. Part 265 (as referenced by WAC 173-303-400). If the director approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in (b)(vi)(A), (B), or (C) of this subsection, such action cancels the temporary or automatic authorization.

(D)(I) In the case of an automatic authorization under (b)(vi)(C) of this subsection, or a temporary authorization under (b)(vi)(A)(IV) or (B)(IV) of this subsection, if the director has not made a final approval or denial of the modification request by the date fifty days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(AA) The permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(BB) Unless the director acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(II) If the owner/operator fails to notify the public by the date specified in (b)(vi)(D)(I) of this subsection, the effective date of the permanent authorization will be deferred until fifty days after the owner/operator notifies the public.

(E) Except as provided in (b)(vi)(G) of this subsection, if the director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under subsection (3) or (4) of this section. The activities authorized under this subsection (b)(vi)(E) must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 C.F.R. Part 265 (as referenced by WAC 173-303-400).

(F) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the director must consider all written comments submitted during the public comment period and must respond in writing to all significant comments in his or her decision.

(G) With the written consent of the permittee, the director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification request or for reclassifying a modification as a Class 3.

(vii) The director may deny or change the terms of a Class 2 permit modification request under (b)(i) through (iii) of this subsection for the following reasons:

(A) The modification request is incomplete;

(B) The requested modification does not comply with the appropriate requirements of WAC 173-303-280 through 173-303-395 and 173-303-600 through 173-303-680 or other applicable requirements; or

(C) The conditions of the modification fail to protect human health and the environment.

(viii) The permittee may perform any construction associated with a Class 2 permit modification request beginning sixty days after the submission of the request unless the director establishes a later date for commencing construction and informs the permittee in writing before day sixty.

(c) Class 3 modifications.

(i) For Class 3 modifications listed in Appendix I of this section, the permittee must submit a modification request to the director that:

(A) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) Identifies that the modification is a Class 3 modification;

(C) Explains why the modification is needed; and

(D) Provides the applicable information required by WAC 173-303-805, 173-303-806, 173-303-807, and 173-303-808.

(ii) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the director and to the appropriate units of state and local government as specified in WAC 173-303-840 (3)(e)(i)(D) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the director evidence of the mailing and publication. The notice must include:

(A) Announcement of a sixty-day comment period, and a name and address of an agency contact to whom comments must be sent;

(B) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with (c)(4) of this subsection;

(C) Name and telephone number of the permittee's contact person;

(D) Name and telephone number of a departmental contact person;

(E) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the department of ecology contact person."

(iii) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(iv) The permittee must hold a public meeting no earlier than fifteen days after the publication of the notice required in (c)(ii) of this subsection and no later than fifteen days before the close of the sixty-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(v) The public will be provided at least sixty days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the department of ecology contact identified in the notice.

(vi) After the conclusion of the sixty-day comment period, the director must grant or deny the permit modification request according to the permit modification procedures of WAC 173-303-840. In addition, the director must consider and respond to all significant written comments received during the sixty-day comment period.

(d) Other modifications.

(i) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit a Class 3 modification request to the department, or he or she may request a determination by the director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the department with the necessary information to support the requested classification.

(ii) The director will make the determination described in (d)(i) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the director will consider the similarity of the modification to other modifications codified in Appendix I and the following criteria:

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the director may require prior approval.

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(I) Common variations in the types and quantities of the wastes managed under the facility permit;

(II) Technological advancements; and

(III) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(C) Class 3 modifications substantially alter the facility or its operation.

(e) Temporary authorizations.

(i) Upon request of the permittee, the director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than one hundred eighty days.

(ii)(A) The permittee may request a temporary authorization for:

(I) Any Class 2 modification meeting the criteria in (e)(iii)(B) of this subsection; and

(II) Any Class 3 modification that meets the criteria in (e)(iii)(B)(I) or (II) of this subsection; or that meets the criteria in (e)(iii)(B)(III) through (V) of this subsection and provides improved management or treatment of a dangerous waste already listed in the facility permit.

(B) The temporary authorization request must include:

(I) A description of the activities to be conducted under the temporary authorization;

(II) An explanation of why the temporary authorization is necessary; and

(III) Sufficient information to ensure compliance with the standards in WAC 173-303-280 through 173-303-395 and 173-303-600 through 173-303-680.

(C) The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the director and to appropriate units of state and local governments as specified in WAC 173-303-840 (3)(e)(i)(D). This notification must be made within seven days of submission of the authorization request.

(iii) The director will approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the director must find:

(A) The authorized activities are in compliance with the standards of WAC 173-303-280 through 173-303-395 and 173-303-600 through 173-303-680.

(B) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(I) To facilitate timely implementation of closure or corrective action activities;

(II) To allow treatment or storage in tanks, containers, or in containment buildings in accordance with 40 C.F.R. Part 268;

(III) To prevent disruption of ongoing waste management activities;

(IV) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(V) To facilitate other changes to protect human health and the environment.

(iv) A temporary authorization may be reissued for one additional term of up to one hundred eighty days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) The reissued temporary authorization constitutes the director's decision on a Class 2 permit modification in accordance with (b)(vi)(A)(IV) or (B)(IV) of this subsection; or

(B) The director determines that the reissued temporary authorization involving a Class 3 permit modification request

is warranted to allow the authorized activities to continue while the modification procedures of (c) of this subsection are conducted.

(f) Public notice and appeals of permit modification decisions.

(i) The director will notify persons on the facility mailing list and appropriate units of state and local government within ten days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The director will also notify such persons within ten days after an automatic authorization for a Class 2 modification goes into effect under (b)(vi)(C) or (E) of this subsection.

(ii) The director's decision to grant or deny a Class 2 or 3 permit modification request under this section may be appealed under the permit appeal procedures of WAC 173-303-845.

(iii) An automatic authorization that goes into effect under (b)(vi)(C) or (E) of this subsection may be appealed under the permit appeal procedures of WAC 173-303-845; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal has been granted pursuant to WAC 173-303-845, notwithstanding the provisions of WAC 173-303-840 (8)(b).

(g) Newly regulated wastes and units.

(i) The permittee is authorized to continue to manage wastes listed or identified as dangerous under WAC 173-303-070, or to continue to manage dangerous waste in units newly regulated as dangerous waste management units, if:

(A) The unit was in existence as a dangerous waste facility with respect to the newly listed or identified waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

(B) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) The permittee is in compliance with the applicable standards of 40 C.F.R. Part 265 (as referenced in WAC 173-303-400) and Part 266 (as referenced in WAC 173-303-510);

(D) The permittee also submits a complete Class 2 or 3 permit modification request within one hundred eighty days of the effective date of the rule listing or identifying the waste, or subjecting the unit to management standards under this chapter; and

(E) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable requirements of 40 C.F.R. Part 265 for groundwater monitoring and financial responsibility (as referenced in WAC 173-303-400) on the date twelve months after the effective date of the rule identifying or listing the waste as dangerous, or regulating the unit as a dangerous waste management unit. If the owner or operator fails to certify compliance with all these requirements, he or she will lose authority to operate under this section.

(ii) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the twenty-five percent capacity expansion limit for Class 2 modifications.

(h) Military dangerous waste munitions treatment and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(i) The facility was in existence as a dangerous waste facility, and the facility was already permitted to handle the waste military munitions, on the date when the waste military munitions became subject to dangerous waste regulatory requirements;

(ii) On or before the date when the waste military munitions become subject to dangerous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or amend the permit provision restricting the receipt of off-site waste munitions; and

(iii) The permittee submits a complete Class 2 modification request within one hundred eighty days of the date when the waste military munitions became subject to dangerous waste regulatory requirements.

(i) Permit modification list. The director must maintain a list of all approved permit modifications and must publish a notice once a year in a statewide newspaper that an updated list is available for review.

(j) *Combustion facility changes to meet 40 C.F.R. part 63 MACT standards*. (Note that 40 C.F.R. part 63 subpart EEE is incorporated by reference at WAC 173-400-075 (5)(a). If you are subject to Part 63, you must get an air permit from ecology or the local air authority.) The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of this section, section L.9.

(i) Facility owners or operators must have complied with the Notification of Intent to Comply requirements of 40 C.F.R. 63.1210 that were in effect prior to October 11, 2000 (see 40 C.F.R. Part 63 sections 63.1200 - 63.1499 revised as of July 1, 2000) in order to request a permit modification under this section for the purpose of technology changes needed to meet the standards under 40 C.F.R. 63.1203, 63.1204, and 63.1205.

(ii) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 C.F.R. 63.1210(b) and 63.1212(a) before a permit modification can be requested under this subsection for the purpose of technology changes needed to meet the 40 C.F.R. 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

(iii) If the department does not approve or deny the request within ninety days of receiving it, the request will be deemed approved. The director may extend this ninety-day deadline one time for up to thirty days by notifying the facility owner or operator.

(k) Waiver of dangerous waste permit conditions in support of transition to the 40 C.F.R. part 63 MACT standards. (Note that 40 C.F.R. part 63 subpart EEE is incorporated by reference at WAC 173-400-075 (5)(a). If you are subject to Part 63, you must get an air permit from ecology or the local air authority.)

(i) You may request to have specific Hazardous Waste Management Act and dangerous waste regulation operating and emissions limits waived by submitting a Class 1 permit modification request under Appendix I of this section, section L(10). You must:

(A) Identify the specific dangerous waste permit operating and emissions limits which you are requesting to waive;

(B) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the dangerous waste permit and MACT compliance; and

(C) Discuss how the revised provisions will be sufficiently protective.

(D) The department will approve or deny the request within thirty days of receipt of the request. The department may, at its discretion, extend this thirty-day deadline one time for up to thirty days by notifying the facility owner or operator.

(ii) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 C.F.R. 63.1207 (h)(2)(i) and (ii), for an aggregate time not to exceed seven hundred twenty hours of operation (renewable at the discretion of the department) you must:

(A) Submit your modification request to the director at the same time you submit your test plans to the department; and

(B) The department may elect to approve or deny the request contingent upon approval of the test plans.

APPENDIX I

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the director	[1]1
b. Extension of final compliance date	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the director	[1]1
7. Changes in ownership or operational control of a facility, provided the procedures of subsection (2)(b) of this section are followed	[1]1
8. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility)	[1]1
B. General Facility Standards	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations	1
b. To incorporate changes associated with F039 (multisource leachate) sampling or analysis methods	[1]1
c. To incorporate changes associated with underlying dangerous constituents in ignitable or corrosive wastes	[1]1
d. Other changes	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations	1
b. Other changes	2
3. Changes in procedures for maintaining the operating record	1
4. Changes in frequency or content of inspection schedules	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees	2
b. Other changes	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures)	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed	1
c. Removal of equipment from emergency equipment list	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan	1
7. Construction quality assurance plan:	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specification	1
b. Other changes	2
Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change will be reviewed under the same procedures as the permit modification.	
C. Groundwater Protection	
1. Changes to wells:	

Modifications	Class
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well	1
2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the director	[1]1
3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the director	[1]1
4. Changes in point of compliance	2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):	
a. As specified in the groundwater protection standard	3
b. As specified in the detection monitoring program	2
6. Changes to a detection monitoring program as required by WAC 173-303-645 (9)(h), unless otherwise specified in this appendix	2
7. Compliance monitoring program:	
a. Addition of compliance monitoring program as required by WAC 173-303-645 (9)(g)(iv) and (10)	3
b. Changes to a compliance monitoring program as required by WAC 173-303-645 (10)(j), unless otherwise specified in this appendix	2
8. Corrective action program:	
a. Addition of a corrective action program as required by WAC 173-303-645 (10)(h)(ii) and (11)	3
b. Changes to a corrective action program as required by WAC 173-303-645 (11)(h), unless otherwise specified in this appendix	2
D. Closure	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the director	[1]1
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the director	[1]1
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the director	[1]1
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the director	[1]1
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix	2
f. Extension of the closure period to allow a landfill, surface impoundment, or land treatment unit to receive nondangerous wastes after final receipt of dangerous wastes under WAC 173-303-610 (4)(d) and (e)	2
2. Creation of a new landfill unit as part of closure	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments	3
b. Incinerators	3
c. Waste piles that do not comply with WAC 173-303-660 (1)(c)	3
d. Waste piles that comply with WAC 173-303-660 (1)(c)	2
e. Tanks or containers (other than specified below)	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the director	[1]1
g. Staging piles	2
E. Post-Closure	
1. Changes in name, address, or phone number of contact in post-closure plan	1
2. Extension of post-closure care period	2
3. Reduction in the post-closure care period	3
4. Changes to the expected year of final closure, where other permit conditions are not changed	1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure	2
F. Containers	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F (1)(c) and F (4)(a) below	3

Modifications	Class
b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F (1)(c) and F (4)(a) below	2
c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 C.F.R. 268.8 (a)(2)(ii), with prior approval of the director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1]1
Note: The RCRA section reference above, 40 C.F.R. 268.8(a)(2)(ii), is no longer in the RCRA regulations. It was removed on April 8, 1996 (61 FR 15599).	
2.	
a. Modification of a container unit without increasing the capacity of the unit	2
b. Addition of a roof to a container unit without alteration of the containment system	1
3. Storage of different wastes in containers:	
a. That require additional or different management practices from those authorized in the permit, except as provided in F(4) below	3
b. That do not require additional or different management practices from those authorized in the permit	2
Note: See (g) of this subsection for modification procedures to be used for the management of newly listed or identified wastes.	
4. Storage or treatment of different wastes in containers:	
a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 C.F.R. 268.8 (a)(2)(ii). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1]1
b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1]1
Note: The RCRA section reference above, 40 C.F.R. 268.8(a)(2)(ii), is no longer in the RCRA regulations. It was removed on April 8, 1996 (61 FR 15599).	
G. Tanks	
1.	
a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G (1)(c), G (1)(d), and G (1)(e) below	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G (1)(d) and G (1)(e) below	2
c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: Neutralization, dewatering, phase separation, or component separation	2
d. After prior approval of the director, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: Neutralization, dewatering, phase separation, or component separation	[1]1
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 C.F.R. 268.8 (a)(2)(ii), with prior approval of the director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1]1
Note: The RCRA section reference above, 40 C.F.R. 268.8(a)(2)(ii), is no longer in the RCRA regulations. It was removed on April 8, 1996 (61 FR 15599).	
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10% of the replaced tank provided	1

Modifications	Class
-The capacity difference is no more than 1500 gallons,	
-The facility's permitted tank capacity is not increased, and	
-The replacement tank meets the same conditions in the permit.	
4. Modification of a tank management practice	2
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G (5)(c) below	3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in G (5)(d)	2
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 C.F.R. 268.8 (a)(2)(ii). The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	[1]1
Note: The RCRA section reference above, 40 C.F.R. 268.8(a)(2)(ii), is no longer in the RCRA regulations. It was removed on April 8, 1996 (61 FR 15599).	
(((~~(d)~~)) d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received waste of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
Note: See (g) of this subsection for modification procedures to be used for the management of newly listed or identified wastes.	
H. Surface Impoundments	
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity . .	3
2. Replacement of a surface impoundment unit	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system	2
4. Modification of a surface impoundment management practice	2
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 C.F.R. 268.8 (a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 C.F.R. 268.5 (h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
Note: The RCRA section reference above, 40 C.F.R. 268.8(a)(2)(ii), is no longer in the RCRA regulations. It was removed on April 8, 1996 (61 FR 15599).	
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 C.F.R. 268.5 (h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
6. Modifications of unconstructed units to comply with WAC 173-303-650 (2)(j), (10), (11), and (4)(d)	[1]1
7. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness	3
c. Other changes	2
Note: See (g) of this subsection for modification procedures to be used for the management of newly listed or identified wastes.	

Modifications	Class
I. Enclosed Waste Piles. For all waste piles except those complying with WAC 173-303-660 (1)(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with WAC 173-303-660 (1)(c).	
1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity	2
2. Modification of waste pile unit without increasing the capacity of the unit	2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit	1
4. Modification of a waste pile management practice	2
5. Storage or treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit	3
b. That do not require additional or different management practices or different design of the unit	2
6. Conversion of an enclosed waste pile to a containment building unit	2
Note: See (g) of this subsection for modification procedures to be used for the management of newly listed or identified wastes.	
J. Landfills and Unenclosed Waste Piles	
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity	3
2. Replacement of a landfill	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, runoff control, or final cover system	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, runoff control, or final cover system	2
5. Modification of a landfill management practice	2
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 C.F.R. 268.8 (a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 C.F.R. 268.5 (h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 C.F.R. 268.5 (h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
7. Modifications of unconstructed units to comply with WAC 173-303-660 (2)(j), (11), (12), (5)(c), 173-303-665 (2)(h), (8), (4)(c), and (9)	[1]1
8. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness.	3
c. Other changes	2
Note: See (g) of this subsection for modification procedures to be used for the management of newly listed or identified wastes.	
K. Land Treatment	
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent	3
2. Modification of run-on control system	2
3. Modify runoff control system	3
4. Other modifications of land treatment unit component specifications or standards required in permit	2
5. Management of different wastes in land treatment units:	
a. That require a change in permit operating conditions or unit design specifications	3
b. That do not require a change in permit operating conditions or unit design specifications	2

Modifications	Class
Note: See (g) of this subsection for modification procedures to be used for the management of newly listed or identified wastes.	
6. Modification of a land treatment unit management practice to:	
a. Increase rate or change method of waste application	3
b. Decrease rate of waste application	2
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions	2
8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops	3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to WAC 173-303-655 (6)(g)(ii)	3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements	3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements	2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid	2
13. Changes in sampling, analysis, or statistical procedure	2
14. Changes in land treatment demonstration program prior to or during the demonstration	2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the director's prior approval has been received	2
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the director	2
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration	3
18. Changes in vegetative cover requirements for closure	2
L. Incinerators, Boilers, and Industrial Furnaces	
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HC1/$C1_2$, metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3

Modifications	Class
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The director may require a new trial burn to demonstrate compliance with the regulatory performance standards . . .	2
5. Operating requirements:	
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls	3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit	2
6. Burning different wastes:	
a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit	2
Note: See (g) of this subsection for modification procedures to be used for the management of newly listed or identified wastes.	

Modifications	Class
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn	2
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the director	[1]1
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the director	[1]1
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the director	[1]1
8. Substitution of an alternate type of nondangerous fuel that is not specified in the permit	1
9. Technology changes needed to meet standards under 40 C.F.R. part 63 (subpart EEE-National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), that are incorporated by reference at WAC 173-400-075 (5)(a) provided the procedures of WAC 173-303-830 (4)(j) are followed.	[1]1
10. Changes to dangerous waste permit provisions needed to support transition to 40 C.F.R. part 63 (Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors) provided the procedures of (4)(k) of this section are followed.	[1]1
M. Containment Buildings	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.	2
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased.	1

Modifications	Class
b. The replacement containment building meets the same conditions in the permit.	1
4. Modification of a containment building management practice.	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices.	3
b. That do not require additional or different management practices.	2
N. Corrective Action	
1. Approval of a corrective action management unit pursuant to WAC 173-303-64640, 173-303-64650, 173-303-64660, and 173-303-64670	3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to WAC 173-303-64680	2
3. Approval of a staging pile or staging pile operating term extension	2
4. Modification to incorporate a corrective action order issued pursuant to MTCA	3
5. Modification or amendment of a corrective action order issued pursuant to MTCA when the MTCA public participation requirements are met and order has already been incorporated by reference into the permit	1
O. Burden Reduction	
1. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to WAC 173-303-350(2)	1
2. Changes to detection and compliance monitoring program pursuant to WAC 173-303-645 (9)(d), (g)(ii) and (iii), and 173-303-645 (10)(f) and (g)	1

[1]Class 1 modifications requiring prior Agency approval

(5) Permit termination. The director will follow the applicable procedures in WAC 173-303-840, procedures for decision making, in terminating any permit. The following are causes for terminating a permit during its term or for denying a permit renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(c) A determination that the permitted activity endangers public health or the environment and can only be regulated to acceptable levels by permit modification or termination.

AMENDATORY SECTION (Amending WSR 04-24-065, filed 11/30/04, effective 1/1/05)

WAC 173-303-841 Integration with maximum achievable control technology (MACT) standards. 40 C.F.R. 270.235, Options for incinerators ((~~and~~)), cement ((~~and~~)) kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events, is incorporated by reference. The incorporated provision is 40 C.F.R. Part 270 Subpart I, Integration with maximum achievable control technology (MACT) standards.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-9903 Discarded chemical products list.

Discarded Chemical Products List

"P" Chemical Products

Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Dangerous Waste Number.

The "P" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P070	116-06-3	Aldicarb
P203	1646-88-4	Aldicard sulfone
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)
P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H_3AsO_4
P012	1327-53-3	Arsenic oxide As_2O_3
P011	1303-28-2	Arsenic oxide As_2O_5
P011	1303-28-2	Arsenic pentoxide

The "P" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P012	1327-53-3	Arsenic trioxide
P038	692-42-2	Arsine, diethyl-
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methyl-amino)ethyl]-, (R)-
P046	122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-
P014	108-98-5	Benzenethiol
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indo1-5-yl methyl-carbamate ester (1:1)
P001	[1]81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
P028	100-44-7	Benzyl chloride
P015	7440-41-7	Beryllium powder
P017	598-31-2	Bromoacetone
P018	357-57-3	Brucine
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl] oxime
P021	592-01-8	Calcium cyanide
P189	55285-14-8	Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester
P191	644-64-4	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]- 5-methyl- 1H-pyrazol-3-yl ester
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H- pyrazol-5-yl ester
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester
P127	1563-66-2	Carbofuran
P021	592-01-8	Calcium cyanide $Ca(CN)_2$
P022	75-15-0	Carbon disulfide
P189	55285-14-8	Carbosulfan
P095	75-44-5	Carbonic dichloride
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P027	542-76-7	3-Chloropropionitrile

The "P" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P202	64-00-6	m-Cumenyl methylcarbamate
P030		Cyanides (soluble cyanide salts), not other-wise specified
P031	460-19-5	Cyanogen
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P016	542-88-1	Dichloromethyl ether
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P038	692-42-2	Diethylarsine
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P191	644-64-4	Dimetilan
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4abeta,5alpha, 8alpha,8abeta)-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta, 8beta,8abeta)-
P037	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta, 6beta,6aalpha,7beta, 7aalpha)-
P051	[1]72-20-8	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha, 6alpha,6abeta,7beta, 7aalpha)-, & metabo-lites
P044	60-51-5	Dimethoate
P046	122-09-8	alpha,alpha-Dimethylphenethylamine
P047	[1]534-52-1	4,6-Dinitro-o-cresol, & salts
P048	51-28-5	2,4-Dinitrophenol
P020	88-85-7	Dinoseb
P085	152-16-9	Diphosphoramide, octamethyl-
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P039	298-04-4	Disulfoton
P049	541-53-7	Dithiobiuret
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- [(methylamino)-carbonyl]oxime
P050	115-29-7	Endosulfan
P088	145-73-3	Endothall
P051	72-20-8	Endrin
P051	72-20-8	Endrin, & metabolites
P042	51-43-4	Epinephrine

The "P" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P031	460-19-5	Ethanedinitrile
P194	23135-22-0	Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester
P066	16752-77-5	Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester
P101	107-12-0	Ethyl cyanide
P054	151-56-4	Ethyleneimine
P097	52-85-7	Famphur
P056	7782-41-4	Fluorine
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Fluoroacetic acid, sodium salt
P198	23422-53-9	Formetanate hydrochloride
P197	17702-57-7	Formparanate
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P059	76-44-8	Heptachlor
P062	757-58-4	Hexaethyl tetraphosphate
P116	79-19-6	Hydrazinecarbothioamide
P068	60-34-4	Hydrazine, methyl-
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P096	7803-51-2	Hydrogen phosphide
P060	465-73-6	Isodrin
P192	119-38-0	Isolan
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-
P196	15339-36-3	Manganese dimethyldithiocarbamate
P092	62-38-4	Mercury, (acetato-O)phenyl-
P065	628-86-4	Mercury fulminate (R,T)
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy] phenyl]-
P082	62-75-9	Methanamine, N-methyl-N-nitroso-
P064	624-83-9	Methane, isocyanato-
P016	542-88-1	Methane, oxybis[chloro-
P112	509-14-8	Methane, tetranitro- (R)
P118	75-70-7	Methanethiol, trichloro-
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-

The "P" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P199	2032-65-7	Methiocarb
P066	16752-77-5	Methomyl
P068	60-34-4	Methyl hydrazine
P064	624-83-9	Methyl isocyanate
P069	75-86-5	2-Methyllactonitrile
P071	298-00-0	Methyl parathion
P190	1129-41-5	Metolcarb
P128	315-18-4	Mexacarbate
P072	86-88-4	alpha-Naphthylthiourea
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl $Ni(CO)_4$, (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide $Ni(CN)_2$
P075	[1]54-11-5	Nicotine, & salts
P076	10102-43-9	Nitric oxide
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P076	10102-43-9	Nitrogen oxide NO
P078	10102-44-0	Nitrogen oxide NO_2
P081	55-63-0	Nitroglycerine (R)
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P085	152-16-9	Octamethylpyrophosphoramide
P087	20816-12-0	Osmium oxide OsO_4, (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P194	23135-22-0	Oxamyl
P089	56-38-2	Parathion
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P048	51-28-5	Phenol, 2,4-dinitro-
P047	[1]534-52-1	Phenol, 2-methyl-4,6-dinitro-, & salts
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P094	298-02-2	Phorate
P095	75-44-5	Phosgene
P096	7803-51-2	Phosphine
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester

The "P" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P204	57-47-6	Physostigmine
P188	57-64-7	Physostigmine salicylate
P110	78-00-2	Plumbane, tetraethyl-
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Potassium silver cyanide
P201	2631-37-0	Promecarb
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P101	107-12-0	Propanenitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P017	598-31-2	2-Propanone, 1-bromo-
P102	107-19-7	Propargyl alcohol
P003	107-02-8	2-Propenal
P005	107-18-6	2-Propen-1-ol
P067	75-55-8	1,2-Propylenimine
P102	107-19-7	2-Propyn-1-ol
P008	504-24-5	4-Pyridinamine
P075	[1]54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts
P204	57-47-6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-
P114	12039-52-0	Selenious acid, dithallium(1+) salt
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)

The "P" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P108	[1]57-24-9	Strychnidin-10-one, & salts
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P108	[1]57-24-9	Strychnine, & salts
P115	7446-18-6	Sulfuric acid, dithallium(1+) salt
P109	3689-24-5	Tetraethyldithiopyrophosphate
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Tetranitromethane (R)
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl_2O_3
P114	12039-52-0	Thallium(I) selenite
P115	7446-18-6	Thallium(I) sulfate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P045	39196-18-4	Thiofanox
P049	541-53-7	Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$
P014	108-98-5	Thiophenol
P116	79-19-6	Thiosemicarbazide
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P072	86-88-4	Thiourea, 1-naphthalenyl-
P093	103-85-5	Thiourea, phenyl-
P185	26419-73-8	Tirpate
P123	8001-35-2	Toxaphene
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V_2O_5
P120	1314-62-1	Vanadium pentoxide
P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P001	[1]81-81-2	Warfarin, & salts, when present at concentrations greater than 0.3%
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide $Zn(CN)_2$
P122	1314-84-7	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10% (R,T)
P205	137-30-4	Ziram

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P001	((~~11~~)) [1]81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
P001	((~~11~~)) [1]81-81-2	Warfarin, & salts, when present at concentrations greater than 0.3%
P002	591-08-2	Acetamide, -(aminothioxomethyl)-
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P003	107-02-8	2-Propenal
P004	309-00-2	Aldrin
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-
P005	107-18-6	Allyl alcohol
P005	107-18-6	2-Propen-1-ol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P008	504-24-5	4-Aminopyridine
P008	504-24-5	4-Pyridinamine
P009	131-74-8	Ammonium picrate (R)
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P010	7778-39-4	Arsenic acid H3 AsO4
P011	1303-28-2	Arsenic oxide As2 O5
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic oxide As2 O3
P012	1327-53-3	Arsenic trioxide
P013	542-62-1	Barium cyanide
P014	108-98-5	Benzenethiol
P014	108-98-5	Thiophenol
P015	7440-41-7	Beryllium powder
P016	542-88-1	Dichloromethyl ether
P016	542-88-1	Methane, oxybis[chloro-
P017	598-31-2	Bromoacetone
P017	598-31-2	2-Propanone, 1-bromo-
P018	357-57-3	Brucine
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P020	88-85-7	Dinoseb
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN)2
P022	75-15-0	Carbon disulfide
P023	107-20-0	Acetaldehyde, chloro-
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	Benzenamine, 4-chloro-
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P027	542-76-7	3-Chloropropionitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P028	100-44-7	Benzene, (chloromethyl)-
P028	100-44-7	Benzyl chloride
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P030		Cyanides (soluble cyanide salts), not otherwise specified

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P031	460-19-5	Cyanogen
P031	460-19-5	Ethanedinitrile
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6- dinitrophenol
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P036	696-28-6	Arsonous dichloride, phenyl-
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P037	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b] oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta, 6aalpha,7beta, 7aalpha)-
P038	692-42-2	Arsine, diethyl-
P038	692-42-2	Diethylarsine
P039	298-04-4	Disulfoton
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-
P042	51-43-4	Epinephrine
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P044	60-51-5	Dimethoate
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methyl amino)-2-oxoethyl] ester
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl]oxime
P045	39196-18-4	Thiofanox
P046	122-09-8	Benzeneethanamine,alpha,alpha-dimethyl-
P046	122-09-8	alpha,alpha-Dimethylphenethylamine
P047	534-52-1	4,6-Dinitro-o-cresol, & salts
P047	534-52-1	Phenol, 2-methyl-4,6-dinitro-, & salts
P048	51-28-5	2,4-Dinitrophenol
P048	51-28-5	Phenol, 2,4-dinitro-
P049	541-53-7	Dithiobiuret
P049	541-53-7	Thioimidodicarbonic diamide[(H2 N)C(S)]2 NH
P050	115-29-7	Endosulfan
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin,6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P051	((~~1~~)) 1 72-20-8	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta,2abeta, 3alpha,6alpha,6abeta,7beta, 7aalpha)-, & metabolites
P051	72-20-8	Endrin
P051	72-20-8	Endrin, & metabolites
P054	151-56-4	Aziridine
P054	151-56-4	Ethyleneimine
P056	7782-41-4	Fluorine
P057	640-19-7	Acetamide, 2-fluoro-
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P058	62-74-8	Fluoroacetic acid, sodium salt
P059	76-44-8	Heptachlor
P059	76-44-8	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-,(1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
P060	465-73-6	Isodrin
P062	757-58-4	Hexaethyl tetraphosphate
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P064	624-83-9	Methane, isocyanato-
P064	624-83-9	Methyl isocyanate
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P065	628-86-4	Mercury fulminate (R,T)
P066	16752-77-5	Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester
P066	16752-77-5	Methomyl
P067	75-55-8	Aziridine, 2-methyl-
P067	75-55-8	1,2-Propylenimine
P068	60-34-4	Hydrazine, methyl-
P068	60-34-4	Methyl hydrazine
P069	75-86-5	2-Methyllactonitrile
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P070	116-06-3	Aldicarb
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P071	298-00-0	Methyl parathion
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl)ester
P072	86-88-4	alpha-Naphthylthiourea
P072	86-88-4	Thiourea, 1-naphthalenyl-
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO)4, (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN)2

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P075	54-11-5	Nicotine, & salts
P075	((~~1~~)) 1 54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts
P076	10102-43-9	Nitric oxide
P076	10102-43-9	Nitrogen oxide NO
P077	100-01-6	Benzenamine, 4-nitro-
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P078	10102-44-0	Nitrogen oxide NO2
P081	55-63-0	Nitroglycerine (R)
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P082	62-75-9	Methanamine, -methyl-N-nitroso-
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P084	4549-40-0	Vinylamine, -methyl-N-nitroso-
P085	152-16-9	Diphosphoramide, octamethyl-
P085	152-16-9	Octamethylpyrophosphoramide
P087	20816-12-0	Osmium oxide OsO4, (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	Endothall
P088	145-73-3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P089	56-38-2	Parathion
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl)ester
P092	62-38-4	Mercury, (acetato-O)phenyl-
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P093	103-85-5	Thiourea, phenyl-
P094	298-02-2	Phorate
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl]ester
P095	75-44-5	Carbonic dichloride
P095	75-44-5	Phosgene
P096	7803-51-2	Hydrogen phosphide
P096	7803-51-2	Phosphine
P097	52-85-7	Famphur
P097	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]O,O-dimethyl ester
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Argentate(1-), bis(cyano-C)-,potassium
P099	506-61-6	Potassium silver cyanide
P101	107-12-0	Ethyl cyanide
P101	107-12-0	Propanenitrile
P102	107-19-7	Propargyl alcohol
P102	107-19-7	2-Propyn-1-ol
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	((~~\1\ 157-24-9~~)) [1]57-24-9	Strychnidin-10-one, & salts
P108	((~~\1\ 157-24-9~~)) [1]57-24-9	Strychnine, & salts
P109	3689-24-5	Tetraethyldithiopyrophosphate
P109	3689-24-5	Thiodiphosphoric acid,tetraethyl ester
P110	78-00-2	Plumbane, tetraethyl-
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Diphosphoric acid, tetraethylester
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Methane, tetranitro-(R)
P112	509-14-8	Tetranitromethane (R)
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl2 O3
P114	12039-52-0	Selenious acid,dithallium(1+) salt
P114	12039-52-0	((~~Tetraethyldithiopyrophosphate~~)) Thallium(I) selenite
P115	7446-18-6	((~~Thiodiphosphoric acid,tetraethyl ester~~)) Sulfuric acid, dithallium(1+) salt
P115	7446-18-6	((~~Plumbane, tetraethyl-~~)) Thallium(I) sulfate
P116	79-19-6	((~~Tetraethyl lead~~)) Hydrazinecarbothioamide
P116	79-19-6	Thiosemicarbazide
P118	75-70-7	Methanethiol, trichloro-
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Ammonium vanadate
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V2O5
P120	1314-62-1	Vanadium pentoxide
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN)2
P122	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations greater than 10% (R,T)
P123	8001-35-2	Toxaphene
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-,methylcarbamate
P127	1563-66-2	Carbofuran
P128	((~~315-8-4~~)) 315-18-4	Mexacarbate
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate(ester)
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime
P185	26419-73-8	Tirpate

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
P188	57-64-7	Benzoic acid, 2-hydroxy-,compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)
P188	57-64-7	Physostigmine salicylate
P189	55285-14-8	Carbamic acid,[(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P189	55285-14-8	Carbosulfan
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester
P190	1129-41-5	Metolcarb
P191	644-64-4	Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester
P191	644-64-4	Dimetilan
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
P192	119-38-0	Isolan
P194	23135-22-0	Ethanimidthioic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methylester
P194	23135-22-0	Oxamyl
P196	15339-36-3	Manganese,bis(dimethylcarbamodithioato-S,S')-,
P196	15339-36-3	Manganesedimethyldithiocarbamate
P197	17702-57-7	Formparanate
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-
P198	23422-53-9	Formetanate hydrochloride
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-carbonyl]oxy]phenyl]-monohydrochloride
P199	2032-65-7	Methiocarb
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-,methylcarbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methylcarbamate
P201	2631-37-0	Promecarb
P202	64-00-6	m-Cumenyl methylcarbamate
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate
P202	64-00-6	Phenol, 3-(1-methylethyl)-,methyl carbamate
P203	1646-88-4	Aldicarb sulfone
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl]oxime
P204	57-47-6	Physostigmine
P204	57-47-6	Pyrrolo[2,3-b]indol-5-ol,1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-,methylcarbamate (ester),(3aS-cis)-
P205	137-30-4	Zinc, bis (dimethylcarbamodithioato-S,S')-,
P205	137-30-4	Ziram

FOOTNOTE: [1] CAS Number given for parent compound only.

"U" Chemical Products

Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Dangerous Waste Number.

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U394	30558-43-1	A2213
U001	75-07-0	Acetaldehyde (I)
U034	75-87-6	Acetaldehyde, trichloro-
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl-
U240	[1]94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U112	141-78-6	Acetic acid ethyl ester (I)
U144	301-04-2	Acetic acid, lead(2+) salt
U214	563-68-8	Acetic acid, thallium(1+) salt
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
U002	67-64-1	Acetone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U008	79-10-7	Acrylic acid (I)
U009	107-13-1	Acrylonitrile
U011	61-82-5	Amitrole
U012	62-53-3	Aniline (I,T)
U136	75-60-5	Arsinic acid, dimethyl-
U014	492-80-8	Auramine
U015	115-02-6	Azaserine
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta,8aalpha,8balpha)]-
U280	101-27-9	Barban
U278	22781-23-3	Bendiocarb
U364	22961-82-6	Bendiocarb phenol
U271	17804-35-2	Benomyl
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
U016	225-51-4	Benz[c]acridine
U017	98-87-3	Benzal chloride
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U018	56-55-3	Benz[a]anthracene

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U094	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U328	95-53-4	Benzenamine, 2-methyl-
U353	106-49-0	Benzenamine, 4-methyl-
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U019	71-43-2	Benzene (I,T)
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U035	305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U037	108-90-7	Benzene, chloro-
U221	25376-45-8	Benzenediamine, ar-methyl-
U028	117-81-7	1,2-Benzenedicarboxylic acid,bis(2-ethylhexyl) ester
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U070	95-50-1	Benzene, 1,2-dichloro-
U071	541-73-1	Benzene, 1,3-dichloro-
U072	106-46-7	Benzene, 1,4-dichloro-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
U017	98-87-3	Benzene, (dichloromethyl)-
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U239	1330-20-7	Benzene, dimethyl- (((~~I,T~~))) (I)
U201	108-46-3	1,3-Benzenediol
U127	118-74-1	Benzene, hexachloro-
U056	110-82-7	Benzene, hexahydro- (I)
U220	108-88-3	Benzene, methyl-
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U055	98-82-8	Benzene, (1-methylethyl)- (I)
U169	98-95-3	Benzene, nitro-
U183	608-93-5	Benzene, pentachloro-
U185	82-68-8	Benzene, pentachloronitro-
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-
U023	98-07-7	Benzene, (trichloromethyl)-
U234	99-35-4	Benzene, 1,3,5-trinitro-
U021	92-87-5	Benzidine
((~~U202~~	~~[1]81-07-2~~	~~1,2-Benzisothiazol-3(2H)-one,1,1-dioxide, & salts~~))
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U064	189-55-9	Benzo[rst]pentaphene
U248	[1]81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations of 0.3% or less
U022	50-32-8	Benzo[a]pyrene
U197	106-51-4	p-Benzoquinone
U023	98-07-7	Benzotrichloride (C,R,T)
U085	1464-53-5	2,2'-Bioxirane
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine
U073	91-94-1	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-
U091	119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-
U095	119-93-7	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethyl-
U225	75-25-2	Bromoform
U030	101-55-3	4-Bromophenyl phenyl ether
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U031	71-36-3	1-Butanol (I)
U159	78-93-3	2-Butanone (I,T)
U160	1338-23-4	2-Butanone, peroxide (R,T)
U053	4170-30-3	2-Butenal
U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-ylester, [1S-[1alpha(Z),7(2S*,3R*), 7aalpha]]-
U031	71-36-3	n-Butyl alcohol (I)
U136	75-60-5	Cacodylic acid
U032	13765-19-0	Calcium chromate
U238	51-79-6	Carbamic acid, ethyl ester
U178	615-53-2	Carbamic acid, methylnitroso-,ethyl ester

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U271	17804-35-2	Carbamic acid, [1-[(butylamino)carbonyl] -1H-benzimidazol-2-yl]-, methyl ester
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester
U409	23564-05-8	Carbamic acid, [1,2-phenylenebis (iminocarbonothioyl)]bis-, dimethyl ester
U097	79-44-7	Carbamic chloride, dimethyl-
U114	[1]111-54-6	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U279	63-25-2	Carbaryl
U372	10605-21-7	Carbendazim
U367	1563-38-8	Carbofuran phenol
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U033	353-50-4	Carbonic difluoride
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U033	353-50-4	Carbon oxyfluoride (R,T)
U211	56-23-5	Carbon tetrachloride
U034	75-87-6	Chloral
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha & gammaisomers
U026	494-03-1	Chlornaphazin
U037	108-90-7	Chlorobenzene
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U042	110-75-8	2-Chloroethyl vinyl ether
U044	67-66-3	Chloroform
U046	107-30-2	Chloromethyl methyl ether
U047	91-58-7	beta-Chloronaphthalene
U048	95-57-8	o-Chlorophenol
U049	3165-93-3	4-Chloro-o-toluidine,hydrochloride
U032	13765-19-0	Chromic acid H_2CrO_4, calcium salt
U050	218-01-9	Chrysene
U051		Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Cumene (I)
U246	506-68-3	Cyanogen bromide (CN)Br
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U056	110-82-7	Cyclohexane (I)

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha, 6beta)-
U057	108-94-1	Cyclohexanone (I)
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U058	50-18-0	Cyclophosphamide
U240	[1]94-75-7	2,4-D, salts & esters
U059	20830-81-3	Daunomycin
U060	72-54-8	DDD
U061	50-29-3	DDT
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz[a,h]anthracene
U064	189-55-9	Dibenzo[a,i]pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U078	75-35-4	1,1-Dichloroethylene
U079	156-60-5	1,2-Dichloroethylene
U025	111-44-4	Dichloroethyl ether
U027	108-60-1	Dichloroisopropyl ether
U024	111-91-1	Dichloromethoxy ethane
U081	120-83-2	2,4-Dichlorophenol
U082	87-65-0	2,6-Dichlorophenol
U084	542-75-6	1,3-Dichloropropene
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U395	5952-26-1	Diethylene glycol, dicarbamate
U108	123-91-1	1,4-Diethyleneoxide
U028	117-81-7	Diethylhexyl phthalate
U086	1615-80-1	N,N'-Diethylhydrazine
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U090	94-58-6	Dihydrosafrole
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	7,12-Dimethylbenz[a]anthracene
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U099	540-73-8	1,2-Dimethylhydrazine
U101	105-67-9	2,4-Dimethylphenol
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U110	142-84-7	Dipropylamine (I)
U111	621-64-7	Di-n-propylnitrosamine
U041	106-89-8	Epichlorohydrin
U001	75-07-0	Ethanal (I)
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U404	121-44-8	Ethanamine, N,N-diethyl-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U067	106-93-4	Ethane, 1,2-dibromo-
U076	75-34-3	Ethane, 1,1-dichloro-
U077	107-06-2	Ethane, 1,2-dichloro-
U131	67-72-1	Ethane, hexachloro-
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
U117	60-29-7	Ethane, 1,1'-oxybis-(I)
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U184	76-01-7	Ethane, pentachloro-
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U218	62-55-5	Ethanethioamide
U226	71-55-6	Ethane, 1,1,1-trichloro-
U227	79-00-5	Ethane, 1,1,2-trichloro-
U410	59669-26-0	Ethanimidothioic acid, N,N'-[thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino) -N-hydroxy-2-oxo-, methyl ester
U359	110-80-5	Ethanol, 2-ethoxy-
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate
U004	98-86-2	Ethanone, 1-phenyl-
U043	75-01-4	Ethene, chloro-
U042	110-75-8	Ethene, (2-chloroethoxy)-
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U210	127-18-4	Ethene, tetrachloro-
U228	79-01-6	Ethene, trichloro-
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U238	51-79-6	Ethyl carbamate (urethane)
U117	60-29-7	Ethyl ether (I)
U114	[1]111-54-6	Ethylenebisdithiocarbamic acid,salts & esters
U067	106-93-4	Ethylene dibromide
U077	107-06-2	Ethylene dichloride
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide (I,T)
U116	96-45-7	Ethylenethiourea
U076	75-34-3	Ethylidene dichloride
U118	97-63-2	Ethyl methacrylate
U119	62-50-0	Ethyl methanesulfonate
U120	206-44-0	Fluoranthene
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U147	108-31-6	2,5-Furandione
U213	109-99-9	Furan, tetrahydro-(I)
U125	98-01-1	Furfural (I)
U124	110-00-9	Furfuran (I)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-
U126	765-34-4	Glycidylaldehyde
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	Hexachlorobutadiene
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U243	1888-71-7	Hexachloropropene
U133	302-01-2	Hydrazine (R,T)
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H_2S
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U116	96-45-7	2-Imidazolidinethione
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U190	85-44-9	1,3-Isobenzofurandione
U140	78-83-1	Isobutyl alcohol (I,T)

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U143	303-34-4	Lasiocarpine
U144	301-04-2	Lead acetate
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U145	7446-27-7	Lead phosphate
U146	1335-32-6	Lead subacetate
U129	58-89-9	Lindane
U163	70-25-7	MNNG
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U149	109-77-3	Malononitrile
U150	148-82-3	Melphalan
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I, T)
U092	124-40-3	Methanamine, N-methyl- (I)
U029	74-83-9	Methane, bromo-
U045	74-87-3	Methane, chloro- (I, T)
U046	107-30-2	Methane, chloromethoxy-
U068	74-95-3	Methane, dibromo-
U080	75-09-2	Methane, dichloro-
U075	75-71-8	Methane, dichlorodifluoro-
U138	74-88-4	Methane, iodo-
U119	62-50-0	Methanesulfonic acid, ethyl ester
U211	56-23-5	Methane, tetrachloro-
U153	74-93-1	Methanethiol (I, T)
U225	75-25-2	Methane, tribromo-
U044	67-66-3	Methane, trichloro-
U121	75-69-4	Methane, trichlorofluoro-
U036	57-74-9	4,7-Methano-1H-indene,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U154	67-56-1	Methanol (I)
U155	91-80-5	Methapyrilene
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one,1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U247	72-43-5	Methoxychlor
U154	67-56-1	Methyl alcohol (I)
U029	74-83-9	Methyl bromide
U186	504-60-9	1-Methylbutadiene (I)
U045	74-87-3	Methyl chloride (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U226	71-55-6	Methyl chloroform
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U068	74-95-3	Methylene bromide
U080	75-09-2	Methylene chloride
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U138	74-88-4	Methyl iodide
U161	108-10-1	Methyl isobutyl ketone (I)
U162	80-62-6	Methyl methacrylate (I,T)
U161	108-10-1	4-Methyl-2-pentanone (I)
U164	56-04-2	Methylthiouracil
U010	50-07-7	Mitomycin C
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U167	134-32-7	1-Naphthalenamine
U168	91-59-8	2-Naphthalenamine
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U165	91-20-3	Naphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U166	130-15-4	1,4-Naphthalenedione
U236	72-57-1	2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt
U279	63-25-2	1-Naphthalenol, methylcarbamate
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	beta-Naphthylamine
U217	10102-45-1	Nitric acid, thallium(1+) salt
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U171	79-46-9	2-Nitropropane (I,T)
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U177	684-93-5	N-Nitroso-N-methylurea
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U180	930-55-2	N-Nitrosopyrrolidine
U181	99-55-8	5-Nitro-o-toluidine
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U115	75-21-8	Oxirane (I,T)
U126	765-34-4	Oxiranecarboxyaldehyde
U041	106-89-8	Oxirane, (chloromethyl)-
U182	123-63-7	Paraldehyde
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Pentachloroethane
U185	82-68-8	Pentachloronitrobenzene (PCNB)
See F027	87-86-5	Pentachlorophenol

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U161	108-10-1	Pentanol, 4-methyl-
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U048	95-57-8	Phenol, 2-chloro-
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	Phenol, 2,6-dichloro-
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U101	105-67-9	Phenol, 2,4-dimethyl-
U052	1319-77-3	Phenol, methyl-
U132	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U170	100-02-7	Phenol, 4-nitro-
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U189	1314-80-3	Phosphorus sulfide (R)
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U179	100-75-4	Piperidine, 1-nitroso-
U192	23950-58-5	Pronamide
U194	107-10-8	1-Propanamine (I,T)
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U110	142-84-7	1-Propanamine, N-propyl- (I)
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U083	78-87-5	Propane, 1,2-dichloro-
U149	109-77-3	Propanedinitrile
U171	79-46-9	Propane, 2-nitro- (I,T)
U027	108-60-1	Propane, 2,2'-oxybis[2-chloro-
U193	1120-71-4	1,3-Propane sultone
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U235	126-72-7	1-Propanol, 2,3-dibromo-,phosphate (3:1)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U002	67-64-1	2-Propanone (I)
U007	79-06-1	2-Propenamide
U084	542-75-6	1-Propene, 1,3-dichloro-
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U009	107-13-1	2-Propenenitrile
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U008	79-10-7	2-Propenoic acid (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U162	80-62-6	2-Propenoic acid, 2-methyl-,methyl ester (I,T)
U373	122-42-9	Propham
U411	114-26-1	Propoxur
U387	52888-80-9	Prosulfocarb
U194	107-10-8	n-Propylamine (I,T)
U083	78-87-5	Propylene dichloride
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U196	110-86-1	Pyridine
U191	109-06-8	Pyridine, 2-methyl-
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180	930-55-2	Pyrrolidine, 1-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
((~~U202~~	~~[1]81-07-2~~	~~Saccharin, & salts~~))
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS_2 (R,T)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex (2,4,5-TP)
U206	18883-66-4	Streptozotocin
U103	77-78-1	Sulfuric acid, dimethyl ester
U189	1314-80-3	Sulfur phosphide (R)
See F027	93-76-5	2,4,5-T
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Tetrachloroethylene
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Thioacetamide
U410	59669-26-0	Thiodicarb
U153	74-93-1	Thiomethanol (I,T)
U244	137-26-8	Thioperoxydicarbonic diamide $[(H_2N)C(S)]_2S_2$, tetramethyl-

The "U" wastes and their corresponding Dangerous Waste Numbers are:

Alphabetical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U409	23564-05-8	Thiophanate-methyl
U219	62-56-6	Thiourea
U244	137-26-8	Thiram
U220	108-88-3	Toluene
U221	25376-45-8	Toluenediamine
U223	26471-62-5	Toluene diisocyanate (R,T)
U328	95-53-4	o-Toluidine
U353	106-49-0	p-Toluidine
U222	636-21-5	o-Toluidine hydrochloride
U389	2303-17-5	Triallate
U011	61-82-5	1H-1,2,4-Triazol-3-amine
((~~U227~~)) U226	71-55-6	1,1,1-Trichloroethane
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Trichloroethylene
U121	75-69-4	Trichloromonofluoromethane
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol
U404	121-44-8	Triethylamine
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U235	126-72-7	Tris(2,3-dibromopropyl)phosphate
U236	72-57-1	Trypan blue
U237	66-75-1	Uracil mustard
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	Urea, N-methyl-N-nitroso-
U043	75-01-4	Vinyl chloride
U248	[1]81-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U239	1330-20-7	Xylene (I)
U200	50-55-5	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U249	1314-84-7	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U001	75-07-0	Acetaldehyde (I)
U001	75-07-0	Ethanal (I)
U002	67-64-1	Acetone (I)
U002	67-64-1	2-Propanone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U004	98-86-2	Ethanone, 1-phenyl-
U005	53-96-3	Acetamide, -9H-fluoren-2-yl-
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U007	79-06-1	Acrylamide
U007	79-06-1	2-Propenamide
U008	79-10-7	Acrylic acid (I)
U008	79-10-7	2-Propenoic acid (I)
U009	107-13-1	Acrylonitrile
U009	107-13-1	2-Propenenitrile
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha,8beta,8aalpha,8balpha)]-
U010	50-07-7	Mitomycin C
U011	61-82-5	Amitrole
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U012	62-53-3	Aniline (I,T)
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Auramine
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-
U015	115-02-6	Azaserine
U015	115-02-6	L-Serine, diazoacetate(ester)
U016	225-51-4	Benz[c]acridine
U017	98-87-3	Benzal chloride
U017	98-87-3	Benzene, (dichloromethyl)-
U018	56-55-3	Benz[a]anthracene
U019	71-43-2	Benzenesulfonic acid chloride(C,R)
U020	98-09-9	Benzenesulfonyl chloride(C,R)
U021	92-87-5	Benzidine
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine
U022	50-32-8	Benzo[a]pyrene
U023	98-07-7	Benzene, (trichloromethyl)-
U023	98-07-7	Benzotrichloride (C,R,T)
U024	111-91-1	Dichloromethoxy ethane
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
U025	111-44-4	Dichloroethyl ether
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U026	494-03-1	Chlornaphazin
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U027	108-60-1	Dichloroisopropyl ether
U027	108-60-1	Propane, 2,2'-oxybis[2-chloro-
U028	117-81-7	1,2-Benzenedicarboxylic acid,bis(2-ethylhexyl) ester
U028	117-81-7	Diethylhexyl phthalate
U029	74-83-9	Methane, bromo-
U029	74-83-9	Methyl bromide
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U030	101-55-3	4-Bromophenyl phenyl ether
U031	71-36-3	1-Butanol (I)
U031	71-36-3	n-Butyl alcohol (I)
U032	13765-19-0	Calcium chromate

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U032	13765-19-0	Chromic acid H2 CrO4, calcium salt
U033	353-50-4	Carbonic difluoride
U033	353-50-4	Carbon oxyfluoride (R,T)
U034	75-87-6	Acetaldehyde, trichloro-
U034	75-87-6	Chloral
U035	305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha & gamma isomers
U036	57-74-9	4,7-Methano-1H-indene,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U037	108-90-7	Benzene, chloro-
U037	108-90-7	Chlorobenzene
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U041	106-89-8	Epichlorohydrin
U041	106-89-8	Oxirane, (chloromethyl)-
U042	110-75-8	2-Chloroethyl vinyl ether
U042	110-75-8	Ethene, (2-chloroethoxy)-
U043	75-01-4	Ethene, chloro-
U043	75-01-4	Vinyl chloride
U044	67-66-3	Chloroform
U044	67-66-3	Methane, trichloro-
U045	74-87-3	Methane, chloro- (I,T)
U045	74-87-3	Methyl chloride (I,T)
U046	107-30-2	Chloromethyl methyl ether
U046	107-30-2	Methane, chloromethoxy-
U047	91-58-7	beta-Chloronaphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U048	95-57-8	o-Chlorophenol
U048	95-57-8	Phenol, 2-chloro-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U050	218-01-9	Chrysene
U051	.....	Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U052	1319-77-3	Phenol, methyl-
U053	4170-30-3	2-Butenal
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Benzene, (1-methylethyl)-(I)
U055	98-82-8	Cumene (I)
U056	110-82-7	Benzene, hexahydro-(I)
U056	110-82-7	Cyclohexane (I)
U057	108-94-1	Cyclohexanone (I)
U058	50-18-0	Cyclophosphamide

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U059	20830-81-3	Daunomycin
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexo-pyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroe-thylidene)bis[4-chloro-
U060	72-54-8	DDD
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroe-thylidene)bis[4-chloro-
U061	50-29-3	DDT
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz[a,h]anthracene
U064	189-55-9	Benzo[rst]pentaphene
U064	189-55-9	Dibenzo[a,i]pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U067	106-93-4	Ethane, 1,2-dibromo-
U067	106-93-4	Ethylene dibromide
U068	74-95-3	Methane, dibromo-
U068	74-95-3	Methylene bromide
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	Benzene, 1,2-dichloro-
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	Benzene, 1,3-dichloro-
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	Benzene, 1,4-dichloro-
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	2-Butene, 1,4-dichloro-(I,T)
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U075	75-71-8	Methane, dichlorodifluoro-
U076	75-34-3	Ethane, 1,1-dichloro-
U076	75-34-3	Ethylidene dichloride
U077	107-06-2	Ethane, 1,2-dichloro-
U077	107-06-2	Ethylene dichloride
U078	75-35-4	1,1-Dichloroethylene
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	1,2-Dichloroethylene
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U080	75-09-2	Methane, dichloro-
U080	75-09-2	Methylene chloride
U081	120-83-2	2,4-Dichlorophenol
U081	120-83-2	Phenol, 2,4-dichloro-

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U082	87-65-0	2,6-Dichlorophenol
U082	87-65-0	Phenol, 2,6-dichloro-
U083	78-87-5	Propane, 1,2-dichloro-
U083	78-87-5	Propylene dichloride
U084	542-75-6	1,3-Dichloropropene
U084	542-75-6	1-Propene, 1,3-dichloro-
U085	1464-53-5	2,2'-Bioxirane
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U086	1615-80-1	N,N'-Diethylhydrazine
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U087	3288-58-2	O,O-Diethyl S-methyldithiophosphate
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U090	94-58-6	Dihydrosafrole
U091	119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dime-thoxy-
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U092	124-40-3	Methanamine, -methyl-(I)
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phe-nylazo)-
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
U094	57-97-6	7,12-Dimethylbenz[a]anthracene
U095	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl-(R)
U097	79-44-7	Carbamic chloride, dimethyl-
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	1,2-Dimethylhydrazine
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U101	105-67-9	2,4-Dimethylphenol
U101	105-67-9	Phenol, 2,4-dimethyl-
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U103	77-78-1	Sulfuric acid, dimethyl ester
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Diethyleneoxide
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U110	142-84-7	Dipropylamine (I)
U110	142-84-7	1-Propanamine, N-propyl-(I)
U111	621-64-7	Di-n-propylnitrosamine
U111	621-64-7	1-Propanamine, N-nitroso-N- propyl-
U112	141-78-6	Acetic acid ethyl ester (I)
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U114	((~~1~~)) [1]111-54-6	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters
U114	((~~1~~)) [1]111-54-6	Ethylenebisdithiocarbamic acid, salts & esters
U115	75-21-8	Ethylene oxide (I,T)
U115	75-21-8	Oxirane (I,T)
U116	96-45-7	Ethylenethiourea
U116	96-45-7	2-Imidazolidinethione
U117	60-29-7	Ethane, 1,1'-oxybis-(I)
U117	60-29-7	Ethyl ether (I)
U118	97-63-2	Ethyl methacrylate
U118	97-63-2	2-Propenoic acid, 2-methyl-,ethyl ester
U119	62-50-0	Ethyl methanesulfonate
U119	62-50-0	Methanesulfonic acid, ethyl ester
U120	206-44-0	Fluoranthene
U121	75-69-4	Methane, trichlorofluoro-
U121	75-69-4	Trichloromonofluoromethane
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U124	110-00-9	Furfuran (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U125	98-01-1	Furfural (I)
U126	765-34-4	Glycidylaldehyde
U126	765-34-4	Oxiranecarboxyaldehyde
U127	118-74-1	Benzene, hexachloro-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U128	87-68-3	Hexachlorobutadiene
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha, 5alpha,6beta)-
U129	58-89-9	Lindane

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Ethane, hexachloro-
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U132	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
U133	302-01-2	Hydrazine (R,T)
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H2S
U136	75-60-5	Arsinic acid, dimethyl-
U136	75-60-5	Cacodylic acid
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U138	74-88-4	Methane, iodo-
U138	74-88-4	Methyl iodide
U140	78-83-1	Isobutyl alcohol (I,T)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
U143	303-34-4	Lasiocarpine
U144	301-04-2	Acetic acid, lead(2+) salt
U144	301-04-2	Lead acetate
U145	7446-27-7	Lead phosphate
U145	7446-27-7	Phosphoric acid, lead(2+)salt (2:3)
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U146	1335-32-6	Lead subacetate
U147	108-31-6	2,5-Furandione
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U149	109-77-3	Malononitrile
U149	109-77-3	Propanedinitrile
U150	148-82-3	Melphalan
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I,T)
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U153	74-93-1	Methanethiol (I,T)
U153	74-93-1	Thiomethanol (I,T)

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U154	67-56-1	Methanol (I)
U154	67-56-1	Methyl alcohol (I)
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U155	91-80-5	Methapyrilene
U156	79-22-1	Carbonochloridic acid, methylester (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U159	78-93-3	2-Butanone (I,T)
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	2-Butanone, peroxide (R,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U161	108-10-1	Methyl isobutyl ketone (I)
U161	108-10-1	4-Methyl-2-pentanone (I)
U161	108-10-1	Pentanol, 4-methyl-
U162	80-62-6	Methyl methacrylate (I,T)
U162	80-62-6	2-Propenoic acid, 2-methyl-,methyl ester (I,T)
U163	70-25-7	Guanidine, -methyl-N'-nitro-N-nitroso-
U163	70-25-7	MNNG
U164	56-04-2	Methylthiouracil
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U165	91-20-3	Naphthalene
U166	130-15-4	1,4-Naphthalenedione
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	1-Naphthalenamine
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	2-Naphthalenamine
U168	91-59-8	beta-Naphthylamine
U169	98-95-3	Benzene, nitro-
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U170	100-02-7	Phenol, 4-nitro-
U171	79-46-9	2-Nitropropane (I,T)
U171	79-46-9	Propane, 2-nitro- (I,T)
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	Ethanol, 2,2'- (nitrosoimino)bis-
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	Ethanamine, -ethyl-N-nitroso-
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	N-Nitroso-N-methylurea
U177	684-93-5	Urea, N-methyl-N-nitroso-

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U179	100-75-4	Piperidine, 1-nitroso-
U180	930-55-2	N-Nitrosopyrrolidine
U180	930-55-2	Pyrrolidine, 1-nitroso-
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U181	99-55-8	5-Nitro-o-toluidine
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U182	123-63-7	Paraldehyde
U183	608-93-5	Benzene, pentachloro-
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Ethane, pentachloro-
U184	76-01-7	Pentachloroethane
U185	82-68-8	Benzene, pentachloronitro-
U185	82-68-8	Pentachloronitrobenzene (PCNB)
U186	504-60-9	1-Methylbutadiene (I)
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Acetamide, -(4-ethoxyphenyl)-
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U189	1314-80-3	Phosphorus sulfide (R)
U189	1314-80-3	Sulfur phosphide (R)
U190	85-44-9	1,3-Isobenzofurandione
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U191	109-06-8	Pyridine, 2-methyl-
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U192	23950-58-5	Pronamide
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U193	1120-71-4	1,3-Propane sultone
U194	107-10-8	1-Propanamine (I,T)
U194	107-10-8	n-Propylamine (I,T)
U196	110-86-1	Pyridine
U197	106-51-4	p-Benzoquinone
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U200	50-55-5	Reserpine
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methylester,(3beta,16beta,17alpha, 18beta,20alpha)-
U201	108-46-3	1,3-Benzenediol
U201	108-46-3	Resorcinol
((~~U202~~	~~181-07-2~~	~~1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts~~
~~U202~~	~~181-07-2~~	~~Saccharin, & salts~~))
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS2 (R,T)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-
U206	18883-66-4	Streptozotocin
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Ethene, tetrachloro-
U210	127-18-4	Tetrachloroethylene
U211	56-23-5	Carbon tetrachloride
U211	56-23-5	Methane, tetrachloro-
U213	109-99-9	Furan, tetrahydro-(I)
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Acetic acid, thallium(1+)salt
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Nitric acid, thallium(1+) salt
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Ethanethioamide
U218	62-55-5	Thioacetamide
U219	62-56-6	Thiourea
U220	108-88-3	Benzene, methyl-
U220	108-88-3	Toluene
U221	25376-45-8	Benzenediamine, ar-methyl-
U221	25376-45-8	Toluenediamine
U222	636-21-5	Benzenamine, 2-methyl-,hydrochloride
U222	636-21-5	o-Toluidine hydrochloride
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl-(R,T)
U223	26471-62-5	Toluene diisocyanate (R,T)
U225	75-25-2	Bromoform
U225	75-25-2	Methane, tribromo-
U226	71-55-6	Ethane, 1,1,1-trichloro-
U226	71-55-6	Methyl chloroform
U226	71-55-6	1,1,1-Trichloroethane
U227	79-00-5	Ethane, 1,1,2-trichloro-
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Ethene, trichloro-
U228	79-01-6	Trichloroethylene
U234	99-35-4	Benzene, 1,3,5-trinitro-

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U235	126-72-7	1-Propanol, 2,3-dibromo-,phosphate (3:1)
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-1	2,7-Naphthalenedisulfonicacid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt
U236	72-57-1	Trypan blue
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U237	66-75-1	Uracil mustard
U238	51-79-6	Carbamic acid, ethyl ester
U238	51-79-6	Ethyl carbamate (urethane)
U239	1330-20-7	Benzene, dimethyl- (I((~~,T~~)))
U239	1330-20-7	Xylene (I)
U240	((~~1~~)) 1[9]4-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U240	((~~1~~)) 1[9]4-75-7	2,4-D, salts & esters
U243	1888-71-7	Hexachloropropene
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U244	137-26-8	Thioperoxydicarbonic diamide [(H2N)C(S)]2 S2, tetramethyl-
U244	137-26-8	Thiram
U246	506-68-3	Cyanogen bromide (CN)Br
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-
U247	72-43-5	Methoxychlor
U248	((~~1~~)) 1[8]1-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations of 0.3% or less
U248	((~~1~~)) 1[8]1-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U249	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations of 10% or less
U271	17804-35-2	Benomyl
U271	17804-35-2	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methylester
U278	22781-23-3	Bendiocarb
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate
U279	63-25-2	Carbaryl
U279	63-25-2	1-Naphthalenol, methylcarbamate
U280	101-27-9	Barban
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U328	95-53-4	Benzenamine, 2-methyl-
U328	95-53-4	o-Toluidine
U353	106-49-0	Benzenamine, 4-methyl-
U353	106-49-0	p-Toluidine
U359	110-80-5	Ethanol, 2-ethoxy-
U359	110-80-5	Ethylene glycol monoethylether
U364	22961-82-6	Bendiocarb phenol

Numerical List

Dangerous Waste No.	Chemical Abstracts No.	Substance
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U367	1563-38-8	Carbofuran phenol
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methylester
U372	10605-21-7	Carbendazim
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester
U373	122-42-9	Propham
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenyl-methyl) ester
U387	52888-80-9	Prosulfocarb
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester
U389	2303-17-5	Triallate
U394	30558-43-1	A2213
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester
U395	5952-26-1	Diethylene glycol, dicarbamate
U395	5952-26-1	Ethanol, 2,2'-oxybis-,dicarbamate
U404	121-44-8	Ethanamine, N,N-diethyl-
U404	121-44-8	Triethylamine
U409	23564-05-8	Carbamic acid, [1,2-phenylenebis (imino-carbonothioyl)]bis-,dimethyl ester
U409	23564-05-8	Thiophanate-methyl
U410	59669-26-0	Ethanimidothioic acid, N,N'-[thio-bis[(methylimino)carbonyloxy]]bis-, dimethyl ester
U410	59669-26-0	Thiodicarb
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U411	114-26-1	Propoxur
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
See F027	87-86-5	Pentachlorophenol
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
See F027	93-72-1	Silvex (2,4,5-TP)
See F027	93-76-5	2,4,5-T
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol

FOOTNOTE: [1]CAS Number given for parent compound only.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-9904 Dangerous waste sources list. The following Hazard Codes are used to indicate the basis EPA used for listing the classes or types of wastes listed in this section:

Ignitable Waste	(I)
Corrosive Waste	(C)
Reactive Waste	(R)
Toxicity Characteristic Waste	(E)
Acute Hazardous Waste	(H)
Toxic Waste	(T)

DANGEROUS WASTE SOURCES LIST

(1) Dangerous Waste No.	Sources
Nonspecific Sources	
Generic:	
F001	The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)
F002	The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane and 1,1,2 trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)

F003	The following spent nonhalogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above nonhalogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (I)
F004	The following spent nonhalogenated solvents: Cresols and cresylic acid, nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)
F005	The following spent nonhalogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (T)
F007	Spent cyanide plating bath solutions from electroplating operations. (R,T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process. (R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process. (R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process. (R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. (R,T)
F012	Quenching wastewater treatment sludges from metal heat-treating operations where cyanides are used in the process. (T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. (T)
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.) (See footnote 1, below.) (H)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives. (See footnote 1, below.) (H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. (See footnote 1, below.) (H)
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri-and tetrachlorophenols. (See footnote 1, below.) (This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H)

F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in this section.) (T)
F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (T)
F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions. (See footnote 1, below.) (H)
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (See footnote 1, below.) (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.) (H)
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with nonspecific sources wastes F020, F021, F022, F023, F026 and F027. (T)
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with WAC 173-303-083 or potentially cross-contaminated wastes that are otherwise currently regulated as dangerous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (T)
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (T)
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: Oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling ((~~waters~~)) wastewaters, sludges generated in aggressive biological treatment units as defined in footnote 2, below (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling

	oil-bearing hazardous secondary materials excluded under WAC 173-303-071 (3)(cc)(i), if those residuals are to be disposed of. (See footnote 2, below.) (T)
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: Induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in footnote 2, below (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing. (See footnote 2, below.) (T)
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as dangerous under WAC 173-303-9903, 173-303-9904, and 173-303-9905. (Leachate resulting from the disposal of one or more of the following dangerous wastes, and no other dangerous wastes, retains its Dangerous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.) (T)

*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

Specific Sources

Wood Preservation:

K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol. (T)

Inorganic Pigments:

K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments. (T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments. (T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments. (T)
K005	Wastewater treatment sludge from the production of chrome green pigments. (T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated). (T)
K007	Wastewater treatment sludge from the production of iron blue pigments. (T)
K008	Oven residue from the production of chrome oxide green pigments. (T)

Organic Chemicals:

K009	Distillation bottoms from the production of acetaldehyde from ethylene. (T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene. (T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile. (R,T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile. (R,T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile. (T)
K015	Still bottoms from the distillation of benzyl chloride. (T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride. (T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin. (T)
K018	Heavy ends from the fractionation column in ethyl chloride production. (T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. (T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production. (T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production. (T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene. (T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene. (T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene. (T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene. (T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene. (T)

K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene. (T)
K026	Stripping still tails from the production of methyl ethyl pyridines. (T)
K027	Centrifuge and distillation residues from toluene diisocyanate production. (R,T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane. (T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane. (T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane. (T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane. (T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene. (T)
K083	Distillation bottoms from aniline production. (T)
K103	Process residues from aniline extraction from the production of aniline. (T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production. (T)
K085	Distillation of fractionation column bottoms from the production of chlorobenzenes. (T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes. (T)
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid ((~~hydrazines~~)) hydrazides. (C,T)
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from the carboxylic acid hydrazides. (I,T)
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. (T)
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. (T)
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene. (C,T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene. (T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. (T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. (T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. (T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine. (T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene. (T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. (T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. (T)
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.) (T)
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (T)
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (T)

K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) (T)
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) (T)
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) (T)
K159	Organics from the treatment of thiocarbamate wastes. (T)
K161	Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (R,T)
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) They are disposed of in a hazardous waste or nonhazardous landfill licensed or permitted by the state or federal government; (ii) They are not otherwise placed on the land prior to final disposal; and (iii) The generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off site landfill. Respondents in any action brought to enforce the requirements of the Hazardous Waste Management Act or dangerous waste regulations must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met. (T)
K175	Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. (T)
((~~[K181]~~)) <u>K181</u>	Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in subsection (3) of this section that are equal to or greater than the corresponding subsection (3) of this section levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) Disposed in a municipal solid waste landfill unit subject to the design criteria in 40 C.F.R. 258.40; (ii) Disposed in a dangerous waste landfill unit subject to either WAC 173-303-665(2) or 40 C.F.R. 265.301 (incorporated by reference at WAC 173-303-400 (3)(a)); (iii) Disposed in other municipal solid waste landfill units that meet the design criteria in 40 C.F.R. 258.40, WAC 173-303-665(2) or 40 C.F.R. 265.301 (incorporated by reference at WAC 173-303-400 (3)(a)); or (iv) Treated in a combustion unit that is permitted under the Hazardous Waste Management Act and the dangerous waste regulations, or an on-site combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in subsection (2)((~~(a)~~)) of this section. Subsection (4) of this section describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as dangerous under WAC 173-303-090 (5) through (8), 173-303-100 (5) through (6), 173-303-9903, and 173-303-9904 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met. (T)

Explosives:

K044	Wastewater treatment sludges from the manufacturing and processing of explosives. (R)
K045	Spent carbon from the treatment of wastewater containing explosives. (R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds. (T)
K047	Pink/red water from TNT operations. (R)

Inorganic Chemicals:

K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. (T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production. (T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production. (T)
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide). (E)
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide). (T)
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process. (T)

Petroleum Refining:

K048	Dissolved air flotation (DAF) float from the petroleum refining industry. (T)
K049	Slop oil emulsion solids from the petroleum refining industry. (T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry. (T)
K051	API separator sludge from the petroleum refining industry. (T)
K052	Tank bottoms (leaded) from the petroleum refining industry. (T)
K169	Crude oil storage tank sediment from petroleum refining operations. (T)
K170	Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations. (T)
K171	Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media). (I,T)
K172	Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media). (I,T)

Iron and Steel:

K061	Emission control dust/sludge from the primary production of steel in electric furnaces. (T)
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (NAICS codes 331111 and 332111). (C,T)

Pesticides:

K031	Byproduct salts generated in the production of MSMA and cacodylic acid. (T)
K032	Wastewater treatment sludge from the production of chlordane. (T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane. (T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane. (T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane. (T)
K035	Wastewater treatment sludges generated in the production of creosote. (T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton. (T)
K037	Wastewater treatment sludges from the production of disulfoton. (T)
K038	Wastewater from the washing and stripping of phorate production. (T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate. (T)
K040	Wastewater treatment sludge from the production of phorate. (T)
K041	Wastewater treatment sludge from the production of toxaphene. (T)
K098	Untreated process wastewater from the production of toxaphene. (T)

K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. (T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D. (T)
K099	Untreated wastewater from the production of 2,4-D. (T)
K123	Process wastewater (including supernates, filtrates, and wastewaters) from the production of ethylenebisdithiocarbamic acid and its salts. (T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts. (C,T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts. (T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts. (T)
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide. (C,T)
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide. (T)

Primary Aluminum:

K088	Spent potliners from primary aluminum reduction. (T)

Secondary Lead:

K069	Emission control dust/sludge from secondary lead smelting. (Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action affecting this stay, EPA will publish a notice of the action in the *Federal Register*. (T)
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. (T)

Veterinary Pharmaceuticals:

K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)

Ink Formulation:

K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. (T)

Coking:

K060	Ammonia still-lime sludge from coking operations. (T)
K087	Decanter tank tar sludge from coking operations. (T)
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations).
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recover of coke by-products produced from coal.
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.
K147	Tar storage tank residues from coal tar refining.
K148	Residues from coal tar distillation, including but not limited to, still bottoms.

Footnotes

1 For wastes listed with the dangerous waste numbers F020, F021, F022, F023, F026, or F027 the quantity exclusion limit is 2.2 lbs. (1 kg) per month or per batch.

2 Listing Specific Definitions:

a For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

b(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: Activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and (A) the units employs a minimum of 6 hp per million gallons of treatment volume; and either (B) the hydraulic retention time of the unit is no longer than 5 days; or (C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a dangerous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities must maintain, in their operating or other on-site records, documents and data sufficient to prove that: (A) The unit is an aggressive biological treatment unit as defined in this subsection; and (B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually treated in the aggressive biological treatment unit.

c(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(A) Sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and

(B) Floats are considered to be generated at the moment they are formed in the top of the unit.

State Sources

WPCB Discarded transformers, capacitors or bushings containing polychlorinated biphenyls (PCB) at concentrations of 2 parts per million or greater (except when drained of all free flowing liquid) and the following wastes generated from the salvaging, rebuilding, or discarding of transformers, capacitors or bushings containing polychlorinated biphenyls (PCB) at concentrations of 2 parts per million or greater: Cooling and insulating fluids and cores, including core papers. (Note—Certain PCB wastes are excluded from this listing under WAC 173-303-071 (3)(k). The generator should check that section to determine if their PCB waste is excluded from the requirements of chapter 173-303 WAC.)

(2) *Listing Specific Definitions*: For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: Dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products.

Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the off site use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(3) *K181 Listing Levels*. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

Constituent	Chemical Abstracts No.	Mass Levels (kg/yr)
Aniline	62-53-3	9,300
o-Anisidine	90-04-0	110
4-Chloroaniline	106-47-8	4,800
p-Cresidine	120-71-8	660
2,4-Dimethylaniline	95-68-1	100

Constituent	Chemical Abstracts No.	Mass Levels (kg/yr)
1,2-Phenylenediamine	95-54-5	710
1,3-Phenylenediamine	108-45-2	1,200

(4) *Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181*. The procedures described in (a) through (c) and (e) of this subsection establish when nonwastewaters from the production of dyes/pigments would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in subsection (1) - the K181 listing - of this section). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in subsection (1) of this section, then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator must maintain documentation as described in (d) of this subsection.

(a) *Determination based on no K181 constituents*. Generators that have knowledge (for example, knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents (*see* subsection (3) of this section) can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(b) *Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents*. If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (for example, knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the listing levels of ((~~this~~)) subsection (3) of this section. To make this determination, the generator must:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator must comply with the requirements of (c) of this subsection for the remainder of the year.

(iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(iv) Keep the following records on-site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The quantity of dyes and/or pigment nonwastewaters generated.

(B) The relevant process information used.

(C) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

(c) *Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents*. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator must perform all of the steps described in ((~~paragraphs (d)(3)(i) - (d)(3)(xi)~~)) (c)(i) through (xi) of this subsection in order to make a determination that its waste is not K181.

(i) Determine which K181 constituents (see ((~~(c) of this~~)) subsection (3) of this section) are reasonably expected to be present in the wastes based on knowledge of the wastes (for example, based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed).

(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in ((~~paragraph (d)(2)~~)) (b) of this subsection and keep the records described in

((~~paragraph (d)(2)(iv)~~)) (b)(iv) of this subsection. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below in this subsection.

(iii) Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:

(A) A discussion of the number of samples needed to characterize the wastes fully;

(B) The planned sample collection method to obtain representative waste samples;

(C) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes;

(D) A detailed description of the test methods to be used, including sample preparation, clean up (if necessary), and determinative methods.

(iv) Collect and analyze samples in accordance with the waste sampling and analysis plan.

(A) The sampling and analysis must be unbiased, precise, and representative of the wastes;

(B) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of subsection (3) of this section.

(v) Record the analytical results.

(vi) Record the waste quantity represented by the sampling and analysis results.

(vii) Calculate constituent-specific mass loadings (product of concentrations and waste quantity).

(viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(ix) Determine whether the mass of any of the K181 constituents listed in subsection (3) of this section generated between January 1 and December 31 of any year is below the K181 listing levels.

(x) Keep the following records on-site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The sampling and analysis plan.

(B) The sampling and analysis results (including QA/QC data).

(C) The quantity of dyes and/or pigment nonwastewaters generated.

(D) The calculations performed to determine annual mass loadings.

(xi) Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.

(A) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(B) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(C) If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change must be retained.

(d) *Recordkeeping for the landfill disposal and combustion exemptions.* For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain on-site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

(e) *Waste holding and handling*. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the Hazardous Waste Management Act and the dangerous waste regulation requirements during the interim period, the generator could be subject to an enforcement action for improper management.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-14-105, filed 6/30/09, effective 7/31/09)

WAC 173-303-9905 Dangerous waste constituents list.

A2213 (Ethanimidothioic acid, 2- (dimethylamino) -N-hydroxy-2-oxo-, methyl ester)
Acetic Acid,2,4,5-trichlorophenoxy-, salts and esters (2,4,5-T, salts and esters)
Acetonitrile [Ethanenitrile]
Acetophenone (Ethanone, 1-phenyl)
-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts (Warfarin)
2-Acetylaminofluorene (Acetemide,N-9H- fluoren-2-yl)-)
Acetyl chloride (Ethanoyl chloride)
1-Acetyl-2-thiourea (Acetamide,N-(aminothioxomethyl)-)
Acrolein (2-Propenal)
Acrylamide (2-Propenamide)
Acrylonitrile (2-Propenenitrile)
Aflatoxins
Aldicarb sulfone (Propanal, 2-methyl-2-(methylsulfonyl) -, O-[(methylamino) carbonyl] oxime)
Aldrin (1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a,-hexahydro-endo,exo- 1,4:5,8-Dimethanonaphthalene)
Allyl alcohol (2-Propen-1-ol)
Allyl chloride (1-Propane, 3-chloro)
Aluminum phosphide
4-Aminobiphenyl ([1,1'-Biphenyl]-4-amine)
6-Amino-1,1a,2,8,8a,8b-hexahydro-8- (hydroxymethyl) -8a-methoxy-5-methyl- carbamate azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, (ester) (Mitomycin C) (Azirino[2'3':3,4]pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8
4-Aminopyridine(4-Pyridinamine)
Amitrole (1H-1,2,4-Triazol-3-amine)
Aniline (Benzenamine)
o-Anisidine (2-methoxyaniline)(Benzenamine, 2-Methoxy-)
Antimony and compounds, N.O.S.*
Aramite (Sulfurous acid 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester)Arsenic and compounds, N.O.S.*
Barban (Carbamic acid, (3-chlorophenyl) -, 4-chloro-2-butynyl ester)
Barium and compounds, N.O.S.*
Barium cyanide
Bendiocarb (1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate)
Bendiocarb phenol (1,3-Benzodioxol-4-ol, 2,2-dimethyl-,)
Benomyl (Carbamic acid, [1- [(butylamino) carbonyl]-1H-benzimidazol-2-yl] -, methyl ester)
Benz[c]acridine (3,4-Benzacridine)
Benz[a]anthracene (1,2-Benzanthracene)
Benzene (Cyclohexatriene)
Benzenearsonic acid (Arsonic acid, phenyl-)
Benzene, 2-amino-1-methyl (o-Toluidine)
Benzene, 4-amino-1-methyl (p-Toluidine)
Benzene, dichloromethyl- (Benzal chloride)
Benzenethoil (Thiophenol)
Benzidine ([1,1'-Biphenyl]-4,4'diamine)
Benzo[b]fluoranthene (2,3-Benzofluoranthene)
Benzo(k)fluoranthene
Benzo[j]fluoranthene (7,8-Benzofluoranthene)
Benzo[a]pyrene (3,4-Benzopyrene)
p Benzoquinone (1,4-Cyclohexadienedione)
Benzotrichloride (Benzene, trichloromethyl-)
Benzyl chloride (Benzene, (chloromethyl)-)
Beryllium powder
Beryllium compounds, N.O.S.*
Bis(2-chloroethoxy)methane (Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-])
Bis(2-chloroethyl) ether (Ethane, 1,1'-oxybis[2-chloro-])
N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornaphazine)
Bis(2-chloroisopropyl) ether (Propane, 2,2'-oxybis[2-chloro-])
Bis(chloromethyl) ether (Methane, oxybis[chloro-])
Bis(2-ethylhexyl) phthalate (1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester)
Bis(pentamethylene)-thiuram tetrasulfide (Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-)
Bromoacetone (2-Propanone, 1-bromo-)
Bromomethane (Methyl bromide)
4-Bromophenyl phenyl ether (Benzene, 1-bromo-4-phenoxy-)
Brucine (Strychnidin-10-one, 2,3-dimethoxy-)
2-Butanone peroxide (Methyl ethyl ketone, peroxide)
Butyl benzyl phthalate (1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester)
2-sec-Butyl-4,6-dinitrophenol (DNBP) (Phenol, 2,4-dinitro-6-(1-methylpropyl)-)
Butylate (Carbamothioic acid, bis(2 methylpropyl)-, S-ethyl ester)
Cadmium and compounds, N.O.S.*
Calcium chromate (Chromic acid, calcium salt)
Calcium cyanide
Carbamic Acid, ethyl ester
Carbaryl (1-Naphthalenol methylcarbamate)
Carbendazim (Carbamic acid, 1H-benzimidazol-2-yl, methyl ester)
Carbofuran (7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate)
Carbofuran phenol (7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-)
Carbon disulfide (Carbon bisulfide)
Carbon oxyfluoride (Carbonyl fluoride)
Carbosulfan (Carbamic acid, [(dibutylamino) thio] methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester)
Chloral (Acetaldehyde, trichloro-)
Chlorambucil (Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-)
Chlordane (alpha and gamma isomers) (4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3,4,7,7a -tetrahydro-) (alpha and gamma isomers)
Chlorinated benzenes, N.O.S.*
Chlorinated ethane, N.O.S.*
Chlorinated fluorocarbons, N.O.S.*

Chlorinated naphthalene, N.O.S.*
Chlorinated phenol, N.O.S.*
Chloroacetaldehyde (Acetaldehyde, chloro-)
Chloroalkyl ethers, N.O.S.*
P-Chloroaniline (Benzenamine, 4-chloro-)
Chlorobenzene (Benzene, chloro-)
Chlorobenzilate (Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester)
2-Chloro-1,3-butadiene
p-Chloro-m-cresol (Phenol, 4-Chloro-3-methyl)
1-Chloro-2,3-epoxypropane (Oxirane, 2-(chloromethyl)-)
2-Chloroethyl vinyl ether (Ethene, (2-chloroethoxy)-)Chloroform (Methane, trichloro-)
Chloromethane (Methyl chloride)
Chloromethyl methyl ether (Methane, chloromethoxy-)
2-Chloronaphthalene (Naphthalene, beta-chloro-)
2-Chlorophenol (Phenol, o-chloro-)
1-(o-Chlorophenyl)thiourea (Thiourea, (2-chlorophenyl)-)
3-Chloropropene
3-Chloropropionitrile (Propanenitrile, 3-chloro-)Chromium and compounds, N.O.S.*
Chrysene (1,2-Benzphenanthrene)
Citrus red No. 2 (2-Naphthol, 1-[(2,5-dimethoxyphenyl)azo]-)
Coal tar creosote
Copper cyanide
Copper dimethyldithiocarbamate (Copper, bis(dimethylcarbamodithioato-S,S')-,)
Creosote
p-Cresidine (2-Methoxy-5-methylbenzenamine)
Cresols (Cresylic acid) (Phenol, methyl-)
Crotonaldehyde (2-Butenal)
m-Cumenyl methylcarbamate (Phenol, 3-(methylethyl)-, methyl carbamate)
Cyanides (soluble salts and complexes), N.O.S.*
Cyanogen (Ethanedinitrile)
Cyanogen bromide (Bromine cyanide)
Cyanogen chloride (Chlorine cyanide)
Cycasin (beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl-)
Cycloate (Carbamothioic acid, cyclohexylethyl-, S-ethyl ester)
2-Cyclohexyl-4,6-dinitrophenol (Phenol, 2-cyclohexyl-4,6-dinitro-)
Cyclophosphamide (2H-1,3,2,-Oxazaphosphorine, [bis(2-chloroethyl)amino]-tetrahydro-, 2-oxide)
Daunomycin (5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-)
Dazomet (2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl-)
DDD (Dichlorodiphenyldichloroethane) (Ethane, 1,1-dichloro-2,2-bis(p chlorophenyl)-)
DDE (Ethylene, 1,1-dichloro-2,2-bis(4-chlorophenyl)-)
DDT (Dichlorodiphenyltrichloroethane) (Ethane, 1,1,1-trichloro-2,2-bis(p-chlorophenyl)-)
Diallate (S-(2,3-dichloroallyl) diisopropylthiocarbamate)
Dibenz[a,h]acridine (1,2,5,6-Dibenzacridine)
Dibenz[a,j]acridine (1,2,7,8-Dibenzacridine)
Dibenz[a,h]anthracene (1,2,5,6-Dibenzanthracene)
7H-Dibenzo[c,g]carbazole (3,4,5,6-Dibenzcarbazole)
Dibenzo[a,e]pyrene (1,2,4,5-Dibenzpyrene)
Dibenzo[a,h]pyrene (1,2,5,6-Dibenzpyrene)
Dibenzo[a,i]pyrene (1,2,7,8-Dibenzpyrene)
1,2-Dibromo-3-chloropropane (Propane, 1,2-dibromo-3-chloro-)
1,2-Dibromoethane (Ethylene dibromide)
Dibromomethane (Methylene bromide)
Di-n-butyl phthalate (1,2-Benzenedicarboxylic acid, dibutyl ester)
o-Dichlorobenzene (Benzene, 1,2-dichloro-)
m-Dichlorobenzene (Benzene, 1,3-dichloro-)
p-Dichlorobenzene (Benzene, 1,4-dichloro-)
Dichlorobenzene, N.O.S.* (Benzene, dichloro-, N.O.S.*)
3,3'-Dichlorobenzidine ([1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-)
1,4-Dichloro-2-butene (2-Butene, 1,4-Butene, 1,4-dichloro-)
Dichlorodifluoromethane (Methane, dichlorodifluoro-)
1,1-Dichloroethane (Ethylidene dichloride)
1,2-Dichloroethane (Ethylene dichloride)
trans-1,2-Dichloroethene (1,2-Dichloroethylene)
Dichloroethylene, N.O.S.* (Ethene, dichloro-, N.O.S.*)
1,1-Dichloroethylene (Ethene, 1,1-dichloro-)
Dichloromethane (Methylene chloride)
2,4-Dichlorophenol (Phenol, 2,4-dichloro-)
2,6-Dichlorophenol (Phenol, 2,6-dichloro)
2,4-Dichlorophenoxyacetic acid (2,4-D), salts and esters (Acetic acid, 2,4-dichlorophenoxy-, salts and esters)
Dichlorophenylarsine (Phenyl dichloroarsine)
Dichloropropane, N.O.S.* (Propane, dichloro-, N.O.S.*)
1,2-Dichloropropane (Propylene dichloride)
Dichloropropanol, N.O.S.* (Propanol, dichloro-, N.O.S.*)
Dichloropropene, N.O.S.* (Propene, dichloro-, N.O.S.*)
1,3-Dichloropropene, (1-Propene, 1,3-dichloro-)
Dieldrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-endo, exo-1,4:5,8-Dimethanonaphthalene)
1,2:3,4-Diepoxybutane (2,2'-Bioxirane)
Diethylarsine (Arsine, diethyl-)
N,N'-Diethylhydrazine (Hydrazine, 1,2-diethyl)
O,O-Diethyl S-methyl ester of phosphorodithioic acid (Phosphorodithioic acid, O,O-diethyl S-methyl ester
O,O-Diethylphosphoric acid, O-p-nitrophenyl ester (Phosphoric acid, diethyl p-nitrophenyl ester)
Diethyl phthalate (1,2-Benzenedicarboxylic acid, diethyl ester)
O,O-Diethyl O-2-pyraxinyl phosphorothioate (Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Diethylene glycol, dicarbamate (Ethanol, 2,2'-oxybis-, dicarbamate)
Diethylstilbesterol (4,4'-Stilbenediol, alpha,alpha-diethyl, bis(dihydrogen phosphate, (E)-)

Dihydrosafrole (Benzene, 1,2-methylenedioxy-4-propyl-)
3,4-Dihydroxy-alpha-(methylamino)methyl benzyl alcohol (1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-)
Diisopropylfluorophosphate (DFP) (Phosphorofluoridic acid, bis(1-methylethyl) ester)
Dimethoate (Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
3,3'-Dimethoxybenzidine ([1,1'-Biphenyl]-4,4'diamine, 3-3'dimethoxy-)
p-Dimethylaminoazobenzene (Benzenamine, N,N-dimethyl-4-(phenylazo)-)
2,4-Dimethylaniline (2,4-xylidine) (Benzenamine,2,4-dimethyl-)
7,12-Dimethylbenz[a]anthracene (1,2-Benzanthracene, 7,12-dimethyl-)
3,3'Dimethylbenzidine ([1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-)
Dimethylcarbamoyl chloride (Carbamoyl chloride, dimethyl-)
1,1-Dimethylhydrazine (Hydrazine, 1,1-dimethyl-)
1,2-Dimethylhydrazine (Hydrazine, 1,2-dimethyl-)
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino) carbonyl]oxime (Thiofanox)
alpha,alpha-Dimethylphenethylamine (Ethanamine, 1,1-dimethyl-2-phenyl)
2,4-Dimethylphenol (Phenol, 2,4-dimethyl-)
Dimethyl phthalate (1,2-Benzenedicarboxylic, acid, dimethyl ester)
Dimethyl sulfate (Sulfuric acid, dimethyl ester)
Dimetilan (Carbamic acid, dimethyl-, 1-[(dimethylamino) carbonyl]-5-methyl-1H-pyrazol-3-yl ester)
Dinitrobenzene, N.O.S.* (Benzene, dinitro-, N.O.S.*
4,6-Dinitro-o-cresol and salts (Phenol, 2,4-dinitro-6-methyl-, and salts)
2,4-Dinitrophenol (Phenol, 2,4-dinitro-)
2,4-Dinitrotoluene (Benezene, 1-methyl-2,4-dinitro-)
2,6-Dinitrotoluene (Benzene,1-methyl-2,6-dinitro-)
Dinoseb (Phenol, 2-(1-methylpropyl)-4,6-dinitro-)
Di-n-octyl phthalate (1,2-Benzenedicarbozylic acid, dioctyl ester)
1,4-Dioxane (1,4-Diethylene oxide)
Diphenylamine (Benzenamine, N-Phenyl-)
1,2-Diphenylhydrazine (Hydrazine, 1,2-diphenyl-)
Di-n-propylmitrosamine (N-Nitroso-di-n-propylamine)
Disulfiram (Thioperoxydicarbonic diamide, tetraethyl)
Disulfoton (O,O-diethyl S-[2-(ethylthio)ethyl] phosphorodithioate)
Dithiobiuret (Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$)
EPTC (Carbamothioic acid, dipropyl-, S-ethyl ester)
Endosulfan (5-Norbornene, 2,3-dimethanol, 1,4,5,6,7,7-hexachloro-, cyclic sulfite)
Endrin and metabolites (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene, and metabolites)
Ethyl carbamate (Urethan) (Carbamic acid, ethyl ester)
Ethyl cyanide (propanenitrile)
Ethyl ziram (Zinc, bis(diethylcarbamodithioato- S,S')-)
Ethylenebisdithiocarbamic acid, salts and esters (1,2-Ethanediylbiscarbamodithioic acid, salts and esters.
Ethylene glycol monoethyl ether (2-Ethoxyethanol)
Ethyleneimine (Aziridine)
Ethylene oxide (Oxirane)
Ethylenethiourea (2-Imidazolidinethione)
Ethylmethacrylate (2-Propenoic acid, 2-methyl-, ethyl ester)
Ethyl methanesulfonate (Methanesulfonic acid, ethyl ester)
Ferbam (Iron, tris(dimethylcarbamodithioato- S,S')-)
Fluoranthene (Benzo[j,k]fluorene)
Fluorine
2-Fluoroacetamide (Acetamide, 2-fluoro-)
Fluoroacetic acid, sodium salt (Acetic acid, fluoro-, sodium salt)
Formaldehyde (Methylene, oxide)
Formetanate hydrochloride (Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino) carbonyl]oxy]phenyl]-, monohydrochloride)
Formic acid (Methanoic acid)
Formparanate (Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino) carbonyl]oxy]phenyl]-)
Glycidylaldehyde (1-Propanol-2,3-epoxy)
Halomethane, N.O.S.*
Heptachlor (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-)
Heptachlor epoxide (alpha, beta, and gamma isomers) (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-2,3-epoxy-3a,4,7,7-tetrahydro-, alpha, beta and gamma isomers)
Heptachlorodibenzofurans
Heptachlorodibenzo-p-dioxins
Hexachlorobenzene (Benzene, hexachloro-)
Hexachlorobutadiene (1,3-Butadiene, hexachloro-)
Hexachlorocyclohexane (all isomers) (Lindane and isomers)
Hexachlorocylopentadiene (1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-)
Hexachlorodibenzo-p-dioxins
Hexachlorodibenzofurans
Hexachloroethane (Ethane, hexachloro-)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonphthalene (Hexachlorohexahydro-endo,endo-dimethanonaphthalene)
Hexachlorophene (2,2'-Methylenebis(3,4,6-trichlorophenol))
Hexachloropropene (Propene, hexachloro-)
Hexaethyl tetraphosphate (Tetraphosphoric acid, hexaethyl ester)
Hydrazine (Diamine)
Hydrocyanic acid (Hydrogen cyanide)
Hydrofluoric acid (Hydrogen fluoride)
Hydrogen sulfide (Sulfur hydride)
Hydroxydimethylarsine oxide (Cacodylic acid)
Indeno(1,2,3-cd)pyrene (1,10-(1,2-phenylene)pyrene)
3-Iodo-2-propynyl n-butylcarbamate (Carbamic acid, butyl-, 3-iodo-2- propynyl ester)
Iodomethane (Methyl iodide)

Isocyanic acid, methyl ester (Methyl isocyanate)Isobutyl alcohol (1-Propanol, 2-methyl-)
Isolan (Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester)
Isosafrole (Benzene, 1,2-methylenedioxy-4-allyl-)
Kepone (Decachlorooctahydro-1,3,4-Methano-2H-cyclobuta[cd]pentalene-2-one)
Lasiocarpine (2-Butanoic acid, 2-methyl-,7-[(2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester)
Lead and compounds, N.O.S.*
Lead acetate (Acetic acid, lead salt)
Lead phosphate (Phosphoric acid, lead salt)
Lead subacetate (Lead, bis(acetato-O)tetrahydroxytri-)
Maleic anhydride (2,5-Furandione)
Maleic hydrazide (1,2-Dihydro-3,6-pyridazinedione)
Malononitrile (Propanedinitrile)
Manganese dimethyldithiocarbamate (Manganese, bis(dimethylcarbamodithioato-S,S')-,)
Melphalan (Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L-)
Mercury Fulminate (Fulminic acid, mercury salt)
Mercury and compounds, N.O.S.*
Metam sodium (Carbamodithioic acid, methyl-, monosodium salt)
Methacrylonitrile (2-Propenenitrile, 2-methyl-)
Methanethiol (Thiomethanol)
Methapyrilene (Pyridine, 2-[(2-dimethylamino)ethyl]-2-thenylamino-)
Methiocarb (Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate)
Metholonyl (Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-,methyl ester
Methoxychior (Ethane, 1,1,1-trichloro-2,2'-bis(p-methoxyphenyl)-)
2-Methylaziridine (1,2-Propylenimine)
3-Methylcholanthrene (Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-)
Methyl chlorocarbonate (Carbonochloridic acid, methyl ester)
4,4'-Methylenebis(2-chloroaniline) (Benzenamine, 4,4'-methylenebis-(2-chloro-)
Methyl ethyl ketone (MEK) (2-Butanone)
Methyl hydrazine (Hydrazine, methyl-)
2-Methyllactonitrile (Propanenitrile, 2-hydroxy-2-methyl-)
Methyl methacrylate (2-Propenoic acid, 2-methyl-, methyl ester)
Methyl methanesulfonate (Methanesulfonic acid, methyl ester)
2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime
N-Methyl-N'-nitro-N-nitrosoguanidine (Guanidine, N-nitros-N-methyl-N'nitro-)
Methyl parathion (O,O-dimethyl O-(4-nitrophenyl) phosphorothioate)
Methylthiouracil (4-1H-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-)
Metolcarb (Carbamic acid, methyl-, 3-methylphenyl ester)
Mexacarbate (Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester))
Molinate (1H-Azepine-1-carbothioic acid,hexahydro-, S-ethyl ester)
Mustard gas (Sulfide, bis(2-chloroethyl)-)
Naphthalene
1,4-Naphthoquinone (1,4-Naphthalenedione)
1-Naphthylamine (alpha-Naphthylamine)
2-Naphthylamine (beta-Naphthylamine)
1-Naphthyl-2-thiourea (Thiourea, 1-naphthalenyl-)
Nickel and compounds, N.O.S.*
Nickel carbonyl (Nickel tetracarbonyl)
Nickel cyanide (nickel (II) cyanide)
Nicotine and salts, Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts)
Nitric oxide (Nitrogen (II) oxide)
p-Nitroaniline (Benzenamine, 4-nitro-)
Nitrobenzine (Benzene, nitro-) Nitrobenzene
Nitrogen dioxide (Nitrogen (IV) oxide)
Nitrogen mustard and hydrochloride salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)-
N-methyl-, and hydrochloride salt)
Nitrogen mustard N-Oxide and hydrochloride salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)-N-methyl-, N-oxide, and hydro-chloride salt)
Nitroglycerine (1,2,3-Propanetriol, trinitrate)
4-Nitrophenol (Phenol, 4-nitro-)
2-Nitropropane (Propane 2-nitro)
4-Nitroquinoline-1-oxide (Quinoline, 4-nitro-1-oxide-)
Nitrosamine, N.O.S.*
N-Nitrosodi-n-butylamine (1-Butanamine, N-butyl-N-nitroso-)
N-Nitrosodiethanolamine (Ethanol, 2,2'-(nitrosoimino)bis-)
N-Nitrosodiethylamine (Ethanamine, N-Ethyl-N-nitroso-)
N-Nitrosodimethylamine (Dimethylnitrosamine)
N-Nitroso-N-ethylurea (Carbamide, N-ethyl-N-nitroso-)
N-Nitrosomethylethylamine (Ethanamine, N-methyl-N-nitroso-)
N-Nitroso-N-methylurea (Carbamide, N-methyl-N-nitroso-)
N-Nitroso-N-methylurethane (Carbamic acid, methylnitroso-, ethyl ester)
N-Nitrosomethylvinylamine (Ethenamine, N-methyl-N-nitroso-)
N-Nitrosomorpholine (Morpholine, N-nitroso-)
N-Nitrosonornicotine (Nornicotine, N-nitroso-)
N-Nitrosopiperidine (Pyridine, hexahydro-, N-nitroso-)
N-Nitrosopyrrolidine (pyrrole, tetrahydro-, N-nitroso-)
N-Nitrososacrosine (Sarcosine, N-nitroso-)
5-Nitro-o-toluidine (Benzenamine, 2-methyl-5-nitro-)
Octachlorodibenzo-p-dioxin (OCDD) 1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin
Octachlorodibenzofuran (OCDF) 1,2,3,4,6,7,8,9-Octachlorodibenzofuran
Octamethylpyrophosphoramide (Diphosphoraminde, octamethyl-)

Osmium tetroxide (Osmium (VIII) oxide)
7-Ocabicyclo[2.2.1]heptane-2,3-dicarbonxylic acid (Endothal)
Oxamyl (Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester)
Paraldehyde (1,3,5-Trioxane, 2,4,6-trinethyl-)
Parathion (Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl) ester
Pebulate (Carbamothioic acid, butylethyl-, S- propyl ester)
Pentachlorobenzene (Benzene, pentachloro-)
Pentachlorodibenzo-p-dioxins
Pentachlorodibenzofurans
Pentachloroethane (Ethane, pentachloro-)
Pentachloronitrobenzene (PCNB) (Benzene, pentachloronitro-)
Pentachlorophenol (Phenol, pentachloro-)
Perchloromethyl mercaptan (Methanesulferryl chloride, trichloro-)
Phenacetin (Acetamide, N-(4-ethoxyphenyl)-)
Phenol (Benzene, hydroxy-)
1,2-Phenylenediamine (1,2-Benzenediamine)
1,3-Phenylenediamine (1,3-Benzenediamine)
Phenylenediamine (Benzenediamine)
Phenylmercury acetate (Mercury, acetatophenyl-)
N-Phenylthiourea (Thiourea, phenyl-)
Phosgene (Carbonyl chloride)
Phosphine (Hydrogen phosphide)
Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester (Phorate)
Phosphorothioic acid, O,O-dimethyl O-[p-((dimethylamino)sulfonyl)phenyl] ester (Famphur)
Phthalic acid esters, N.O.S.* (Benzene, 1,2-dicarboxylic acid, esters, N.O.S.*
Phthalic anhydride (1,2-Benzenedicarboxylic acid anhydride)
Physostigmine (Pyrrolo[2,3-b]indol-5-01, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-,methylcarbamate (ester), (3aS-cis)-)
Physostigmine salicylate (Benzoic acid, 2-hydroxy-, compd. with (3aS-cis) —1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1).)
2-Picoline (Pyridine, 2-methyl-)
Polychlorinated biphenyl, N.O.S.*
Potassium cyanide
Potassium dimethyldithiocarbamate (Carbamodithioic acid, dimethyl, potassium salt)
Potassium n-hydroxymethyl-n-methyl- dithiocarbamate (Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt)
Potassium n-methyldithiocarbamate (Carbamodithioic acid, methyl- monopotassium salt)
Potassium pentachlorophenate (Pentachlorophenol, potassium salt)
Potassium silver cyanide (Argentate(1-), dicyano-, potassium)
Promecarb (Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate)
Pronamide (3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide)
1,3-Propanesultone (1,2-Oxathiolane, 2,2-dioxide)
Propham (Carbamic acid, phenyl-, 1-methylethyl ester)
Propionic acid, 2-(2,4,5-trichlorophenoxy), salts and esters (2,4,5-TP,Silvex, salts and esters)
Propoxur (Phenol, 2-(1-methylethoxy)-, methylcarbamate)
n-Propylamine (1-Propane)
Propylthiouracil (2,3 dihydro-6-propyl-2 thioxo-4(1H)-pyrimidinone)
2-Propyn-1-ol (Propargyl alcohol)
Prosulfocarb (Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester)
Pyridine
Reserpine (Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenxoyl)oxy]-, methyl ester)
Resorcinol (1,3-Benzenediol)
((~~Saccharin and salts (1,2-Benzoisothiazolin-3-one, 1,1-dioxide, and salts)~~))
Safrol (Benzene, 1,2-methylenedioxy-4-allyl-)
Selenious acid (Selenium dioxide)
Selenium and compounds, N.O.S.*
Selenium sulfide (Sulfur selenide)
Selenium, tetrakis (dimethyl-dithiocarbamate) (Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid)
Selenourea (Carbamimidoselenoic acid)
Silver and compounds, N.O.S.*
Silver cyanide
Sodium cyanide
Sodium dibutyldithiocarbamate (Carbamodithioic acid, dibutyl, sodium salt)
Sodium diethyldithiocarbamate (Carbamodithioic acid, diethyl-, sodium salt)
Sodium dimethyldithiocarbamate (Carbamodithioic acid, dimethyl-, sodium salt)
Sodium pentachlorophenate (Pentachlorophenol, sodium salt)
Streptozotocin (D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-)
Strychnine and salts (Strychnidin-10-one, and salts)
Sulfallate (Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester)
Tetrabutylthiuram disulfide (Thioperoxydicarbonic diamide, tetrabutyl)
1,2,4,5-Tetrachlorobenzene (Benzene, 1,2,4,5-tetrachloro-)
Tetrachlorodibenzo-p-dioxins
Tetrachlorodibenzofurans
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) (Dibenzo-p-dioxin, 2,3,7,8-tetrachloro-)
Tetrachloroethane, N.O.S.* (Ethane, tetrachloro-, N.O.S.*)
1,1,1,2-Tetrachlorethane (Ethane, 1,1,1,2-tetrachloro-)
1,1,2,2-Tetrachlorethane (Ethane, 1,1,2,2-tetrachloro-)
Tetrachlorethylene (Ethene, 1,1,2,2-tetrachloro-)[1]
Tetrachloromethane (Carbon tetrachloride)
2,3,4,6-Tetrachlorophenol (Phenol,2,3,4,6-tetrachloro-)

2,3,4,6-Tetrachlorophenol, potassium salt
2,3,4,6-Tetrachlorophenol, sodium salt
Tetraethyldithiopyrophosphate (Dithiopyrophosphoric acid, tetraethyl-ester)
Tetraethyl lead (Plumbane, tetraethyl-)
Tetraethylpyrophosphate (Pyrophosphoric acid, tetraethyl ester)
Tetramethylthiuram monosulfide (Bis(dimethylthiocarbamoyl) sulfide)
Tetranitromethane (Methane, tetranitro-)
Thallium and compounds, N.O.S.*
Thallic oxide (Thallium (III) oxide)
Thallium (1) acetate (Acetic acid, thallium (I) salt)
Thallium (I) carbonate (Carbonic acid, dithallium (I) salt)
Thallium (I) chloride
Thallium (I) nitrate (Nitric acid, thallium (I) salt)
Thallium selenite
Thallium (I) sulfate (Sulfuric acid, thallium (I) salt)
Thioacetamide (Ethanethioamide)
Thiodicarb (Ethanimidothioic acid, N,N'-[thiobis [(methylimino) carbonyloxy]] bis-, dimethyl ester.)
Thiophanate-methyl (Carbamic acid, [1,2-phyenylenebis (iminocarbonothioyl)] bis-, dimethyl ester)
Thiosemicarbazide (Hydrazinecarbothioamide)
Thiourea (Carbamide thio-)
Thiuram (Bis(dimethylthioucarbamoyl) disulfide)
Tirpate (1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino) carbonyl] oxime.)
Toluene (Benzene, methyl-)
Toluenediamine, N.O.S. (Toluene, 2,5-diamine-)
2,4-Toluenediamine
2,6-Toluenediamine
3,4-Toluenediamine
o-Toluidine hydrochloride (Benzenamine, 2-methyl-, hydrochloride)
Tolylene diisocyanate (Benzene, 2,4- and 2,6-diisocyanato-methyl-)
Toxaphene (Camphene, octachloro-)
Triallate (Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester)
Tribromomethane (Bromoform)
1,2,4-Trichlorobenzene (Benzene, 1,2,4-trichloro-)
1,1,1-Trichloroethane (Methyl chloroform)
1,1,2-Trichloroethane (Ethane, 1,1,2-trichloro-)
Trichloroethene (Trichloroethylene)
Trichloromonofluoromethane (Methane, trichlorofluoro-)
2,4,5-Trichlorophenol (Phenol, 2,4,5-trichloro-)
2,4,6-Trichlorophenol (Phenol, 2,4,6-trichloro-)
2,4,5-Trichlorophenoxyacetic acid (2,4,5-T, salts and esters) (Acetic acid, 2,4,5-trichlorophenoxy-, salts and esters)
2,4,5-Trichlorophenoxypropionic acid (Porpionoic acid, 2-(2,4,5-trichlorophenoxyl), salts and esters (2,4,5-TP, Silvex, salts and esters))
Trichloropropane, N.O.S.* (Propane, trichloro-, N.O.S.*
1,2,3-Trichloropropane (Propane, 1,2,3-trichloro-)
O,O,O-Triethyl phosphorothioate (Phosphorothioic acid, O,O,O-triethyl ester)
Triethylamine (Ethanamine, N,N-diethyl-)
sym-Trinitrobenzene (Benzene, 1,3,5-trinitro-)
Tris(1-aziridinyl) phosphine sulfide (Phosphine sulfide, tris(1-aziridinyl-)
Tris(2,3-dibromopropyl) phosphate (1-Propanol, 2,3-dibromo-, phosphate)
Trypan blue (2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo)]bis(5-amino-4-hydroxy-, tetrasodium salt)
Undecamethylenediamine, N,N'-bis-(2-chlorobenzyl)-,dihydrochloride N,N'-Undecam ethylenebis(2-chlorobenzylamine, dihydrochloride)
Uracil mustard (Uracil 5-[bis(2-chlorethyl)amino]-)
Vanadic acid, ammonium salt (ammonium vanadate)
Vanadium pentoxide (Vanadium (V) oxide)
Vernolate (Carbamothioic acid, dipropyl-,S-propyl ester)
Vinyl chloride (Ethane, chloro-)
Warfarin (2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations less than 0.3%)
Warfarin (2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations greater than 0.3%)
Warfarin salts, when present at concentrations less than 0.3%
Warfarin salts, when present at concentrations greater than 0.3%
Zinc cyanide
Zinc phosphide
Ziram (Zinc, bis(dimethylcarbamodithioato-S,S')-, (T-4)-)

*The abbreviation N.O.S. signifies those members of the general class "not otherwise specified" by name in this listing.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-303-084	Reserved.
WAC 173-303-101	Reserved.
WAC 173-303-103	Reserved.
WAC 173-303-121	Reserved.
WAC 173-303-130	Containment and control of infectious wastes.
WAC 173-303-430	Reserved.
WAC 173-303-440	Reserved.
WAC 173-303-550	Reserved.
WAC 173-303-560	Reserved.
WAC 173-303-575	Reserved.
WAC 173-303-820	Reserved.
WAC 173-303-825	Reserved.

WSR 14-17-086
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 19, 2014, 7:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-23-077.

Title of Rule and Other Identifying Information: Chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations: WAC 296-15-266 Penalties.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way, Auditorium, Tumwater, WA 98501, on September 30, 2014, at 1:30 p.m.

Date of Intended Adoption: October 21, 2014

Submit Written Comments to: Steve Reinmuth or Mike Ratko, Department of Labor and Industries, P.O. Box 44100, Olympia, WA 98504-4100, e-mail steve.reinmuth@lni.wa.gov or michael.ratko@lni.wa.gov, fax (360) 902-4474, by September 30, 2014.

Assistance for Persons with Disabilities: Contact office of information and assistance by September 23, 2014, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The self-insurance section within the department of labor and industries is proposing amendments to WAC 296-15-266. The proposal will define the circumstances under which the department will consider assessing a penalty for an unreasonable delay of benefits, and the process of this penalty request.

This rule is proposed to establish general guidance and procedures as well as necessary clarifications on requesting and assessing penalties against self-insured employers for unreasonable delay of benefits, all of which are originated or required by the industrial insurance law under Title 51 RCW. The board of industrial insurance appeals in its 2012 decision expanded the definition of benefits which may lead to a penalty if medical benefits are delayed. (In re James Coston, BIIA Dec. 11 12310 (2012).

Reasons Supporting Proposal: The rule will help create a level playing field for all other employers and discourage noncompliant behaviors. It will also benefit injured workers in that more timely benefit payments can be ensured for those who are entitled, which is critical for them and their families. The procedures and guidance established by this rule will help eliminate ambiguity that the department may encounter when the situation arises in the future.

Statutory Authority for Adoption: RCW 51.04.020 and 51.48.017.

Statute Being Implemented: RCW 51.48.017.

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

Name of Agency Personnel Responsible for Drafting,Implementation, and Enforcement: Steve Reinmuth, Tumwater, Washington, (360) 902-6275.

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

Small Business Economic Impact Statement

The self-insurance section within the department of labor and industries is proposing rule changes to chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations. The proposed changes will define the circumstances under which the department will consider assessing a penalty for an unreasonable delay of benefits, and the process of this penalty request. Pursuant to the Regulatory Fairness Act (chapter 19.85 RCW), the department shall prepare a small business economic impact statement (SBEIS) if: (a) The proposed rule will impose more than minor costs on businesses in an industry; or (b) requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

To help determine whether the first condition applies to a proposed rule, the Regulatory Fairness Act also defines (1) small business: Any business entity that is owned and operated independently from all other businesses, and that has fifty or fewer employees; (2) minor cost: A cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. It should be noted that for the purpose of SBEIS analysis, the estimated cost of a rule is interpreted and practically captured as the one that only occurs as a result of this proposed rule. Therefore, any current or potential costs resulting from the compliance with the existing statutory requirements or standards will not be taken into consideration, even if they appear, in some cases, substantial or significant from employers' perspectives.

As to the proposed rule changes to WAC 296-15-266, condition (b) does not apply. In addition, as stated in the cost-benefit analysis, this proposal will not impose more than minor costs on average on affected businesses. The rule is intended to establish general guidance and procedures as well as necessary clarifications on requesting and assessing penalties against a self-insured employer for an unreasonable delay of benefits, all of which are originated or required by the industrial insurance law under Title 51 RCW. In light of this, the proposed rule does not create any new requirements that are above and beyond what have already been in place under the law. Furthermore, all self-insured businesses are large businesses based on the definition above, so the proposed rule will not affect the small business community. For these reasons, condition (a) does not apply either. Therefore, the department is not required to prepare an SBEIS for this rule-making project.

A copy of the statement may be obtained by contacting Suchi Sharma, Department of Labor and Industries, P.O. Box 44001, Tumwater, WA 98504-4001, phone (360) 902-6744, fax (360) 902-4204, e-mail suchi.sharma@lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Suchi Sharma, Department of Labor and Industries, P.O. Box 44001, Tumwater, WA 98504-4001, phone (360) 902-6744, fax (360) 902-4204, e-mail suchi.sharma@lni.wa.gov.

August 19, 2014
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

WAC 296-15-266 Penalties. ((~~**What must a self-insurer do when the department issues an order assessing a penalty?** The self-insurer must make payment of the penalty assessment on or before the date the order becomes final.~~)) (1) **Under what circumstances will the department consider assessing a penalty for an unreasonable delay of benefits, when requested by a worker?** Upon a worker's request, the department will consider assessment of an unreasonable delay of benefits penalty for:

(a) Time loss compensation and loss of earning power: The department will issue an unreasonable delay order, and assess associated penalties based on the department's calculation of the time loss or loss-of-earning-power benefits, if a self-insurer:

(i) Has written medical certification that the claimant is unable to work because of the industrial injury or occupational disease; and

(ii) Fails to make the first time loss or loss-of-earning-power payment to the claimant within fourteen calendar days of notice that there is a claim*, or fails to continue time loss or loss-of-earning-power payments on regular intervals as required by RCW 51.32.190(3); and

(iii) Fails to request, with supporting medical evidence and within thirty days of receiving notice of the claim, that the department settle a dispute about the covered conditions or eligibility for time loss compensation or loss-of-earning-power benefits as required by RCW 51.32.190(1).

* Notice of claim is provided to the self-insured employer when all the elements of a claim are met. The elements of a claim are:

• Description of incident. Examples: Self-Insurance Form 2 (SIF-2), physician's initial report (PIR), employer incident report, or other employer records.

• Diagnosis of the medical condition. Examples: PIR, on-site medical facility records if supervised by provider qualified to diagnose, or other medical records.

• Treatment provided or treatment recommendations. Examples: PIR, on-site medical facility records if supervised by provider qualified to treat, or other medical records.

• Application for benefits. Examples: SIF-2, PIR, or other signed written communication that evinces intent to apply.

(b) Payment of medical treatment benefits: The department will issue an unreasonable delay order, and assess associated penalties based on the department's fee schedule, order, and accrued principal and interest, if a self-insurer fails to pay all fees and medical charges within sixty days of receiving a proper billing, as defined in WAC 296-20-125 through 296-20-17004.

(i) If the self-insurer believes that it should not pay the billing, or if there is a dispute regarding whether the treatment is for a related condition, the self-insurer must, within sixty calendar days of receiving a billing, clearly state in writing to the worker, the medical provider, and the department why the payment is denied.

(ii) The department will review the reasons provided by the self-insurer and will make a decision by legal order within thirty days.

(c) Authorization of emergent or life-saving medical treatment benefits: The department will issue an unreasonable delay order, and assess associated penalties, based on the department's fee schedule, order, and accrued principal and interest, if a self-insurer fails to respond to requests to authorize emergent or life-saving treatment, by either allowing or denying the request within thirty business days of the worker's discharge, or fourteen days after receiving notice of the request for treatment, whichever happens first.

(i) If the request is denied, the self-insured employer must clearly tell the medical provider, the claimant and the department, in writing, why the request is being denied.

(ii) If the medical provider or claimant disagrees with the self-insurer's decision, either of them may file a dispute with the department.

(d) Refusal to pay benefits without cause: The department will issue an order determining an unreasonable refusal to pay benefits, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer denies a benefit such as time loss compensation, loss-of-earning-power compensation, or medical treatment if a self-insurer's denial fails to contain genuine medical, vocational, or legal doubt about whether the self-insurer should pay the benefit. Accrued principal and interest will apply to nonpayment of medical benefits.

(e) Paying benefits during an appeal to the board of industrial insurance appeals: The department will issue an unreasonable delay order, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer appeals a department order to the board of industrial insurance appeals, and fails to provide the benefits required by the order on appeal within fourteen calendar days, unless the board of industrial insurance appeals grants a stay of the department order. Accrued principal and interest will apply to nonpayment of medical benefits.

(2) **How is a penalty request created and processed?**

(a) An injured worker may request a penalty against his or her self-insured employer by:

(i) Completing the appropriate self-insurance form or sending a written request providing the reasons for requesting the penalty;

(ii) Attaching supporting documents (optional).

(b) Within ten days of receipt of a certified request, the self-insured employer must send its claim file to the department. Failure to timely respond may subject the self-insured employer to a rule violations penalty under RCW 51.48.080. The employer may attach supporting documents. If the employer fails to timely respond to the penalty request, the department will issue an order in response to the injured worker's request based on the available information.

(c) The department will issue an order on all written penalty requests completed per (a) of this subsection. The department's review during the thirty-day period for responding to the injured worker's request will include only the claim file records and supporting documents provided by the worker and the employer per (a) and (b) of this subsection.

(d) In deciding whether to assess a penalty, the department will consider only the underlying record and supporting documents at the time of the request which will include documents listed in (a) and (b) of this subsection, if timely available, to determine if the alleged untimely benefit was appropriately requested and if the employer timely responded.

(e) The department order issued under (c) of this subsection is subject to request for reconsideration or appeal under the provisions of RCW 51.52.050 and 51.52.060.

WSR 14-17-087
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 19, 2014, 7:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-075.

Title of Rule and Other Identifying Information: Apprenticeship rules; WAC 296-05-003 Definitions, 296-05-007 Rules of procedure, and 296-05-321 Apprenticeship agreement—Cancellation.

Hearing Location(s): Spokane Community College, Apprenticeship and Journeyman Training Center, 2110 North Fancher, Spokane, WA 99217, on September 24, 2014, at 1:30 p.m.; and at the Tukwila L&I Office, 12806 Gateway Drive South, Tukwila Classroom, Tukwila, WA 98168, on October 1, 2014 at 1:00 p.m.

Date of Intended Adoption: November 18, 2014.

Submit Written Comments to: Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, e-mail Beverly.Clark@Lni.wa.gov, fax (360) 902-5292, by October 3, 2014.

Assistance for Persons with Disabilities: Contact Beverly Clark by September 15, 2014, at Beverly.Clark@Lni.wa.gov or (360) 902-6272.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The apprenticeship system in this state is authorized under the federal system of apprenticeship, specifically 29 C.F.R. Part 29 and 30. The apprenticeship program needs to proceed with rule making in response to the need for continued federal recognition of our state system of apprenticeship. The United States Department of Labor recently informed the department that there were a couple of areas the department needs to correct in order to be in full compliance with federal regulations. The department is proposing language to mitigate the concerns of the United States Department of Labor.

Reasons Supporting Proposal: This rule making is in response to a letter dated February 21, 2014, from the United States Department of Labor, in which they accepted labor and industries corrective action proposal concerning Washington's application for continued recognition as a state apprenticeship agency pursuant to Title 29 Code of Federal Regulations (C.F.R.), Part 29. The apprenticeship program worked with the Washington state apprenticeship and training council (WSATC), with representation from business, labor, and the public, regarding employer compliance with apprenticeship rules. The WSATC has endorsed the concept of the proposed changes.

Statutory Authority for Adoption: Chapter 49.04 RCW and RCW 19.285.040.

Statute Being Implemented: Chapter 49.04 RCW and RCW 19.285.040.

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

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

Name of Agency Personnel Responsible for Drafting: Tim Wilson, Tumwater, Washington, (360) 902-5321; Implementation and Enforcement: Elizabeth Smith, Tumwater, Washington, (360) 902-5933.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department's proposed rules are subject to the Regulatory Fairness Act, but they do not require a small business economic impact statement because the proposed changes are exempt by law (see RCW 19.85.025 referencing RCW 34.05.310(4)).

A cost-benefit analysis is not required under RCW 34.05.328. The department's proposed rules are subject to the Regulatory Fairness Act, but they do not require a cost-benefit analysis because the proposed changes are exempt by law.

August 19, 2014
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

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 chapter 49.04 RCW and these rules.

Exception: Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations.

Apprenticeable occupation: Is a skilled 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.

Apprenticeship agreement: A written agreement between an apprentice and either the apprentice's employer(s), or an apprenticeship committee acting as agent

for employer(s), containing the terms and conditions of the employment and training of the apprentice.

Apprenticeship committee: A quasi-public entity approved by the WSATC to perform apprenticeship and training services for employers and employees.

Apprenticeship program: A plan for administering an apprenticeship agreement(s). The plan must contain all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

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.

Cancellation: The termination of the registration or approval status of a program at the request of the supervisor or sponsor. Cancellation also refers to the termination 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).

Certification: Written approval by the WSATC of:

(1) A set of apprenticeship standards established by an apprenticeship program sponsor and substantially conforming to the standards established by the WSATC.

(2) An individual as eligible for probationary employment as an apprentice under a registered apprenticeship program.

Committee program: All apprenticeship programs as further described in WAC 296-05-309.

Competent instructor: An instructor who has demonstrated a satisfactory employment performance in his/her occupation for a minimum of three years beyond the customary learning period for that occupation and:

(1) Meets 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 is recognized within an industry as having expertise in a specific occupation; and

(2) Has training in teaching techniques and adult learning styles, which may occur before or within one year after the apprenticeship instructor has started to provide the related technical instruction.

Competitor: A competing apprenticeship program that provides training in the same or overlapping occupation as the proposed program in the same geographic area proposed. In determining whether an occupation is the same or overlapping as the proposed program's occupation, the council may consider the following:

(1) Washington state apprenticeship and training council approved apprenticeship standards;

(2) Collective bargaining agreements;

(3) Dictionaries of occupational titles;

(4) Experts from organized labor, licensed contractors, and contractors' associations;

(5) Recognized labor and management industry practice;

(6) Scope of work descriptions issued by the department.

Completion rate: The percentage of an apprenticeship cohort who receives 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 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 any federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

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 SE
Tumwater, Washington 98501

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 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. Practical experience must be equal to or greater than the term of apprenticeship.

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.

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.

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).

Probation: (1) Initial: 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 cannot exceed twenty percent of the term of the program, or one year from the date of registration, whichever is shorter. Initial probationary apprentices are not subject to an appeal under the complaint review procedures as defined in WAC 296-05-009. Transferred apprentices are not subject to additional initial probationary periods.

(2) Disciplinary: A time assessed when 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. 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).

Provisional registration: The one-year initial approval of newly registered programs that meet the required standards for program registration, after which the program approval may be made permanent, continued as provisional through the first full training cycle/term, or rescinded following a compliance review by the apprenticeship section of the department.

RCW: The Revised Code of Washington.

Registration: (1) For the purposes of an apprenticeship agreement means 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 apprenticeship program means the acceptance and recording of such program by the WSATC and 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.

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; conducting reviews for compliance with 29 C.F.R. parts 29 and 30, chapters 49.04 RCW and 296-05 WAC.

Regular quarterly meeting: A public meeting held quarterly by the WSATC as described in WAC 296-05-200.

Related/supplemental instruction: 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.

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 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.

Supervision: The necessary education, assistance, and control provided by a journey-level employee that is 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 these rules indicate a duty of the supervisor or secretary of the WSATC, the supervisor may designate a department of labor and industries' employee to assist in the performance of those duties subject to the supervisor's oversight and direction.

Trainee: An individual registered with the supervisor according to WAC 296-05-311.

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 approved program standards.

Training agreement: A written agreement between a training agent and a program sponsor that contains 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 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 296-05-007 Rules of procedure. 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.

(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 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.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-321 Apprenticeship agreement—Cancellation. The supervisor may recommend that an agreement and program be canceled when a program does not comply with these rules or the program's standards. The procedures for cancellation are as follows:

(1) When any program is found to be operating inconsistently or contrary to these rules or its established program standards, the supervisor must notify the offending committee, person, firm or agency of the violation(s).

(2) The offending committee, firm, or agency has sixty calendar days to correct the violation(s).

(3) If the supervisor does not receive notice, within sixty calendar days, that action has been taken to correct the violations, the supervisor may recommend cancellation of the apprenticeship or training program and agreement to the WSATC.

(4) A recommendation to cancel a program must be in writing, addressed to each WSATC member, and detail the reasons for the recommendation.

(5) A copy of the recommendation, along with a notice that the WSATC will consider the recommendation, must be mailed to the last known address of each member of the committee administering said program, or to those persons responsible for the program.

(6) The WSATC must consider the recommendation at its next regularly scheduled quarterly meeting. However, at least thirty calendar days must pass between the date of the recommendation and the date of the regular quarterly meeting. If thirty calendar days have not passed, the recommendation must be considered at the subsequent regular quarterly meeting.

(7) At the regular quarterly meeting, all interested person(s) may present evidence or testimony regarding the recommendation.

(8) The WSATC must act on the recommendation by a majority vote of the members present and voting.

(9) Once the WSATC has voted, it must give written notification of its decision to all interested parties along with the reasons supporting it.

(10) The cancellation of any program or agreement automatically cancels any agreement(s) registered under them. However, any organization or firm not responsible for the violations that caused the cancellation may petition the WSATC for approval of the canceled agreement or program as a new program.

(11) An apprenticeship program disputing a notice of involuntary cancellation for federal purposes may obtain an administrative hearing from the U.S. Department of Labor by filing a written request for a hearing.

(a) The request for a federal hearing must be filed within fifteen days from the date of the mailing of the notices of involuntary cancellation sent by the department to the apprenticeship program, as provided by 29 C.F.R. 29.8 (b)(5). The request for a federal hearing must identify the apprenticeship program and contain a brief description of the reason why the program believes it should not be involuntarily canceled for federal purposes. The written request for a federal hearing must be sent:

(i) If by mail, to:

Apprenticeship Section
Washington State Department of Labor and Industries
P.O. Box 44530
Olympia, WA 98504-4530;

(ii) If by physical delivery, to:

Apprenticeship Section
Washington State Department of Labor and Industries
7273 Linderson Way S.W.
Tumwater, WA 98501-5414;

(iii) If by facsimile (fax), to 360-902-4248; and

(iv) If by e-mail, to apprentice@lni.wa.gov.

"Filing" or "filed" for purposes of this subsection means actual receipt by the department during regular office hours.

(b) The department must promptly forward the sponsor's request for a federal administrative hearing to the U.S. Department of Labor, Office of Apprenticeship and notify the sponsor that it has done so.

(c) The federal administrative hearing regarding the proposed involuntary cancellation of an apprenticeship program for federal purposes is governed by the provisions of 29 C.F.R. 29.8(b) and by such other federal regulations as deemed applicable by the secretary of the U.S. Department of Labor.

(12) Outcomes of administrative proceedings and appeals under state law only affect the registration status of the program for Washington purposes and projects. Outcomes of administrative proceedings and appeals under federal law only affect the registration status of the program for federal purposes and projects.

WSR 14-17-090
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 19, 2014, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-041.

Title of Rule and Other Identifying Information: Chapter 392-502 WAC, Online learning—Approval of multidistrict online providers.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington S.E., Brouillet Conference Room, 4th Floor, Olympia, WA 98504-7200, on September 23, 2014, at 9:00 a.m.

Date of Intended Adoption: October 21, 2014.

Submit Written Comments to: Karl Nelson, 4507 University Way N.E., Suite 204, Seattle, WA 98105, e-mail karl.nelson@k12.wa.us, fax (206) 616-4595, by September 23, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by September 23, 2014, TTY (360) 664-3631 or (360) 725-6133.

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

(1) Add student outcome data to the accountability measures for online providers.

(2) Add the definition of an "online course provider."

(3) Distinguish between an online provider's initial approval, subsequent renewals and ongoing approved status.

(4) Remove the requirement for single-district providers emerging as multidistrict providers to participate in OSPI's full review process.

(5) Modify WAC 392-502-030 to include student achievement performance targets.

(6) Add the requirement for teachers of online courses and programs to be evaluated annually as established in RCW 28A.405.100.

(7) Modify the approval assurance regarding provider responsibility for providing quality web systems in online courses.

(8) Distinguish between approval requirements for "online school programs" and "online course providers."

(9) Add an assurance regarding instructional material adoptions by districts.

(10) Modify the approval and renewal time periods.

(11) Remove redundant data from annual reporting requirements.

(12) Identify corrective action plan requirements.

Statutory Authority for Adoption: Chapter 28A.250 RCW and RCW 28A.150.290.

Statute Being Implemented: Chapter 28A.250 RCW.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Karl Nelson, 4507 University Way N.E., Suite 204, Seattle, WA 98105, (206) 616-9940; and Enforcement: Peter Tamayo, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 664-3631.

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

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

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-23-086, filed 11/19/13, effective 12/20/13)

WAC 392-502-010 Definitions. As used in this chapter, the term:

(1) "Multidistrict online provider" means:

(a) A private or nonprofit organization that enters into a contract with a school district to provide online courses or programs to K-12 students from more than one school district;

(b) A private or nonprofit organization or a school district that enters into contracts with multiple school districts to provide online courses or programs to K-12 students from those districts; or

(c) Except as provided in (c)(i) and (ii) of this subsection, a school district that provides online courses or programs to students who reside outside the geographic boundaries of the school district.

(i) "Multidistrict online provider" does not include a school district online learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225.

(ii) "Multidistrict online provider" also does not include regional online learning programs that are jointly developed and implemented through an interdistrict cooperative program between two or more school districts or between one or

more school districts and an educational service district, unless the annual average headcount of students who reside outside the geographic boundaries of those school districts and who are enrolled in the regional online program is ten percent or more of the total program enrollment headcount. Any agreement establishing such a program must address, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students.

(2) "Online course" means a course, or grade-level course work, in which:

(a) More than half of the course content is delivered electronically using the internet or other computer-based methods; and

(b) More than half of the teaching is conducted from a remote location through an online course learning management system or other online or electronic tools; and

(c) A certificated teacher has the primary responsibility for the student's instructional interaction pertaining to the online course. Primary responsibility means the teacher is the principal individual who provides instructional interactions that may include, but are not limited to, direct instruction, review of assignments, assessment, testing, progress monitoring, and educational facilitation; and

(d) Students have access to the teacher synchronously, asynchronously, or both.

An online course may be delivered to students at school as part of the regularly scheduled school day. An online course also may be delivered to students, in whole or in part, independently from a regular classroom schedule.

(3) "Online school program" means a school program that offers a sequential set of online courses or grade-level course work that may be taken in a single school term or throughout the school year in a manner that could provide a full-time basic education program if so desired by the student. Students may enroll in the program as part-time or full-time students.

An online school program may be delivered to students at school as part of the regularly scheduled school day. An online school program also may be delivered to students, in whole or in part, independently from a regular classroom schedule.

(4) "Online course provider" is an online provider that offers individual online courses that are not delivered as an online school program.

(5) "Online provider" means any provider of an online course or program, multidistrict online providers, all school district online learning programs, and all regional online learning programs.

(((~~(5)~~))) (6) "Accrediting organizations" means the designated bodies identified by the superintendent of public instruction and published on the superintendent of public instruction web site. Accrediting organizations are for providers to use to satisfy the accreditation qualification for being an approved online provider.

(((~~(6)~~))) (7) "Affiliate provider" means a school district that:

(a) Provides online courses offered by one or more approved online provider that provides the course content, the technology platform, and the instructional component of the courses; and

(b) Does not modify the content or instruction of the approved provider's offerings. An affiliate provider may not offer to its students any online course or courses that are provided by a nonapproved online provider.

(((~~(7)~~))) (8) "Single-district provider" means a school district online provider that is not a multidistrict online provider or an affiliate provider.

(((~~(8)~~))) (9) For the purposes of this section, "primarily" is defined as more than half.

AMENDATORY SECTION (Amending WSR 13-23-086, filed 11/19/13, effective 12/20/13)

WAC 392-502-020 Online provider approval process and timeline. (1) This section sets forth the process that online providers must follow to be approved in accordance with RCW 28A.250.020. Beginning with the 2013-14 school year, all online providers must be approved by the superintendent of public instruction for districts to collect state funding, to the extent otherwise allowed by state law, for courses offered by those providers in accordance with WAC 392-502-080.

(2) All online providers seeking initial approval must apply to the superintendent of public instruction for approval as follows:

(a) Multidistrict online providers must submit an application as outlined on the superintendent of public instruction web site which will be reviewed for compliance with the designated approval criteria and must meet or exceed the acceptable defined score. Multidistrict online providers must comply with the superintendent of public instruction's required assurances.

(b) Affiliate providers must submit an affiliate provider application as outlined on the superintendent of public instruction web site. Affiliate providers must also comply with the superintendent of public instruction's required assurances.

(c) Single-district providers must submit a single-district provider application as outlined on the superintendent of public instruction web site. Single-district providers must also comply with the superintendent of public instruction's required assurances.

((~~If, at the end of a school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of a single-district provider and are enrolled in an online program offered by the single-district provider increases to ten percent or more of the total program enrollment headcount, the program shall be required to apply as a multidistrict online provider in the next approval cycle. The program may continue operating the year of the required approval review, but not the following school year unless approved as a multidistrict online provider.~~))

(3) The superintendent of public instruction makes decisions regarding approval of multidistrict provider applications submitted pursuant to this chapter no later than November 1st of each year. A multidistrict online provider's approval status takes effect the beginning of the school year following the date of the superintendent's approval of the

online provider's application. Single-district and affiliate providers may apply at any point, and, subject to the requirements of approval, can be approved immediately by the superintendent of public instruction.

(4) Beginning with the 2012-13 school year, any proposed modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction web site by October 1st of each year. The superintendent will accept feedback on the proposed modifications from any interested parties prior to November 1st of each year. Any final modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction's web site by January 1st of each year.

AMENDATORY SECTION (Amending WSR 13-23-086, filed 11/19/13, effective 12/20/13)

WAC 392-502-030 Approval assurances ((~~and~~)), criteria, and performance targets. (1) This section sets forth the assurances ((~~and~~)), criteria, and performance targets that online providers must meet to be approved under this chapter.

(a) To be approved, online providers must provide the following assurances to the superintendent of public instruction:

(i) The online provider is accredited through an accrediting body as defined in WAC 392-502-010 and agrees to maintain accredited status for the duration of the approval period. Online providers may be candidates for accreditation at the time of application for approval provided that the provider earns full accreditation on the standard timeline.

(ii) Each course and program the online provider offers is aligned with at least eighty percent of the current applicable grade/subject area of Washington state standards. For courses with content that is not included in state standards, the online provider's courses are aligned with at least eighty percent of nationally accepted content standards set for the relevant subjects. Online providers must submit information to the superintendent regarding the standards alignment and the standards aligned.

(iii) All instruction delivered to Washington state students is delivered by Washington state certificated teachers who:

(A) Are assigned to instruct courses in a manner which meets the "highly qualified" definition under the No Child Left Behind Act and in a manner which meets the requirements set forth in chapter 181-82 WAC; and

(B) Are evaluated annually using the revised evaluative criteria and four-level rating system established in RCW 28A.405.100.

(iv) For online providers that offer high school courses, the courses offered by the online provider must be eligible for high school credit pursuant to WAC 180-51-050.

(v) All of the online provider's current and future courses in the applicable areas meet the credit/content requirements in chapter 392-410 WAC.

(vi) All advanced placement courses offered by the online provider have been approved in accordance with the college board advanced placement course audit. For advanced placement courses not yet offered at the time of application, the online provider must assure that those courses will be approved by the college board prior to offering those courses to students.

(vii) The online provider's data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act of 1974, as amended.

(viii) The online provider's web systems and content meet accessibility conformance levels specified in the list of approved provider assurances on the office of superintendent of public instruction's web site.

(ix) The online provider provides all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) The online provider informs the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) The online provider upholds any pertinent federal or state laws, rules or regulations, in the delivery of the online courses or programs.

(xii) The online provider retains responsibility for the quality of courses, web systems, and content offered, regardless of any third-party contractual arrangements, partnerships or consortia, contributing to the content or delivery of the online courses or programs.

(xiii) The online ((~~provider~~)) school program complies with the state assessment requirements including, but not limited to, the requirements of chapter 28A.655 RCW and WAC 392-121-182, as applicable.

(xiv) All of the provider's current and future career and technical education (CTE) courses are aligned to Washington state CTE program standards and have been approved by the office of superintendent of public instruction's CTE office. CTE courses must be taught by a Washington certificated teacher who is also CTE-certificated in the subject area of the course.

(xv) The online provider agrees to abide by any additional assurances required by the superintendent of public instruction.

(xvi) The online ((~~provider~~)) school program agrees that all programs delivered as alternative learning experiences comply with the requirements of WAC 392-121-182. The online course provider agrees to disclose to OSPI the manner in which it supports the requirements of WAC 392-121-182 for online courses delivered outside of an online school program.

(xvii) Instructional materials used by online school programs in online courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(b) Multidistrict online providers must meet the following initial approval criteria by a preponderance of evidence submitted with the online provider's application:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(iii) Student assessment incorporating various types, frequent feedback, and appropriateness for the online learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) School-based support incorporating strategies and systems to allow school-based staff to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and online instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(x) The superintendent may require additional approval criteria pursuant to WAC 392-502-080.

(c) Beginning September 1, 2015, online school programs must meet or exceed each of the following annual performance targets:

(i) The online school program's combined course completion rate and passing rate must be greater than one hundred forty percent. Programs with fewer than twenty online enrollments are not subject to this performance target.

(ii) The online school program's median math student growth percentile for students taking an online math course must be greater than the thirtieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and have a math student growth percentile.

(iii) The online school program's median English language arts student growth percentile for students taking an online English language arts course must be greater than the fortieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and have an English language arts student growth percentile.

(iv) The online school program's percentage of students taking online math courses who meet standard on the state math assessments must be greater than forty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and taken the state math assessment.

(v) The online school program's percentage of students taking online English language arts courses who meet standard on the state English language arts assessments must be greater than fifty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and taken the state English language arts assessment.

(d) Online course providers' combined course completion rate and passing rate must be greater than one hundred forty percent. Online providers must provide OSPI with student-level enrollment and performance information provided to OSPI by the provider. Online course providers must also supply OSPI with a list of each district in the state that they served. An online course provider is not subject to this performance target if they have fewer than twenty online course enrollments.

(2) After review by the online learning advisory committee, the approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site on or before the date the application is made available.

(3) Online provider's application will be reviewed by reviewers selected by the superintendent of public instruction for their experience and expertise. The reviewers will be provided orientations and training to review and score the online provider applications using the approval criteria and scoring protocols.

(4) Single-district provider online programs must incorporate the approval criteria developed by the superintendent of public instruction into the program design.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-040 Appeal of the superintendent's decision. In the event the superintendent of public instruction denies an online provider's initial application for approval, the online provider may appeal the decision as follows:

(1) The online provider may file a revised application with the superintendent of public instruction no later than fifteen days after the online provider received notice of the denial.

(2) The superintendent of public instruction will designate an official to review the online provider's revised application. The designated official will notify the applicant in writing whether the revised application is approved or denied within forty-five business days of the superintendent's receipt of the revised application. This deadline for acting on the request may be extended by the superintendent of public instruction if additional information is required from the applicant.

(3) Decisions made by the superintendent of public instruction under WAC 392-502-020 and 392-502-060 may be appealed as provided for in RCW 34.05.514.

AMENDATORY SECTION (Amending WSR 13-23-086, filed 11/19/13, effective 12/20/13)

WAC 392-502-050 ((~~Approval duration and~~)) Conditions for continued approval. ((~~Approvals will be for the four subsequent consecutive full school years.~~))

(1) Online providers that have been approved must annually provide the superintendent of public instruction information regarding the following:

(a) Online provider's overall instructional program;

(b) Content of individual online courses and online school programs;

(c) Direct link to the online provider's web site;

(d) Registration information for online learning programs and courses;

(e) Teacher information and qualifications;

(f) ((~~Student-to-teacher ratios as defined by the superintendent of public instruction;~~

~~(g) Course completion and pass rates as defined by the superintendent of public instruction; and~~

~~(h)~~)) Other descriptive, evaluative, and comparative information requested by the superintendent of public instruction.

(2) Online providers must carry out the program/courses described in the approval application, abide by the assurances listed in WAC 392-502-030 and certified in the application process, and maintain the approval criteria and performance targets listed in WAC 392-502-030.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-060 Rescinding approvals. (1) Approved online providers that fail to comply with the conditions of approval in WAC 392-502-050, may be subject to rescindment of approval.

(2) Process for rescindment.

(a) The superintendent of public instruction or his or her designee will notify an online provider when there is substantial evidence that the online provider is not meeting one or more of the approval conditions and that the superintendent is considering rescindment. The notification will be in writing and will state the specific areas of concern.

(b) The online provider will be invited to submit a corrective action plan with a timeline to address the specific areas of concern. The corrective action plan must be submitted within fifteen business days of the superintendent's notification. If no corrective action plan is received by the superintendent of public instruction or his or her designee, the provider's approval will be rescinded.

(c) The superintendent of public instruction will consider the corrective action plan and determine whether the plan satisfactorily addresses the specific areas of concern, whether additional actions are necessary, or whether the plan is substantially incomplete and approval must be immediately rescinded. If a corrective action plan is required because of the provider's failure to meet performance targets as specified in WAC 392-502-030, the corrective action plan must include a rate of growth to achieve the performance targets. Before making this decision, the superintendent or his or her designee will provide an opportunity for the online provider to clarify and adjust its plan.

(d) Recognizing the serious nature of rescindment and its potential impact on students, districts and providers, the superintendent of public instruction or his or her designee will only rescind approvals if he or she finds that the ((~~multidistrict~~)) online provider is unwilling to take the necessary corrective actions to bring the courses/programs in compliance with the approval assurances and criteria. If the superintendent of public instruction or his or her designee determines that ((~~a multidistrict~~)) an online provider's approval must be rescinded, the implementation of the rescindment shall, to the greatest extent possible, be timed to prevent unnecessary disruption to the education of the students.

(e) The superintendent of public instruction reserves the right to immediately rescind approval of any provider where conditions exist that jeopardize academic or fiscal integrity or compromise the health and safety of students or staff.

(3) Rescinded providers are responsible for communicating that change in status to their clients. The superintendent of public instruction or his or her designee will remove rescinded providers from the agency's web site.

(4) Rescinded providers are permitted to submit for reapproval during subsequent approval application periods.

AMENDATORY SECTION (Amending WSR 10-01-099, filed 12/17/09, effective 1/17/10)

WAC 392-502-070 Period of initial approval and renewal process. ((~~(1) The approval period is four years, and the renewal process is the same as the approval process.~~

~~(2) Approved providers must initiate their renewal no later than the approval cycle in their fourth year of approved status in order to maintain approval for the following school year.~~))

(1) The initial approval of an online provider will be for a period of four consecutive full school years.

(2) In the final year of the online provider's approval, the superintendent of public instruction will automatically renew the approval for a successive one-year period on October 31st, to be effective at the start of the following school year.

(3) Nothing herein limits the authority of the superintendent of public instruction to rescind an online provider's approval pursuant to WAC 392-502-060.

WSR 14-17-094

WITHDRAWL OF PROPOSED RULES

DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed August 19, 2014, 9:49 a.m.]

WAC 246-817-305 and 246-817-310, proposed by the department of health in WSR 14-04-022, appearing in issue 14-04 of the Washington State Register, which was distributed on February 19, 2014, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 14-17-095
WITHDRAWL OF PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
(By the Code Reviser's Office)
[Filed August 19, 2014, 9:49 a.m.]

WAC 392-140-921, 392-140-923, 392-140-932 and 392-140-933, proposed by the office of superintendent of public instruction in WSR 14-04-131, appearing in issue 14-04 of the Washington State Register, which was distributed on February 19, 2014, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 14-17-096
PROPOSED RULES
BENTON CLEAN AIR AGENCY
[Filed August 19, 2014, 9:50 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141.

Title of Rule and Other Identifying Information: Regulation 1, the changes are primarily housekeeping items such as updating outdated references to WACs and/or RCWs; preparing sections of the rule for submission to the Washington state implementation plan; and consolidation [consolidating] current rules.

Hearing Location(s): Benton Clean Air Agency, 526 South Clodfelter Road, Kennewick, WA 99336, on October 23, 2014, at 5:00 p.m.

Date of Intended Adoption: October 23, 2014, or later.

Submit Written Comments to: Robin Priddy, 526 South Clodfelter Road, Kennewick, WA 99336, e-mail robin.priddy@bentoncleanair.org, fax (509) 783-1304, by October 23, 2014.

Assistance for Persons with Disabilities: Contact 711 relay or Robin Priddy.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes are primarily housekeeping items such as:

- Aligning sections and wording with the Washington Administrative Code in preparation for submission as part of the state implementation plan.
- Consolidation of rules for fugitive dust in Article 4, asbestos in Article 8 and some industrial sources in Article 3.
- Updating outdated references to WACs and/or RCWs.
- Aligning language with the current RCWs and WACs.
- Updating agricultural burning rule and fees per changes already made to the WAC.

Reasons Supporting Proposal: Current rules need the above corrections in order to be able to approve them into the state implementation plan, and to bring them up-to-date.

Statutory Authority for Adoption: RCW 70.94.141 Air pollution control authority—Powers and duties of activated authority.

Statute Being Implemented: Regulation 1 of the Benton Clean Air Agency.

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

Name of Proponent: Benton Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robin Priddy, 526 South Clodfelter, Kennewick, (509) 783-1304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposed regulations strictly clarify and consolidate existing regulation and correct references to RCWs and WACs.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed regulations strictly clarify and consolidate existing regulation and correct references to RCWs and WACs.

August 4, 2014
Robin Priddy
Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the (14-19) issue of the Register.

WSR 14-17-098
PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT
[Filed August 19, 2014, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-052.

Title of Rule and Other Identifying Information: Implementation of SSB 5173 Respecting holidays of faith or conscience including WAC 82-56-010 Purpose, 82-56-020 Definition of undue hardship, and 82-56-030 Application of definition of undue hardship to request.

Hearing Location(s): Capitol Campus, John A. Cherberg Building, 298 15th Avenue S.W., Hearing Room 3, Olympia, WA 98501, on September 30, 2014, at 9:00 a.m.

Date of Intended Adoption: November 1, 2014.

Submit Written Comments to: Kristie Wilson, Office of Financial Management (OFM), P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by September 26, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by September 16, 2014, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5173 allows employees of the state and its political subdivisions two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organiza-

tion. The employer must allow the employee to take this leave unless the employee's absence would impose an "undue hardship" on the employer. OFM was provided authority to establish by rule the definition of "undue hardship."

Reasons Supporting Proposal: This proposal establishes the definition of undue hardship that SSB 5173 tasked OFM to develop. Enacted during the 2014 legislative session, SSB 5173 was effective on June 12, 2014.

Statutory Authority for Adoption: Section 2, chapter 168, Laws of 2014 (SSB 5173).

Statute Being Implemented: Chapter 168, Laws of 2014 (SSB 5173).

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules have no or minimal cost to small business. In addition, the fiscal impact of the bill was captured in the fiscal note requested in the 2014 legislative session. The implementation of the rules will not have any additional fiscal impact to school districts.

A cost-benefit analysis is not required under RCW 34.05.328. OFM is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, OFM does not voluntarily make this statute applicable to this rule adoption nor, to date, has the joint administrative rules review committee made this statute applicable to this rule adoption.

August 19, 2014
Roselyn Marcus
Assistant Director of Legal
and Legislative Services

Chapter 82-56 WAC

UNDUE HARDSHIP

NEW SECTION

WAC 82-56-010 Purpose. (1) Chapter 168, Laws of 2014, provides that state and political subdivision employees are entitled to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. The employer must allow the employee to take unpaid leave for up to two such holidays unless the employee's absence would impose an undue hardship on the employer or the employee is necessary to maintain public safety. Chapter 168, Laws of 2014, directs the director of the office of financial management to establish the definition of "undue hardship" by rule.

(2) The purpose of this chapter is to establish the definition of "undue hardship" for purposes of chapter 168, Laws of 2014.

(3) This chapter applies to employees of the state and its political subdivisions, including:

(a) Employees of school districts;

(b) Nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months;

(c) Employees of public institutions of higher education; and

(d) Employees of community colleges, technical colleges, and workforce training programs.

NEW SECTION

WAC 82-56-020 Definition of undue hardship. For purposes of chapter 168, Laws of 2014, "undue hardship" means an action requiring significant difficulty or expense to the employer. The following factors should be considered in determining whether approving unpaid leave results in an undue hardship to the employer:

(1) The number, composition, and structure of staff employed by the employing entity or in the requesting employee's program.

(2) The financial resources of the employing entity or the requesting employee's program.

(3) The number of employees requesting leave for each day subject to such a request.

(4) The financial impact on the employing entity or requesting employee's program resulting from the employee's absence and whether that impact is greater than a de minimus cost to the employer in relation to the size of the employing entity or requesting employee's program.

(5) Impact on the employing entity, the requesting employee's program, workplace safety or public safety.

(6) Type of operations of the employing entity or requesting employee's program.

(7) Geographic location of the employee or geographic separation of the particular program to the operations of the employing entity.

(8) Nature of the employee's work.

(9) Deprivation of another employee's job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement.

(10) Any other impact on the employing entity's operation or requesting employee's program due to the employee's absence.

NEW SECTION

WAC 82-56-030 Application of definition of undue hardship to request. (1) In determining whether the employee's absence would result in an undue hardship to the employing entity, the employer must make a case-by-case determination based on the specific objective facts and circumstances, not assumed information, present at the time of each request.

(2)(a) The existence of a collective bargaining agreement or bona fide seniority system does not in and of itself relieve the employing entity from determining whether there would be an undue hardship if the request was granted.

(b) When an employee is represented by a union, in determining whether the employee's absence would result in an undue hardship, the request must be reconciled, when fea-

sible, with the provisions of the applicable collective bargaining agreement.

(c) If the employee is covered under a collective bargaining agreement, the employing agency must determine whether the request can be granted without violating that agreement.

WSR 14-17-100
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed August 19, 2014, 12:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-107.

Title of Rule and Other Identifying Information: Eliminating the contribution rate flexibility for members of Teachers' Retirement System Plan 3, WAC 415-111-220.

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Tuesday, September 23, 2014, at 10:00 a.m.

Date of Intended Adoption: September 23, 2014.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-5397, by September 22, 2014, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by September 19, 2014, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Elimination of the annual rate flexibility is necessary to meet plan qualification requirements in the Internal Revenue Code.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Zan Johnston, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7049; and Implementation: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

August 19, 2014
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-03-097, filed 1/17/06, effective 2/17/06)

WAC 415-111-220 How do I choose a defined contribution rate? (1) **Contribution rates:** If you are a member of the Teachers' Retirement System (TRS) Plan 3, the School Employees' Retirement System (SERS) Plan 3, or the Public Employees' Retirement System (PERS) Plan 3, you are required to contribute from your compensation according to one of the following rate structures:

	Base Rate	Additional Rate	Total Contribution Rate
Option A			
All ages	5.0%	0.0%	5.0%
Option B			
Up to age 35	5.0%	0.0%	5.0%
Age 35 to 44	5.0%	1.0%	6.0%
Age 45 and above	5.0%	2.5%	7.5%
Option C			
Up to age 35	5.0%	1.0%	6.0%
Age 35 to 44	5.0%	2.5%	7.5%
Age 45 and above	5.0%	3.5%	8.5%
Option D			
All ages	5.0%	2.0%	7.0%
Option E			
All ages	5.0%	5.0%	10.0%
Option F			
All ages	5.0%	10.0%	15.0%

(2) **How do I make the choice?** Under WAC 415-111-110, it is your responsibility to complete the correct form for choosing a contribution rate and submitting the form in a timely manner to your employer as directed on the form.

(3) **Where do I get the form to make my choice?** Your employer must provide the appropriate form to choose a contribution rate if you are enrolling in Plan 3 or transferring from Plan 2 to Plan 3.

(4) **When do I have to choose?** You must choose a contribution rate within ninety calendar days from your date of hire in an eligible position. However, if you are transferring from Plan 2 to Plan 3, you must choose a contribution rate at the same time you transfer. The ninety-day period does not apply to a member transferring from Plan 2 to Plan 3.

(5) **When do contributions begin?**

(a) Once you choose a contribution rate, contributions will begin the first day of the pay cycle in which you make the choice.

(b) If the employer advises the department that you should be reported into Plan 3 membership retroactively, the ninety-day period starts from the date it is discovered that you

should have been reported. The department will decide which date to use.

(6) **What if I work for more than one employer?** If you are a Plan 3 member working in eligible positions for more than one employer, you may select a different contribution rate with each employer.

(7) **What happens if I do not make a choice?** Under RCW 41.34.040, you will be assigned a base rate of 5% (Option A) if:

(a) You are a new employee or changing your employer, and do not choose a contribution rate within the ninety-day election period described in subsection (4) of this section; or

(b) You are transferring from Plan 2 to Plan 3 and do not choose a contribution rate at the time of transfer. Contributions required under subsection (a) or (b) will begin the first day of the pay cycle in which you are assigned to Option A.

(8) **Can I change my contribution rate?**

(a) If you are a PERS 3 or SERS 3 member, once you choose a contribution rate or are assigned the base rate of 5% (Option A), you cannot change that contribution rate unless you change employers. This rule is required by an IRS decision on the tax qualified status of PERS 2 and 3 and SERS 2 and 3.

(b) Each time you change employers, you must choose a new contribution rate within ninety days or you will be assigned a base rate of 5% (Option A). No contributions will be taken until you choose a rate or until the ninety-day period has elapsed, whichever occurs first.

(c) Each January, through January 2015, TRS Plan 3 members may change their contribution rate option by providing written notification to their employer as described in WAC 415-111-110(1). After January 2015, TRS Plan 3 members may only change their contribution rate option as provided in (b) of this subsection. The termination of TRS rate flexibility after January 2015 is necessary to meet plan qualification requirements in the Internal Revenue Code.

WSR 14-17-102
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed August 19, 2014, 12:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-004.

Title of Rule and Other Identifying Information: Traction tire devices—Automatic tire chains.

Hearing Location(s): General Administration Building, Room 106, 210 11th Avenue S.E., Olympia, WA 98504-2600, on September 23, 2014, at 9:00 a.m.

Date of Intended Adoption: September 24, 2014.

Submit Written Comments to: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail wsprules @wsp.wa.gov, fax (360) 596-4015, by September 22, 2014.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by September 19, 2014, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules to include an automatic tire chain formerly approved by the state commission on equipment in the 1980s.

Reasons Supporting Proposal: Inclusion of an automatic tire chain as a traction device under certain circumstances.

Statutory Authority for Adoption: RCW 46.37.005, 46.37.420.

Statute Being Implemented: RCW 46.37.420.

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

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

Name of Agency Personnel Responsible for Drafting: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504, (360) 596-4017; Implementation and Enforcement: Washington State Patrol, P.O. Box 42600, Olympia, WA 98504, (360) 596-4000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The language being proposed is clarifying language to a process that is already in place. It is not anticipated that there will be a cost to small businesses associated with this proposed change.

A cost-benefit analysis is not required under RCW 34.05.328. The proposal provides clarifying language regarding a process already in place.

August 19, 2014
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-19-073, filed 9/16/10, effective 10/17/10)

WAC 204-24-015 Definitions. (1) "All wheel drive" means a vehicle which has four-wheel drive capability and may be driven with all wheels in gear.

(2) "Alternative traction device (ATD)" means pneumatically driven chains which, when engaged, spin under the drive wheels automatically as traction is lost or a traction device differing from metal chains in construction, material or design but capable of providing traction equal to or exceeding that of such metal chains under similar conditions.

(3) "Automatic tire chain" means an air-operated centrifugal force system which deploys short lengths of chain underneath the drive wheels.

(4) "Cable laid rope" means a compound laid rope consisting of several ropes or several layers of strands laid together into one rope.

(((~~4~~))) (5) "Cable tire chains" means any ladder-type cable tire chain assemblies designed for use on tires that have been manufactured in accordance with the standards of the Tire & Rim Association, Inc.; 3200 West Market Street; Akron, Ohio 44313.

(((~~5~~))) (6) "Cross cable fastener" means any suitable fastener used to attach each cross cable to the side cable. The fastener must be constructed and assembled to prevent accidental detachment.

(((~~6~~))) (7) "Cross cable traction reinforcement sleeves" means a device that is constructed of the manufacturer's specified material and of suitable length and width to maximize traction, braking, cornering and longevity.

(((~~(7)~~))) (8) "Fastener" means any suitable connecting device, secured to one end of a side cable constructed so that it can connect to the opposing end and be easily closed (engaged or fastened) and be readily opened (released) by hand.

(((~~(8)~~))) (9) "Link tire chains" means tire chains which consist of at least two chain loops, one on each side of the tire, connected by evenly spaced metal cross chains across the tire tread.

(((~~(9)~~))) (10) "Reinforced cross cables" means stranded cable wrapped or covered to provide increased resistance to abrasive wear. This covering may be either a hard drawn spring wire, a high-carbon steel wire or nylon type 6 or 12. The wrapped or covered cable must be enclosed by traction reinforcement sleeves covering said cable essentially from side connector to side connector. Cross cable must be of specified length and provide proper drape over the tire tread.

(((~~(10)~~))) (11) "Side cable" means stranded cable to complete one full circumference along the tire sidewall.

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

WAC 204-24-020 Standards for tire chains. (1) Link tire chains must meet the National Association of Chain Manufacturers Tire Chain Specifications NACM-5179(TC).

(2) Cable tire chains must be designed for use on tires mounted in accordance with specifications in Society of Automotive Engineers (SAE) Recommended Practice J1232, Class S, and SAE Informational Report J683a. Oversized tires, snow tires, special service, or special traction tires, etc., may require chains of a larger size.

(a) Classifications. Cable tire chains described in this specification must be of the following types as specified for regular and restricted clearances:

(i) Passenger car;

(ii) Single light truck;

(iii) Heavy truck;

(iv) Special police and emergency vehicle.

(b) Requirements:

(i) Components. Cable tire chain assemblies must consist of two side cables, or two outer and one inner side cable, with reinforced cross cables, cross cable fastener, and fasteners necessary to form a complete assembly.

(ii) Material.

(A) Stranded side and stranded cross cable wire must be constructed of preformed galvanized high-carbon steel with a minimum of 450 pounds breaking strength with seven wires per strand and seven strands per cable. The lay must be a right hand lay.

(B) Wire covering stranded cable must be constructed of high-carbon plow steel wire with a minimum tensile strength of 230,000 pounds per square inch.

(C) Spring wire covering stranded cable must be constructed of harddrawn spring wire with a minimum tensile strength of 200,000 pounds per square inch.

(D) Cables, spring, and plow wire must be manufactured in conformance to SAE Recommended Practice J113.

(E) Cross cable fasteners must be constructed of open hearth, electric furnace, or basic oxygen process steel.

(F) Metallic cross cable traction reinforcement sleeves must be constructed of open hearth, electric furnace, or basic oxygen process steel and shall comply with the following American Society for Testing Materials (ASTM) standards: Standard E6 - Bend Test, Standard E8 - Tension Test, Standard E18 - Test Methods for Rockwell Hardness, and Standard A568 - Table of Chemical Content of Steel.

(G) Nonmetallic cross cable traction reinforcement sleeves shall be constructed of "Zytel" ST-801 nylon or its equivalent.

(H) All side cable fasteners are to be constructed of material that will allow easy installation and removal.

(iii) Spacing of cross cable. The first cross cable must be attached to that point of each side cable nearest the fastener that will permit the fastener to lie in the proper plane when the assembled cable tire chain is applied to the tire. On single cable tire chains, the remainder of the cross cables must be attached to the side cable at intervals designed to provide for at least one cross cable in contact with the roadway at all times. On dual-triple tire chains, the remainder of the cross cable shall be attached to the outer side cables at like intervals and to the inner side chain with opposing cross cables staggered at the same intervals.

(iv) Tolerances.

(A) Cross cable length. The inside length of all cross cable, including fasteners held in the same plane, must be within a tolerance of minus 1/8 inch to plus 1/8 inch of the specified length indicated by the chain manufacturer's specifications. The length shall be measured by hanging the cross cable vertically on a horizontal pin and measuring the inside to inside length. The number of traction reinforcement sleeves in a cross cable may not vary from the number specified by the manufacturer.

(B) Side cable length. The length of all side cables must be within tolerance of minus 1/8 inch to plus 1/2 inch of the length indicated by the chain manufacturer's specifications.

(C) Stranded cable size. Stranded cable size must be subject to the following tolerances:

(I) Material up to and including .094 inch (2.4 mm) diameter shall not be less than the designated diameter and shall not exceed .010 inch (.25 mm) over the specified diameter.

(II) Material over .094 inch (2.4 mm) diameter shall not be less than the specified diameter and shall not exceed .014 inch (.36 mm) over the specified diameter.

(D) Component dimensions. The dimensions of manufactured components may vary, but the assembled cable chains must meet the tolerances specified in (b)(iv)(A), (B), and (C) of this subsection.

(E) Finish. All cable tire chains must have a rust-resistant finish for protection in transit and storage.

(F) Identification. Each half set of cable tire chains must be permanently marked with the manufacturing company's name, initials or trademark in order that it may be easily identified when not in the original container.

(3) Automatic tire chain system must:

(a) Consist of:

(i) A switch or button located within reach of the driver in the vehicle cab;

(ii) An air valve; and

(iii) An air cylinder and chain wheel with units mounted on the rear suspension in order to apply the chain to make contact with the inside wheel.

(b) Be periodically inspected by the operator for proper mechanical conditions;

(c) Display a sign with letters at least one inch high indicating the vehicle is equipped with the automatic tire chain. The design of the sign must be approved by the manufacturer of the automatic tire chain.

AMENDATORY SECTION (Amending WSR 12-17-116, filed 8/21/12, effective 9/21/12)

WAC 204-24-050 Use of tire chains or other traction devices. (1) Vehicles under 10,000 pounds gross vehicle weight.

When traffic control signs are posted by the department of transportation it will be unlawful for any vehicle to enter the controlled area without having mounted on its drive tires the traction device specified by the sign, which must also meet the requirements of WAC 204-24-040.

(a) Exception for all wheel drive vehicles. When "chains required" signs are posted, all-wheel drive vehicles will be exempt from the chain requirement when all wheels are in gear and are equipped with approved traction devices as specified in WAC 204-24-040 provided that tire chains for at least one set of drive tires are carried in the vehicle.

(b) Alternative traction devices listed on the patrol's web site as being approved for passenger vehicles as outlined in this chapter will be considered approved for use when "chains required" signs are posted.

(2) Vehicles or combinations of vehicles over 10,000 pounds gross vehicle weight rating (GVWR).

When traffic control signs marked "chains required" are posted by the department of transportation it will be unlawful for any vehicle or combination of vehicles to enter the controlled area without having mounted on its tires, tire chains as follows: Provided, That highway maintenance vehicles operated by the department of transportation for the purpose of snow removal and its ancillary functions are exempt from the following requirements if such vehicle has sanding capability in front of the drive tires.

(a) Vehicles or vehicle combinations with two to four axles including but not limited to trucks, truck-tractors, buses and school buses: For vehicles with a single drive axle, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers; one tire on the last axle of the last trailer or semi-trailer, must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(b) Automobile transporters are any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles. For vehicles with single drive axles, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of each of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(c) Vehicle combinations with five axles consisting of a truck tractor with dual drive axles and a tandem axled semi-trailer; all tires on one drive axle may be chained or one tire on each side of each of the drive axles may be chained. Chains must be applied to a minimum of four tires on the drive axles. On the tandem axle semi-trailer, the chained tire may be on either of the last two axles.

(d) Vehicle combinations with five axles, consisting of a truck and trailer, or truck tractor and semi-trailer with a single drive axle, or truck tractor, semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles, all tires on one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(e) Vehicle combinations with six or more axles, including but not limited to truck and trailer or truck tractor and semi-trailer or truck tractor semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles where traffic control signs marked "approved traction tires required" are posted, all tires on one of the drive axles must be chained. For vehicles with dual drive axles where traffic control signs marked "chains required" are posted, all tires on one of the drive axles must be chained. In addition, one tire on each side of the additional drive axle must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle must be chained. For vehicles with tandem axle trailers or semi-trailers, the chained tire may be on either of the last two axles.

(f) All vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must carry a minimum of two extra chains for use in the event that road conditions require the use of more chains or in the event that chains in use are broken or otherwise made useless.

(g) Approved chains for vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must have at least two side chains to which are attached sufficient cross chains of hardened metal so that at least one cross chain is in contact with the road surface at all times. Plastic chains will not be allowed.

(h) If automatic tire chains are used, the vehicle must carry regular tire chains for use on the outside tires of the drive axle of all axles equipped with the automatic tire chain.

(i) On the following routes all vehicles and combinations of vehicles over 10,000 gross vehicle weight rating (GVWR) pounds must carry sufficient tire chains to meet the requirements of this chapter from November 1 to April 1 of each year or at other times when chains are required for such vehicles:

(i) I-90 - Between North Bend (MP 32) and Ellensburg (MP 101).

(ii) SR-97 - Between (MP 145) and Junction SR-2.

(iii) SR-2 - Between Dryden (MP 108) and Index (MP 36).

(iv) SR-12 - Between Packwood (MP 135) and Naches (MP 187).

(v) SR-97 - Between the Columbia River (MP 0.00) and Toppenish (MP 59.00).

(vi) SR-410 - From Enumclaw to Naches.

(vii) SR-20 - Between Tonasket (MP 262) and Kettle Falls (MP 342); and SR-20 between Newhalem (MP 120) and Winthrop (MP 192).

(viii) SR-155 - Between Omak (MP 79) and Nespelem (MP 45).

(ix) SR-970 - Between (MP 0) and (MP 10).

(x) SR-14 - Between Gibbons Creek (MP 18.00) and (MP 108.40) intersection of Cliffs Road.

(xi) SR-542 - Mt. Baker highway between (MP 22.91) and (MP 57.26).

(xii) I-82 - Between Ellensburg Exit 3 (MP 3.00) and Selah Exit 26 (MP 26.00).

Vehicles making local deliveries as indicated on bills of lading and not crossing the mountain pass are exempt from this requirement if operating outside of a chain required area.

(3) For the purpose of this section, chained will mean that the tire has either a tire chain approved for use under chapter 204-24 WAC or an alternative traction tire device listed on the patrol's web site as approved for the type of vehicle combination listed in this section.

(4) The Washington state department of transportation or Washington state patrol may prohibit any vehicle from entering a chain/approved traction device control area when it is determined that the vehicle will experience difficulty in safely traveling the area.

WSR 14-17-103
PROPOSED RULES
OLYMPIC COLLEGE
[Filed August 19, 2014, 1:22 p.m.]

Continuance of WSR 14-09-114.

Preproposal statement of inquiry was filed as WSR 13-24-048.

Title of Rule and Other Identifying Information: Revision of Olympic College student conduct code, chapter 132C-120 WAC.

Hearing Location(s): Olympic College, 1000 Olympic College Way N.W., Room 221, Poulsbo, WA, on October 27, 2014, at 10:00 a.m.; at Olympic College, 937 West Alpine Way, Room 118, Shelton, WA, on October 28, 2014, at 2:00 p.m.; and at Olympic College, 1600 Chester Avenue, Humanities and Student Services Building, Room 112, Bremerton, WA, on October 29, 2014, at 10:00 a.m. and 2:00 p.m.

Date of Intended Adoption: November 18, 2014.

Submit Written Comments to: Thomas Oliver, Olympic College, CSC 210, 1600 Chester Avenue, Bremerton, WA 98337, e-mail toliver@olympic.edu, fax (360) 475-7505 by October 20, 2014.

Assistance for Persons With Disabilities: Contact access services by (360) 475-7540 or e-mail accessservices@olympic.edu, by October 17, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is an update of existing policy to bring it into alignment with the federal Violence Against Women Act (VAWA) and to bring language into alignment with current practice. Existing student disciplinary procedures will be repealed and replaced with procedures in compliance with VAWA and state law. Substantive provisions in the student conduct code will be updated, including but not limited to new prohibitions regarding sexual harassment, sexual violence, harassment, retaliation, academic dishonesty, weapons, and use of marijuana, tobacco, electronic cigarettes and related products.

Reasons Supporting Proposal: This policy will meet federal and state laws as follows: Titles VII and IX of the Civil Rights Act of 1964, the Age Discrimination and Employment Act, Section 504 of the Rehabilitation Act of 1974, the Americans with Disabilities Act of 1990, the VAWA, and the state law against discrimination, chapter 49.60 RCW.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Chapter 28B.50 RCW.

Rule is necessary because of federal law, see "Reasons Supporting Proposal" above.

Name of Proponent: Damon Bell, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Damon Bell, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7476.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will be no impact on any entity other than Olympic College.

A cost-benefit analysis is not required under RCW 34.05.328. There is no significant economic impact.

August 19, 2014
Thomas Oliver
Rules Coordinator

NEW SECTION

WAC 132C-120-022 Statement of student rights. (1) 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.

(2) 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 educational goals of the college:

(a) Academic freedom.

(i) 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.

(ii) 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).

(iii) 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.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate conduct, and harassment, including sexual harassment.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-050 Authority to prohibit trespass. The president or designee, acting through the vice-president ((~~of~~)) for the student services area or such other designated person shall have authority and power to:

(1) Prohibit the entry of, or withdraw the license or privilege of a person or persons or any group of persons to enter onto or remain upon any portion of a college facility; or

(2) Give notice against trespass to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of a college facility; or

(3) Order any person, persons, or group of persons to leave or vacate all or any portion of a college facility.

Such authority and power may be exercised to halt any event that is deemed to be unreasonably disruptive of order or threatens to disrupt the movement of persons from facilities owned and/or operated by the college. Any student or person who shall disobey a lawful order given by the college president or designee pursuant to the requirements of this rule shall be subject to disciplinary and/or legal action.

AMENDATORY SECTION (Amending WSR 85-13-067, filed 6/18/85)

WAC 132C-120-055 Emergency procedures. In the event of activities or situations which interfere with the orderly operation of the college, the ((~~dean of students~~)) vice-president for the student services area or college president or their designees shall determine the course of action which appears to offer the best possibility for resolution of the problem. The emergency procedures outlined below will be followed if deemed essential:

(1) Inform those involved in such activities that they are in violation of college and/or civil regulations.

(2) Inform them that they should cease and desist.

(3) If they do not respond within a reasonable time, call the civil authorities.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-060 Right to demand identification. Olympic College identification is required for the purpose of determining the identity of a person as a student, where identification as a student is a prerequisite to admission or the charge for admission to any college activity, or where identification as a student is required in a case of alleged violation of this code, any college employee may demand that any person on college property or at a college activity produce evidence of student enrollment at the college. Failure of the student to produce identification as required shall subject the student to disciplinary action.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-065 ((~~Violations.~~)) Prohibited student conduct. ((~~Any student shall be subject to immediate disciplinary action provided for in this student conduct code who, either as a principal actor or aider or abettor:~~

~~(1) Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;~~

~~(2) Violates any provision of the student conduct code;~~

~~(3) Commits any of the following acts which are hereby prohibited:~~

~~(a) Assault, reckless endangerment, intimidation, harassment, or interference upon another person.~~

~~(b) Disorderly, abusive, or bothersome conduct. Disorderly or abusive behavior that interferes with the rights of others or obstructs or disrupts teaching, research, or administrative functions.~~

~~(c) Failure to follow instructions. Inattentiveness, inability, or failure of student to follow the instructions of a college official, thereby infringing upon the rights and privileges of others.~~

~~(d) Providing false information to the college, forgery, or alteration of records.~~

~~(e) Illegal assembly, disruption, obstruction or other act which materially and substantially interferes with vehicular or pedestrian traffic, classes, hearings, meetings, the educational and administrative functions of the college, or the private rights and privileges of others.~~

~~(f) Inciting others. Intentionally encouraging, preparing, or compelling others to engage in any prohibited conduct.~~

~~(g) Hazing. Hazing means any method of 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, mental or emotional harm to any student or other person.~~

~~(h) False complaint. Knowingly or recklessly filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.~~

~~(i) False alarms. Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.~~

~~(j) Sexual harassment. Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or~~

~~physical conduct of a sexual nature where such behavior offends the recipient, causes discomfort or humiliation, or interferes with job or school performance.~~

~~(k) Malicious harassment. Malicious harassment involves intimidation or bothersome behavior directed toward another person because of, or related to that person's race, color, religion, gender, sexual orientation, ancestry, national origin, or mental, physical, or sensory disability.~~

~~(l) Theft and robbery. Theft of the property of the district or of another as defined in RCW 9A.56.010 through 9A.56.050 and RCW 9A.56.100 as now law or hereafter amended. Includes theft of the property of the district or of another; actual or attempted theft of property or services belonging to the college, any member of its community or any campus visitor; or knowingly possessing stolen property.~~

~~(m) Damage to any college facility or equipment. Intentional or negligent damage to or destruction of any college facility, equipment, or other public or private real or personal property.~~

~~(n) Unauthorized use of college or associated students' equipment or supplies. Converting of college equipment, supplies, or computer systems for personal gain or use without proper authority.~~

~~(o) Illegal entry. Entering, or remaining in any administrative office or otherwise closed college facility or entering after the closing time of college facilities without permission of an employee in charge.~~

~~(p) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons, instruments, or substances that can be used to inflict bodily harm or to damage real or personal property, except for authorized college purposes or law enforcement officers.~~

~~(q) Refusal to provide identification (e.g., valid driver's license, student identification, passport, or state identification card) in appropriate circumstances to any college employee in the lawful discharge of the employee's duties.~~

~~(r) Smoking. Smoking in any classroom or laboratory, the library, or in any college facility, office, or any other smoking not in compliance with college policy or chapter 70.160 RCW.~~

~~(s) Controlled substances. Using, possessing, being demonstrably under the influence of, or selling any narcotic or controlled substance as defined in chapter 69.50 RCW as now law or hereafter amended, except when the use or possession of a drug is specifically prescribed as medication by an authorized medical doctor or dentist. For the purpose of this regulation, "sale" shall include the statutory meaning defined in RCW 69.50.410 as now law or hereafter amended.~~

~~(t) Alcoholic beverages. Being demonstrably under the influence of any form of alcoholic beverage. Possessing or consuming any form of alcoholic beverage on college property, with the exception of sanctioned events, approved by the president or his or her designee and in compliance with state law.~~

~~(u) Computer, telephone, or electronic technology violation. Conduct that violates the college published acceptable use rules on computer, telephone, or electronic technology use, including electronic mail and the internet.~~

~~(v) Computer trespass. Gaining or denying others access, without authorization, to a computer system or network, or electronic data owned, used by, or affiliated with Olympic College.~~

~~(w) Ethics violation. The breech 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 courses or is pursuing as an educational goal or major. These ethics codes must be distributed to students as part of an educational program, course, or sequence of courses and the student must be informed that a violation of such ethics codes may subject the student to disciplinary action by the college.~~

~~(x) Criminal law violation, illegal behavior, other violations. Students may be accountable to the civil or criminal authorities and the college for acts which constitute violations of federal, state, or local law as well as college rules where the students' behavior is determined to threaten the health, safety, and/or property of the college and its members. The college may refer any such violations to civilian or criminal authorities for disposition.~~)) The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists 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 assistance 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 acts of dishonesty. Such acts 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) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, 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, abuse, threats, intimidation, harassment and stalking.** Assault, physical abuse, verbal abuse,

threat(s), intimidation, harassment, bullying, stalking, 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 subsection:

(a) Bullying is severe, persistent, or pervasive physical or verbal abuse and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated 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 an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. 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. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction 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, 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 firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or his delegee may authorize possession of a weapon on campus upon a showing 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 therein.

(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, or sale 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 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, or sale of any legend drug (any drug that requires a prescription including both controlled substances and nonnarcotic drugs), 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.** Use of tobacco, electronic cigarettes, and related products is prohibited in all buildings owned or controlled by the college, in all college vehicles, and on all college property, except in designated areas. All smoking materials are to be lit,smoked and extinguished in designated areas only. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his: Race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy/family status; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes, but is not limited to, sexual harassment, sexual intimidation, and sexual violence. Use of alcohol or other drugs will not function as a defense to a violation of college policies regarding sexual misconduct. Cases involving allegations of sexual misconduct are subject to special discipline procedures; see WAC 132C-120-300 through 132C-120-315.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome 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 person to participate in or benefit from the college's educational programs/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

including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, or gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(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; genetic information; 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.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliation is considered a separate offense, regardless of the outcome of the original complaint.

(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 violations include 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, including college traffic and parking rules.

(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.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-076 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.

An instructor has the authority to exclude a student from ((~~any single~~)) up to three class ((~~session during which~~)) sessions if the student is disruptive to the learning environment pending a meeting with the vice-president for the student services area or a designee. The instructor shall report any such exclusion from the class to the vice-president ((~~of~~)) for the student services area or designee who may ((~~summarily suspend the student or~~)) at his or her discretion initiate ((~~conduct~~)) disciplinary proceedings as provided in this procedure. The vice-president ((~~of~~)) for the student services area may impose a disciplinary probation that restricts the student from the classroom until the student has met with the vice-president ((~~of~~)) for the student services area and the student agrees to comply with the specific conditions outlined by the vice-president ((~~of~~)) for the student services area for conduct in the classroom. The student may appeal the disciplinary sanction according to the disciplinary appeal procedures.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-100 Statement of jurisdiction. ((~~Admission to the college carries with it the expectation that the student will obey the law, comply with rules and regulations of the college, and is accountable for his/her conduct.~~

~~All rules herein adopted shall apply to every student on any college property or engaged in any college related activity or function. Sanctions for violation of the rules of student conduct herein adopted will be administered by the college in the manner provided by said rules. When violations of the laws of the state of Washington and/or the United States are involved, the college may in addition refer such matters to civil authorities. In the case of minors such conduct may be referred to parents or guardians.~~

~~This code is applicable in all matters of discipline, and any disciplinary action imposed upon a student shall be taken in accordance with this code, unless the disciplinary action was imposed according to separate college policy which the student contractually accepted as a condition to participation in a particular course of study.~~

~~Disciplinary action, including dismissal from the college, may be imposed on a student for failure to abide by rules of conduct contained herein. The form of disciplinary action imposed will determine whether and under what conditions a violator may continue as a student at the college. Practices in disciplinary cases may vary in formality according to the severity of the case.~~

~~College administrative officers may deny admission to a prospective student or reregistration to a current student if, in their judgment, the student would not be competent to profit from the curricular offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college inconsistent with the purpose of the institution.~~

~~When reference in this document is made to a college official, that reference shall be read to include the specified college official or designee.~~)) The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited 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, campus housing, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission 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. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college 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.

NEW SECTION

WAC 132C-120-101 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of the student services area or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132C-120-102 Brief adjudicative proceeding authorized. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Parking violations.

(2) Outstanding debts owed by students.

(3) Use of college facilities.

(4) Residency determinations.

(5) Use of library - Fines.

(6) Challenges to contents of education records.

(7) Loss of eligibility for participation in institution sponsored athletic events.

(8) Student conduct appeals involving the following disciplinary actions:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands;

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

NEW SECTION

WAC 132C-120-103 Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

WAC 132C-120-104 Definitions. The following definitions shall apply for the purposes of this student conduct code:

(1) "Student conduct officer" is a college administrator designated by the president or vice-president for the student services area to be responsible for implementing and enforcing the student conduct code. The president or vice-president for the student services area is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(2) "Conduct review officer" is the vice-president for the student services area or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(3) "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.

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline 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 student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Respondent" is the student against whom disciplinary action is initiated.

(7) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by first class 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 deposited in the mail.

(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. 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) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) "College premises" includes 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 all persons taking courses at or through the college, whether on a full-time or 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 admission are considered "students."

(11) "Business day" means a weekday, excluding weekends and college holidays.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-110 Initiation of disciplinary ((~~proceedings~~)) action. ((~~Any person shall have the right to request sanctions for violations of the student conduct code.~~

~~All disciplinary proceedings will be initiated by the vice-president of student services who may also establish advisory panels to advise or act for the office in disciplinary proceedings.~~

~~Any student accused of violating any provision of the rules of student conduct will be called for an initial conference with the vice-president of student services and will be informed of what provision or provisions of the code of student conduct he/she is charged with violating and what appears to be the range of penalties which might result from consideration of the disciplinary proceeding.~~

~~After considering the evidence in the case and interviewing the accused, the vice-president of student services may take any of the following actions:~~

~~(1) Terminate the proceeding, exonerating the accused;~~

~~(2) Dismiss the case after whatever counseling and advice may be appropriate;~~

~~(3) Impose sanctions directly such as warning, reprimand, restitution, disciplinary probation, suspension, and/or expulsion;~~

~~(4) Refer the matter to the student conduct board for a recommendation to the vice-president of student services as to appropriate action.~~

~~A student accused of violating any provision of the code of student conduct shall be given written notification of the vice-president of student services' action.~~

~~Disciplinary action recommended by the vice-president of student services is final unless the accused exercises his/her right of appeal as provided in WAC 132C-120-115.~~)) (1) All disciplinary actions will be initiated by the student conduct officer. 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 complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her 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 opportu-

nity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten 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 his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) 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 132-120-145.

(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.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-115 Appeal((s)) from disciplinary action. ((~~Any disciplinary action may be appealed as provided. Action by the vice-president of student services may be appealed to the student conduct board. Action taken by the student conduct board may be appealed to the president. Action taken by the president shall be final. All appeals by a student must be made in writing and presented to the college president within five instructional days of the disciplinary action/recommendation or the right to appeal is waived and the disciplinary action/recommendation is automatically imposed. Decisions on appeals will be rendered in writing within three instructional days following conclusion of the appeal process.~~

~~Time periods referenced in the code may be altered or waived on written agreement of the accused and vice-president of student services.~~

~~An appeal of a disciplinary action stays enforcement of the action until the appeal process is exhausted or a final decision reached.~~)) (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of 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 student conduct 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 disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary sanction for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended. Protective measures which have been imposed to protect the health, safety and welfare of an individual or the campus community, such as no contact orders, will not be stayed.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the disciplinary actions listed in (8)(a) through (c) of this subsection.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final and are not subject to appeal.

NEW SECTION

WAC 132C-120-116 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a 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) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both parties within ten 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 twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132C-120-117 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a 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.

(3) During the review, the president 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 and must be served on the parties within twenty-one 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 does not make a disposition of the matter within twenty-one days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-120 ((~~Composition of the~~)) Student conduct ((~~board~~)) committee. ((~~The student conduct board shall be composed of seven members on an ad hoc basis as needed. Members shall be selected as follows:~~

~~(1) The college president shall appoint three members and an alternate from the faculty.~~

~~(2) The president shall appoint one member from the college administration and an alternate.~~

~~(3) The college president shall appoint two members from the student body. The president may consult the president of the associate students of Olympic College for a recommendation of student members.~~

~~(4) The president of the college shall designate a chair from the membership who shall preside at all meetings and hearings. The chair shall not vote except to break a tie vote.~~)) (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president; and

(c) One administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrator 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 a party 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 party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132C-120-122 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. 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 hearing 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 rel-

evant 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 his/her choice. A respondent may elect to be represented by an attorney at his or her 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 is represented by an attorney, the student conduct officer may also be represented by an appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-125 ((~~Procedures for~~)) Student conduct ((~~board~~)) committee hearings—Presentations of evidence. ((~~The student conduct board will hear and make recommendations to the president of the college on all disciplinary cases referred/appealed to it.~~

~~The accused has a right to a fair and impartial hearing before the student conduct board on any charge of violating rules of student conduct. The accused's failure to cooperate with hearing procedures shall not prevent the student conduct board from making its findings of fact, conclusions, and recommendations. Failure by the accused to cooperate may be taken into consideration by the student conduct board in recommending appropriate disciplinary action to the president.~~

~~The accused shall be given written notice of the time and place of the hearing before the student conduct board and afforded not less than five instructional days notice thereof. Said notice shall contain:~~

~~(1) A statement of the time, place, and nature of the disciplinary hearing.~~

~~(2) A statement of allegations and reference to relevant sections of the student conduct code involved.~~

~~The accused shall be entitled to hear and examine evidence against him/her and be informed of the identity of its source, shall be entitled to present evidence or witnesses in his/her own behalf and cross-examine adverse witnesses as to relevant factual matters.~~

~~Only those matters presented at the hearing in the presence of the accused will be considered by the student conduct board in determining whether there is sufficient evidence to cause it to believe the accused violated the student conduct code.~~

~~The student may be represented by counsel of choice at the disciplinary hearing. If the student elects to choose a duly licensed attorney admitted to practice in any state as counsel, he/she may do so provided that not less than three instructional days notice of the same is given the vice-president of student services.~~

~~In all disciplinary proceedings, the college may be represented by the vice-president of student services, designee, and/or assistant attorney general who shall present the college's case against the student accused of violating rules of the student conduct code.~~

~~The chair of the student conduct board shall preside at the disciplinary hearing and may establish organizational or operational procedures necessary to the conduct of the hearing. The chair may rule on all questions before the student conduct board and may limit repetitious testimony and exclude immaterial or irrelevant evidence. Strict rules of evidence shall not be applied.~~

~~The proceedings of the hearing shall be recorded and copies of presented materials retained. Such shall be kept in the vice president of student services office after use by the student conduct board.~~)) (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 he/she selects, 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.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-135 ((~~Decision by the~~)) Student conduct ((~~board~~)) committee—Initial decision. ((~~Upon conclusion of the disciplinary hearing, the student conduct board shall in closed session consider the evidence therein presented. By majority the board shall reach its conclusions and recommended disciplinary action. The board shall issue in written form its conclusions and recommended disciplinary action within three instructional days of the conclusion of the hearing to the student, the vice-president of student services,~~

~~and the president. The disciplinary recommendations of the board shall be limited to the following:~~

~~(1) That the student or students be exonerated and the proceedings terminated.~~

~~(2) That any disciplinary action provided in WAC 132C-120-145 be imposed on the student or students.~~

~~Disciplinary action recommended by the student conduct board shall be automatically imposed unless the accused exercises his/her right of appeal to the president as provided in WAC 132C-120-115.~~)) (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, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty-one 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 conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. 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 sanction(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.

NEW SECTION

WAC 132C-120-139 Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one 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 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. The president's 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.

(3) The president shall provide a written decision to all parties within twenty-one days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-145 Disciplinary ((~~actions~~)) sanctions and terms and conditions. ((~~The following disciplinary actions are hereby established and shall be usual sanctions imposed upon violators of the code of student conduct:~~

~~Disciplinary warnings: Notice to a student either verbally or in writing that he/she has been in violation of the rules of student conduct or has otherwise failed to satisfy the college's expectations regarding conduct. Such warnings imply that continuation or repetition of the specific conduct involved or other misconduct will result in one of the more serious disciplinary actions described below.~~

~~Reprimand: Formal action censuring a student for violation of the rules of student conduct. Reprimands are always made in writing. A reprimand indicates to the student that continuation or repetition of the specific conduct involved or other misconduct will result in one of the more serious disciplinary actions described below.~~

~~Disciplinary probation: Formal action placing conditions upon the student's continued attendance for violation of the code of student conduct. The action will specify, in writing, the period of probation and any conditions such as limiting the student's participation in extracurricular activities. Disciplinary probation may be for a specified term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.~~

~~Dismissal: Termination of student status for violation of the code of student conduct. Dismissal may be for a stated or for an indefinite period. The notification dismissing a student will indicate, in writing, the term of the dismissal and any special conditions which must be met before readmission. There is no refund of tuition and fees for the quarter in which action is taken but tuition and fees paid in advance for a subsequent quarter are to be refunded.~~

~~Restitution: The college may demand restitution from individual students for destruction or damage of property. Failure to make arrangements for restitution promptly will result in the cancellation of the student's registration and will prevent the student from reregistration.~~)) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

Disciplinary warning: A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

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.

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 limited time or may be for the duration of the student's attendance at the college.

Disciplinary suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

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.

Disciplinary terms and conditions that may be imposed alone or in conjunction with a disciplinary sanction include, but are not limited to, the following:

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 proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

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 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.

Not in good standing: A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(1) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(2) Ineligible to 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.

Other terms and conditions: The vice-president for the student services area may impose other terms and conditions, such as a no-contact order, as necessary to protect the health, safety and welfare of the campus community.

AMENDATORY SECTION (Amending WSR 85-13-067, filed 6/18/85)

WAC 132C-120-200 Summary suspension ((~~rules~~)). ((~~The board of trustees of Olympic College recognizes the need to provide the administration with a summary system of student discipline which can swiftly and fairly respond to immediate disorder. Summary suspension rules are not to be construed to supplant provisions of the student conduct code or usual disciplinary procedures, but rather to supplement the student conduct code by providing an emergency method of suspension during the pendancy of investigation and prosecution of student violations that will subsequently be heard on their merits consistent with student conduct code procedures.~~)) (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 reasons 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 his or her 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 with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

NEW SECTION

WAC 132C-120-300 Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving 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 decision.

The college reserves the right to take whatever protective measures it deems necessary in response to an allegation of sexual misconduct in order to protect the rights and personal safety of our campus community members. Such measures include, but are not limited to, reasonable changes to academic/housing arrangements, no-contact orders, counseling, interim suspension from campus pending a proceeding, and reporting the matter to local police. The college will consider the concerns and rights of both the recipient of and the person accused of the sexual misconduct. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the college reserves the right to impose different sanctions, from warning to dismissal, depending on the severity of the offense.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132C-120-010 through 132C-120-200. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132C-120-305 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) "Complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking;

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132C-120-310 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX compliance officer or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the vice-president for the student services area for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct 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.

(3) In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(4) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(5) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(6) 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 disciplinary 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 his or her 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 disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132C-120-315 Supplemental appeal rights. (1) The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132C-120-310(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

(a) Exoneration and dismissal of the proceedings;

(b) A disciplinary warning;

(c) A written reprimand;

(d) Disciplinary probation;

(e) Suspensions of ten instructional days or less; and/or

(f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) 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 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 his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132C-120-071	Academic dishonesty.
WAC 132C-120-105	Procedural standards in disciplinary proceedings.
WAC 132C-120-130	Conduct of disciplinary hearings.
WAC 132C-120-140	Final decision on disciplinary appeals.
WAC 132C-120-150	Readmission after dismissal.
WAC 132C-120-205	Initiation of summary suspension proceedings.
WAC 132C-120-210	Notice of summary suspension.
WAC 132C-120-215	Permission to enter or remain on campus.
WAC 132C-120-220	Procedures for summary suspension hearing.
WAC 132C-120-225	Decision by vice-president of student services.
WAC 132C-120-230	Failure to appear for summary suspension hearing.
WAC 132C-120-235	Summary suspension proceedings not duplicitous.

WSR 14-17-111
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed August 19, 2014, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-028.

Title of Rule and Other Identifying Information: Amendments to WAC 51-50-0200 and 51-50-0903 of the 2012 International Building Code.

Hearing Location(s): DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga,wa,gov [sbcc@ga.wa.gov], fax (360) 586-5366, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 30, 2014, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment to the Building Code will redefine "portable school classrooms" and add a definition of "clusters" of such classrooms; it will modify the requirements for fire sprinklers in clusters of portable school classrooms below six thousand square feet for the purpose of improving fire safety and efficient egress for school occupants.

This matter is also the subject of an emergency rule currently in place under WSR 14-17-065.

Reasons Supporting Proposal: The existing code language regarding portable classrooms was originally adopted many years ago and has become obsolete due to changes in technology and fire safety requirements for schools. It no longer reflects the needs of school districts regarding fire safety in portable school classrooms. The existing rules negatively impact building plans for school districts throughout the state. This proposed modification of the Building Code will provide immediate economic relief to school districts planning to add portable classrooms to meet capacity, and will provide a safer environment for students, school staff, and other Group E building occupants and visitors. Identical changes have been submitted to modify the Fire Code in WAC 51-54A-0202 and 51-54A-0903 under WSR 14-16-030.

Statutory Authority for Adoption: RCW 19.27.074, 19.27.031.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne McCaughan, P.O. Box 41449, Olympia, WA 98504-1449, (360) 407-9279; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules pertain to Group E portable school classrooms, and would revise the Building Code. The rules are proposed for adoption due to numerous requests for interpretation for this code section. The rules will eliminate obsolete language related to portables, and will add definitions for "portable school classrooms" and for "clusters" of such classrooms. The rule will also clarify and modify requirements for fire sprinklers in such classrooms. Existing rules have had a negative impact on school districts, and adoption of these proposed rules will eliminate that impact.

A copy of the statement may be obtained by contacting Joanne McCaughan, Washington State Building Code Council, P.O. Box 41449, Olympia, WA 98504-1449, phone (360) 480-2596, fax (360) 586-9088, e-mail joanne.mccaughan@des.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not a listed agency under RCW 34.05.328 (5)(a)(i).

June 13, 2014
C. Ray Allshouse
Council Chair

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-0200 Chapter 2—Definitions.

SECTION 202—DEFINITIONS.

ADULT FAMILY HOME. A dwelling, licensed by Washington state, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

AIR-IMPERMEABLE INSULATION. An insulation having an air permeance equal to or less than 0.02 L/s-m^2 at 75 Pa pressure differential tested in accordance with ASTM E2178 or ASTM E283.

CHILD CARE. The care of children during any period of a 24-hour day.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

CLUSTER. Clusters are multiple *portable school classrooms* separated by less than the requirements of the building code for separate buildings.

HOSPICE CARE CENTER. A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

NIGHTCLUB. An A-2 Occupancy use under the 2006 International Building Code in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

NONSTRUCTURAL CONCRETE. Any element made of plain or reinforced concrete that is not part of a structural system required to transfer either gravity or lateral loads to the ground.

PORTABLE SCHOOL CLASSROOM. A prefabricated structure((,)) consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in

one or more sections((~~, which requires a chassis to be transported,~~)) and is designed to be used as an educational space with or without a permanent foundation. The structure shall be ((~~trailerable and~~)) capable of being demounted and relocated to other locations as needs arise.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:
1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table 1004.1.2, provided that the aggregate area of any cluster ((~~or portion of a cluster~~)) of portable school classrooms does not exceed ((~~5,000~~)) 6,000 square feet (((~~1465 m^2~~))) (557 m^2); and clusters of portable school classrooms shall be separated as required by the building code((~~.~~)); or
2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table 1004.1.2, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each class room shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m^2); and clusters of portable school classrooms shall be separated as required by the building code; or
3. Group E occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.2.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m^2).

2. A Group M fire area is located more than three stories above grade plane.

3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m^2).

4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m^2).

903.2.8 Group R. An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

WSR 14-17-113
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed August 19, 2014, 4:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-088.

Title of Rule and Other Identifying Information: WAC 182-532-720 TAKE CHARGE program—Eligibility.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 23, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 24, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on September 23, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 22, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will update TAKE CHARGE program eligibility criteria to comply with changes in state and federal law.

Reasons Supporting Proposal: HCA must implement federal requirements under the Affordable Care Act, and the changes under the legislative session of 2013 concerning eligibility for TAKE CHARGE in accordance with the federal waiver amendments.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

Rule is necessary because of federal law, the Patient Protection and Affordable Care Act, Public Law 111-148.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Mick Pettersen, HCA, P.O. Box 42716, Olympia, WA, (360) 725-1842; Implementation and Enforcement: Maureen Considine, HCA, P.O. Box 45530, Olympia, WA, (360) 725-1652.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has ana-

lyzed the proposed rule and concludes that it does not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

August 19, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-008, filed 7/25/13, effective 9/1/13)

WAC 182-532-720 TAKE CHARGE program—Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in WAC 182-503-0530, and give proof of citizenship or qualified alien status and identity upon request from the medicaid agency;

(b) Provide a valid Social Security number (SSN);

(c) Be a resident of the state of Washington as described in WAC ((~~388-468-0005~~)) 182-503-0520;

(d) Have an income at or below two hundred ((~~fifty~~)) sixty percent of the federal poverty level as described in WAC ((~~182-505-0100~~)) 182-503-0502;

(e) Need family planning services;

(f) Have applied for categorically needy coverage, unless the applicant:

(i) Is a domestic violence victim who is covered under the alleged perpetrator's health insurance;

(ii) Is under eighteen years of age and is seeking confidential services; or

(iii) Has an income between one hundred fifty percent and two hundred sixty percent (inclusive) of the federal poverty level.

(g) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(((~~g~~))) (h) Not be covered currently through another ((~~medical assistance~~)) Washington apple health program for family planning. If categorically needy coverage is approved for a TAKE CHARGE recipient, the individual will be enrolled in the categorically needy program.

(2) ((~~A client~~)) An applicant who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) An applicant who has concurrent coverage under a creditable health insurance policy as defined in WAC 182-12-109 is not eligible for TAKE CHARGE unless the applicant is seeking confidential services and is either under nineteen years old or is a domestic violence victim who is covered under the perpetrator's insurance.

(4) A client is authorized for TAKE CHARGE coverage for one year from the date the medicaid agency determines eligibility. Upon reapplication for TAKE CHARGE by the client, the medicaid agency may renew the coverage for an additional period of up to one year, or for the duration of the waiver, whichever is shorter.

WSR 14-17-114
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed August 19, 2014, 4:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-065.

Title of Rule and Other Identifying Information: WAC 182-527-2742 Services subject to recovery.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 23, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 24, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on September 23, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 22, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will reduce the range of services subject to recovery.

Reasons Supporting Proposal: Rule changes are necessary to remove a financial barrier to applying for health care coverage under the Affordable Care Act. For the Affordable Care Act to be implemented successfully, it is important to get as many people as possible to apply for health care coverage through the health benefit exchange.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, the Patient Protection and Affordable Care Act, Public Law 111-148.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Mick Pettersen, HCA, P.O. Box 42716, Olympia, WA, (360) 725-1842; Implementation and Enforcement: Stephen Kozak, HCA, P.O. Box 45534, Olympia, WA, (360) 725-1343.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rule and concludes that it does not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

August 19, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

WAC 182-527-2742 Services subject to recovery. The medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, ((~~in order~~)) to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state-only funded long-term care services (LTC), and subsection (3) of this section covers liability for all other ((~~state-funded~~)) state-only funded services. An estate can be liable under any of these subsections.

(1) The client's estate is liable for:

(a) All medicaid services provided from July 26, 1987, through June 30, 1994;

(b) The following medicaid services provided after June 30, 1994, and before July 1, 1995:

(i) Nursing facility services;

(ii) Home and community-based services; and

(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services((~~.~~));

(c) The following medicaid services provided after June 30, 1995, and before June 1, 2004:

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and long-term support administration (ALTSA) of the department of social and health services (DSHS); and

(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection((~~.~~));

(d) The following services provided on and after June 1, 2004, through December 31, 2009:

(i) All medicaid services, including those services described in subsection (c) of this section;

(ii) Medicare savings programs services for individuals also receiving medicaid;

(iii) Medicare premiums only for individuals also receiving medicaid; and

(iv) Premium payments to managed care organizations((~~.~~));

(e) The following services provided on or after January 1, 2010, through December 31, 2013:

(i) All medicaid services except those ((~~defined under~~)) described in (d)(ii) and (iii) of this subsection;

(ii) All institutional medicaid services described in (c) of this subsection (((~~c) of this section~~));

(iii) Premium payments to managed care organizations; and

(iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid((~~.~~)); and

(f) The following services provided after December 31, 2013:

(i) Nursing facility services, including those provided in a developmental disabilities administration (DDA) residential habilitation center (RHC);

(ii) Home and community-based services authorized by ALTSA or DDA, as follows:

(A) Community options program entry system (COPES);

(B) New Freedom consumer directed services (NFCDS);

(C) Basic Plus waiver;

(D) CORE waiver;

(E) Community protection waiver;

(F) Children's intensive in-home behavioral support (CIIBS) waiver;

(G) Medicaid personal care;

(iii) The portion of the Washington apple health (WAH) managed care premium used to pay for LTC services under the program of all-inclusive care for the elderly (PACE) authorized by ALTSA;

(iv) The portion of the WAH managed care premium used to pay for LTC services under the Washington medicaid integration partnership (WMIP) authorized by ALTSA or DDA;

(v) Roads to community living (RCL) demonstration project;

(vi) Personal care services funded under Title XIX or XXI;

(vii) Private duty nursing administered by ALTSA or DDA;

(viii) Intermediate care facility for individuals with intellectual disabilities (ICF/ID) services provided in either a private community setting or in an RHC; and

(ix) Hospital and prescription drug services provided to a client while receiving services under subsection (1)(f)(i) through (viii) of this section.

(2) The client's estate is liable for all state-only funded ((~~long-term care~~)) LTC services (excluding the services listed in subsection (3)(a) through (d) of this section) and related hospital and prescription drug services provided to:

(a) Clients of the home and community services division of DSHS on and after July 1, 1995; and

(b) Clients of the ((~~developmental disabilities administration of DSHS~~)) DDA on and after June 1, 2004.

(3) The client's estate is liable for all ((~~state-funded~~)) state-only funded services provided regardless of the age of the client at the time the services were provided, with the following exceptions:

(a) State-only funded adult protective services (APS);

(b) Supplemental security payment (SSP) authorized by DDA;

(c) Offender reentry community safety program (ORCSP); and

(d) Volunteer chore services.

WSR 14-17-117
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed August 20, 2014, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-096.

Title of Rule and Other Identifying Information: WAC 16-401-060 Annual assessment—Grapevines, the agency is proposing to adopt a $.10 per vine annual assessment limit on grapevines as a result of a petition submitted by the Washington Association of Wine Grape Growers. This is not a fee increase.

Hearing Location(s): Washington State Department of Agriculture, 21 North First Avenue, Pest Program Conference Room, 1st Floor, Yakima, WA 98902, on September 23, 2014, at 11:00 a.m.

Date of Intended Adoption: October 7, 2014.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by September 23, 2014.

Assistance for Persons with Disabilities: Contact Henri Gonzales by September 16, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing to amend WAC 16-401-060 to place a $.10 per vine annual assessment limit on grapevines as a result of a petition submitted by the Washington Association of Wine Grape Growers. The current assessment is five percent on the gross sale price of the wholesale market value for all grapevine propagation material. Although, the five percent assessment will remain in effect, this amendment will limit the assessment to $.10 per vine. This will allow Washington nurseries to remain competitive with out-of-state nurseries and provide the same amount of funding for nursery improvement projects.

Reasons Supporting Proposal: The grapevine assessment was initially implemented in 2003 to provide funding for improving the foundation vineyard at Washington State University and to support grapevine improvement projects. The current assessment is five percent on the gross sale price of the wholesale market value for all grapevine propagation material. When the assessment was established, most grapevines were grown on their own roots (rooted cuttings) with an approximate present-day wholesale value of $1-2 per vine. Currently, the grape industry is moving toward grafted grapevines which have a wholesale value of $5 or more per vine. This change in practice results in a higher assessment collected and could essentially put Washington stock at a competitive disadvantage. Putting a $.10 per vine cap on the assessment should ensure the industry remains competitive with other states and provide adequate income to support grapevine related improvement projects.

Statutory Authority for Adoption: RCW 15.13.310, 15.14.015, and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.13.310 and 15.14.015.

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

Name of Proponent: Washington Association of Wine Grape Growers, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes no additional regulations or costs on Washington businesses. The proposal actually sets a limit on the current assessment which will essentially result in future cost reductions for nurseries.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

August 18, 2014
Brad White
Assistant Director

AMENDATORY SECTION (Amending WSR 03-09-112, filed 4/22/03, effective 5/23/03)

WAC 16-401-060 Annual assessment—Grapevines. As provided in RCW 15.13.310, an annual assessment of five percent, not to exceed $0.10 per grapevine, on the gross sale price of the wholesale market value for all grapevine propagation material produced in Washington, and sold within the state or shipped from the state by any licensed nursery dealer, is established.

WSR 14-17-118
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed August 20, 2014, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-093.

Title of Rule and Other Identifying Information: Chapter 16-462 WAC, Grape planting stock—Registration and certification, the agency is proposing to adopt changes to better align with the model grapevine standard of the National Clean Plant Network (NCPN) as a result of a petition submitted by the Washington Association of Wine Grape Growers. These changes include:

(1) Defining certification levels;

(2) Adding grapevine virus A, grapevine red blotch virus, grapevine vein clearing virus, and *Xylella fastidiosa* as regulated pests;

(3) Repealing the required testing for nematodes of the genus *Longidorus* prior to planting registered vines; and

(4) Improving language clarity.

Hearing Location(s): Washington State Department of Agriculture, 21 North First Avenue, Pest Program Conference Room, 1st Floor, Yakima, WA 98902, on September 23, 2014, at 11:00 a.m.

Date of Intended Adoption: October 7, 2014.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by September 23, 2014.

Assistance for Persons with Disabilities: Contact Henri Gonzales by September 16, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing to amend chapter 16-462 WAC, the grapevine certification rule, to align with the model grapevine standard of NCPN. It would also add grapevine virus A, grapevine red blotch virus, grapevine vein clearing virus, and *Xylella fastidiosa* as regulated pests. Following the NCPN model gives growers a clearer understanding of certification requirements.

Reasons Supporting Proposal: NCPN was created to protect specialty crops from the spread of economically harmful plant pests and diseases. Their mission is to provide healthy planting stock that is easier to propagate, requires fewer chemical inputs, and produces higher crop yields and better crop quality. This is done through programs which screen plant selections for viruses and other diseases that can be spread by contaminated planting stock.

Washington's grapevine certification program is a voluntary program that was first adopted in 1968 for the purpose of providing the grape growers a source of planting stock free of harmful pathogens. The rule has been revised several times since then to address new threats and the changing needs of a rapidly evolving grape industry. Modifying our certification program is necessary to continue to reduce the chance of introduction of exotic pests that can be difficult and costly to control and to further standardize our program with the NCPN model.

Statutory Authority for Adoption: RCW 15.14.015 and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.14.015.

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

Name of Proponent: Washington Association of Wine Grape Growers, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes no additional regulations or costs on Washington businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

August 18, 2014
Brad White
Assistant Director

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-010 Grape planting stock program—General. (1) Grapevines or parts of grape plants may be designated as registered stock or certified stock, if they and the stock from which they were produced have been inspected, indexed, and tested in accordance with procedures and requirements outlined in this chapter and found to be in compliance with all standards and requirements established in this chapter.

(2) The issuance of a state of Washington plant tag, stamp, or other document under this chapter means only that the tagged, stamped, or otherwise documented planting stock has been subjected to standards and procedures described in this chapter and determined to be in compliance with its standards and requirements. The department disclaims all expressed or implied warranties, including without limitation, implied warranties of merchantability and fitness for particular purpose, regarding all plants, plant parts, and plant materials under this chapter.

(3) The department is not responsible for disease, genetic disorders, off-type, failure of performance, mislabeling, or otherwise, in connection with this chapter. No grower, nursery dealer, government official, or other person is authorized to give any expressed or implied warranty, or to accept financial responsibility on behalf of the department regarding this chapter.

(4) Participation in the grape planting stock certification program is voluntary.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

"Certified grape planting stock" means vines, rooted cuttings, cuttings or grafted plants taken or propagated directly from foundation vines or registered vines in compliance with the provisions of this chapter.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture or the director's designee.

"Foundation block" means a planting of grapevines established, operated, and maintained by Washington State University, or other sources approved in writing by the director, that are indexed and found free from viruses designated in this chapter and that are not off-type.

"Generation 1 (G1)" means original mother plants indexed for the viruses of concern by the Clean Plant Center Northwest at Washington State University or an equivalent facility approved by the department. The Clean Plant Center Northwest web site is: http://healthyplants.wsu.edu/grape-program-at-cpcnw/.

"Generation 2 (G2)" means grapevines propagated from G1 mother plants and grown in accordance with the requirements of this chapter.

"Generation 3 (G3)" means grapevines propagated from G1 or G2 mother plants and grown in accordance with the requirements of this chapter.

"Generation 4 (G4)" means grapevines propagated from G1, G2, or G3 mother plants and grown in accordance with this chapter. This is material most often grown for commercial vineyards.

"Index" means testing for virus infection by making a graft with tissue from the plant being tested to an indicator

plant, or by any other testing method approved by the department.

"Indicator plant" means any herbaceous or woody plant used to index or determine virus infection.

"Mother vine" means a grapevine used as a source for propagation material.

"National Clean Plant Network (NCPN)" means the national network of clean plant centers established in 2008 and supported by the United States department of agriculture. The NCPN web site is: http://nationalcleanplantnetwork.org/.

"Off-type" means appearing under visual examination to be different from the variety listed on the application for registration and certification, or exhibiting symptoms of a genetic or nontransmissible disorder.

"Registered block" means a planting of registered grapevines maintained by a nursery and used as a source of propagation material for certified grapevines.

"Registered vine" means any ((~~vine propagated from a foundation block~~)) G2 or G3 grapevine approved by the director, identified to a single ((~~vine~~)) grapevine source, and registered with the Washington state department of agriculture, in compliance with provisions of this chapter.

"Tissue culture" means aseptically removing a vegetative shoot tip from growth arising from a dormant cutting ((~~from a foundation plant~~)) or from green growth (i.e., softwood) from a ((~~foundation~~)) plant during the growing season and aseptically transferring this shoot tip to a suitable vessel containing an appropriate culture medium.

"Virus-like" means a graft-transmissible disorder with symptoms resembling a characterized virus disease, including, but not limited to, disorders caused by viroids and phytoplasmas.

NEW SECTION

WAC 16-462-018 Certification levels. All propagative material produced under this program must be derived from Generation 1 stock and grown under conditions that mitigate the risk of reinfection. Generation 1 level material is produced at the Clean Plant Center-Northwest (CPC-NW) at Washington State University, or other grapevine foundation facilities within the National Clean Plant Network (NCPN) and approved by the department. The accession numbers relating to the single grapevine source at CPC-NW or other approved facilities must be retained for tracking purposes. At each stage of propagation, progeny plants drop to a lower certification level.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-020 Requirements for participation in the grape planting stock program. (1) The applicant shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of registered blocks and planting stock.

(2) The applicant must maintain records identifying the foundation source of registered ((~~vines~~)) grapevines and certified planting stock((~~. The applicant must make~~)) and provide these records ((~~available~~)) to the department upon request.

(3) The applicant shall take suitable precautions in cultivation, irrigation, movement and use of equipment, and in other farming practices, to guard against spread of soil-borne pests to planting stock entered in this program. The applicant shall keep all registered blocks and certified planting stock clean cultivated except for approved cover crops.

(4) Following notification by the department, the applicant shall remove and destroy immediately any registered ((~~vine~~)) grapevine or certified planting stock found to be off-type or affected by a virus or virus-like disease or a quarantine pest.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-021 Requirements for registered blocks. (1) All registered grapevines must be identified by the number assigned to the single ((~~vine~~)) grapevine source in the foundation block from which they were taken.

(2) With the exception of practices allowed in subsections (3), (4), and (5) of this section, registered plants must be propagated directly from cuttings taken from a ((~~foundation block~~)) G1 grapevine.

(3) Plants propagated from a ((~~foundation block by tissue culture~~)) G1 grapevine and grown entirely under laboratory or greenhouse conditions may serve as a source of softwood cuttings or shoot tip culture used to establish a registered block ((~~or registered~~)) of G2 grapevines.

(4) G3 registered grapevines may be propagated from ((~~other~~)) G2 registered grapevines within the same registered block for the purpose of increasing the size of the ((~~registered~~)) block or for replacement grapevines((~~, if the mother vine was propagated directly from a foundation vine~~)).

(5) Participating nurseries must obtain ((~~a permit~~)) written permission from the department to propagate ((~~registered~~)) G3 grapevines from ((~~other registered~~)) G2 grapevines for the purpose of establishing or increasing other registered blocks within the nursery((~~. All of~~)) if the following conditions ((~~must be~~)) are complied with:

(a) The mother vines were ((~~propagated directly from foundation vines~~)) G2 grapevines;

(b) Propagation occurs ((~~under controlled conditions adequate to prevent the introduction of pests~~)) in a laboratory or insect proof greenhouse by tissue culture or softwood cuttings; and

(c) The mother vine is no more than two years old, or the department has determined the mother vine is free of regulated viruses.

(6) Prior to planting a registered ((~~vines~~)) block, the growing area and its contiguous borders of not less than ten feet must be tested for the presence of the nematodes of the genus *Xiphenema* ((~~and Longidorus~~)), which can be virus vectors. If ((~~either~~)) a *Xiphenema* nematode is detected, the growing area must be fumigated in accordance with rates and practices recommended by Washington State University. This treatment must be carried out under the supervision of the department.

(7) Registered blocks must be located at least one hundred feet from noncertified or nonregistered grapevines. This does not apply to registered stock grown in a fully enclosed

greenhouse, screenhouse or laboratory, providing the facility does not contain noncertified grapevines.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-022 Requirements for certified planting stock. (1) Certified planting stock, including all components of budded or grafted plants, must be propagated from cuttings taken from ((~~registered or foundation~~)) G1, G2, or G3 grapevines.

(2) Cuttings from registered blocks must be sorted and kept separate by variety and selection number or clone.

(3) Treatment to control nematodes and other soil-borne pests may be required at any time by the department.

(4) All certified planting stock other than greenhouse grown plants must comply with the grades and standards for Washington certified grape planting stock as listed in WAC 16-462-055.

(5) Certified stock must be separated from noncertified grapevines by one of the following distances. This requirement does not apply to certified stock grown in a fully enclosed greenhouse, screenhouse or laboratory, providing the facility does not contain noncertified grapevines.

(a) Ten feet for any land treated to control nematodes; or

(b) Twenty feet for land not specifically treated to control nematodes.

(6) Certification is based solely on compliance with the requirements prescribed in WAC 16-462-050 and other requirements of this chapter.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-025 Foundation, registered, and certified grape planting stock—Inspections. (1) Inspections and indexing of registered grapevines and certified planting stock will be performed by the department at times determined to be suitable for the detection of virus and virus-like disease symptoms. ((~~Washington State University~~)) The Clean Plant Center Northwest will inspect and index the foundation block (G1).

(2) The department will index registered grapevines by methods consistent with those utilized by the ((~~Washington State University grapevine foundation program~~)) Clean Plant Center Northwest.

(3) The department will conduct at least two inspections of registered grapevines during each growing season.

(4) The department will inspect certified planting stock at least three times per year, twice during the growing season and once during or after harvest.

(5) The department will refuse or withdraw registration or certification for any planting stock that is infested or infected with any regulated pest.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-030 Certified grape planting stock—Application and fees. (1) The applicant shall furnish all information requested on the application form and shall give consent to the department to take samples from any planting stock enrolled in the program as registered or certified grapevines for inspection or indexing.

(2) Application for registration and certification shall be filed with the department by January 1 of each year accompanied by a one hundred seventy-five dollar application fee.

(3) Inspection, phytosanitary certification, indexing and testing fees are due upon completion of services.

(4) Fees for inspection, phytosanitary certification, and ((~~testing~~)) indexing shall be assessed at the appropriate rate established in chapters 16-401 and 16-470 WAC. Mileage for inspections and other on-site services shall be charged at a rate established by the state office of financial management.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-035 Certified grape planting stock—Tagging and identity. (1) Certification tags issued by the department must be securely attached by the grower to each certified grape planting stock((~~, including rooted cuttings, cuttings and grafted plants~~)).

(2) Any person selling Washington certified grape planting stock is responsible for the identity of such planting stock. Persons issued tags authorized by this chapter must account by variety for stock produced and sold. They must keep and allow the department to inspect and copy records necessary to verify this.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-050 ((~~Certified grape planting stock—~~))Requirements. Certified plants must be free of Grapevine fanleaf virus, Grapevine leafroll-associated viruses, ((~~grapevine corky bark disease agent,~~)) Grapevine virus A, Grapevine virus B, Grapevine rupestris stem pitting virus, Arabis mosaic virus, Tomato ringspot virus, ((~~grape phylloxera, and vine mealy bug~~)) Grapevine red blotch virus, Grapevine vein clearing virus, *Xylella fastidiosa*, *Daktulosphaira vitifoliae*, and *Planococcus ficus*. It must also be free of nematode root knots ((~~nematode~~)), crown gall, and other visible diseases or serious pest injuries.

WSR 14-17-124
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed August 20, 2014, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-094.

Title of Rule and Other Identifying Information: Chapter 16-483 WAC, Grape virus quarantine, and chapter 16-481 WAC, Grape insect pests. The agency is proposing to adopt changes as a result of a petition submitted by the Washington Association of Wine Grape Growers. These changes include:

(1) Combining the grape virus quarantine and the grape insect pests rules into one chapter under chapter 16-483 WAC, Grape pest quarantine;

(2) Adding grapevine virus A and *Xylella fastidiosa* to the list of quarantined pests;

(3) Updating the name of the corky bark disease agent to grapevine virus B;

(4) Repealing chapter 16-481 WAC, Grape insect pests; and

(5) Updating and improving language clarity.

Hearing Location(s): Washington State Department of Agriculture, 21 North First Avenue, Pest Program Conference Room, 1st Floor, Yakima, WA 98902, on September 23, 2014, at 11:00 a.m.

Date of Intended Adoption: October 7, 2014.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by September 23, 2014.

Assistance for Persons with Disabilities: Contact Henri Gonzales by September 16, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal combines the grapevine insect pest quarantine and the grapevine virus quarantine into a single grapevine pest quarantine. It also adds grapevine virus A and *Xylella fastidiosa* to the list of quarantined pests. Introduction of pests into the state of Washington through infested grape plants, rootstock, and plant cuttings or on contaminated grape cultivation or harvesting equipment could have a severe economic impact on the Washington grape industry. Modifications to the grape virus quarantine are necessary to harmonize Washington's quarantine with Oregon and Idaho and continue to be effective in excluding harmful viruses and insects.

Reasons Supporting Proposal: Chapters 16-481 and 16-483 WAC establish the rules for the importation of grape planting stock into the state. Washington growers do not currently produce enough certified grape planting stock to meet the needs of an expanding grape industry. This means that it is necessary to import vines from other states. Most imported certified stock is from California with a smaller amount coming from the Oregon certification program. Both California and Oregon have similar certification programs. Since it is necessary to import planting stock from other states, it is also necessary to revise the quarantine periodically to continue to provide the same level of protection against pest threats and meet the changing needs of a rapidly evolving grape industry.

Combining the grape insect quarantine and the grape virus quarantine will make it easier for growers to understand the requirements for importing grapevines and will provide the current level of protection from grapevine pests.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.041, and chapter 34.05 RCW.

Statute Being Implemented: RCW 17.24.011 and 17.24.041.

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

Name of Proponent: Washington Association of Wine Grape Growers, private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes no additional regulations or costs on Washington businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

August 18, 2014
Brad White
Assistant Director

Chapter 16-483 WAC

GRAPE ((~~VIRUS~~)) PEST QUARANTINE

AMENDATORY SECTION (Amending WSR 00-23-096, filed 11/21/00, effective 12/22/00)

WAC 16-483-001 ((~~Grape virus quarantine—~~))Establishing a quarantine. ((~~The production of wine grapes, juice grapes, and grape planting stock are important industries in the state of Washington. The director has determined that these industries are threatened by the introduction and establishment of the virus diseases known as leafroll, fanleaf and corky bark that are not known to occur in the state of Washington. The presence of these virus diseases cannot be determined by the most rigorous visual examination of dormant grape planting stock. The introduction and establishment of these virus diseases would entail great economic loss to the grape industries of the state. To minimize this risk, the director, under the authority provided in chapter 17.24 RCW, has established a quarantine setting forth rules for the importation of grape planting stock into the state of Washington.~~)) (1) A quarantine is established against harmful pests of grapevines that could endanger the grape industries of Washington.

(2) Quarantine pests include:

(a) Grapevine fanleaf virus;

(b) Grapevine leafroll associated viruses;

(c) Grapevine virus A;

(d) Grapevine virus B;

(e) *Xylella fastidiosa*;

(f) Grapevine phylloxera (*Daktulosphaira vitifoliae*); and

(g) Vine mealybug (*Planococcus ficus*).

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-010 ((~~Grape virus quarantine—Quarantine~~)) Area under quarantine. The area((~~s~~)) under quarantine includes all states, districts, and territories of the United States ((~~outside of the territorial borders of the state of Washington~~)).

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-020 ((~~Grape virus quarantine—~~))Regulated articles. ((~~All~~)) Grape planting stock ((~~is~~)) including live plants, hardwood cuttings, softwood cuttings, and any other plant parts capable of propagation except fruit are regulated under the terms of this quarantine.

AMENDATORY SECTION (Amending WSR 00-23-096, filed 11/21/00, effective 12/22/00)

WAC 16-483-030 ((~~Grape virus quarantine—Regulations.~~)) Restrictions. Grape planting stock will be admitted into the state of Washington provided the following provisions are complied with:

(1) An official certificate issued by the plant protection organization of the state, district, or territory of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state.

(2) The grape planting stock has been certified in accordance with the regulations of an official grapevine certification program that includes inspection and testing by methods approved by the director for grapevine fanleaf virus, grapevine leafroll ((~~and corky bark virus diseases. An official certificate issued by the plant protection organization of the state of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state.~~

~~(2) All shipments of grape planting stock must be plainly marked with the contents on the outside of the package or container.~~

~~(3) Persons shipping or transporting grape planting stock into this state from areas under quarantine shall notify the department by mail or telefacsimile prior to shipment. The notification must include the nature of the grape planting stock (such as live plants, hardwood cuttings, softwood cuttings, rootstocks, or other similar categories), the quantity in each shipment, the expected date of arrival, the name of the intended receiver and the destination. The person to whom the articles are shipped shall hold the articles until the grape planting stock is inspected and/or released by the department~~)) associated viruses, grapevine virus A, grapevine virus B, and *Xylella fastidiosa*.

(3) Each shipment of grapevines, grape rootstock, or softwood cuttings from a state infested with grapevine phylloxera or vine mealybug require one of the following statements on the certificate:

(a) The grapevines, rootstock, or softwood cuttings were grown in and shipped from an area known to be free from grape phylloxera and vine mealybug; or

(b) The grapevines, rootstock, or softwood cuttings were grown under an approved sterile media system; or

(c) For small shipments (five hundred articles or less), softwood cuttings were inspected by a state, district, or territory plant regulatory official and were found to be free from grape phylloxera and vine mealybug; or

(d) The grapevines, rootstock, or softwood cuttings were subject to one of the two treatments in subsection (4) of this section or other treatments determined to be effective and are approved in writing by the director. The treated grapevines must be stored in a manner after treatment that would prevent reinfestation.

(4) Acceptable treatments for grapevine insect pests include:

(a) Hot water treatment. Dormant, rooted grapevines or rootstock shall be washed to remove all soil or other propagative media. Dormant rooted plants or rootstock shall be immersed in a hot water bath for a period of not less than three minutes nor more than five minutes at a temperature of not less than 125°F (52°C) nor more than 130°F (55°C) at any time during immersion; or

(b) Methyl bromide fumigation. Grapevines, rootstock, or softwood cuttings may be treated by methyl bromide fumigation. The fumigation shall be in an approved gastight fumigation chamber, equipped with a heating unit, fan for dispersal of gas and clearing the chamber of gas after fumigation, and interior thermometer readable from the outside. Fumigation shall be with a dosage of two pounds (0.908 kg) of methyl bromide per one thousand cubic feet (twenty-eight cubic meters) for a period of three hours at a temperature of between 65°F (18.3°C) and 70°F (21.1°C). The fan shall be operated for a period of ten minutes after the injection of the gas.

(5) All shipments of grapevines, rootstock, or softwood cuttings from a quarantine area shall be plainly marked with the contents on the outside of the package or container as "grapevines," "grape rootstock," or "grape cuttings."

NEW SECTION

WAC 16-483-033 Equipment cleaning requirements. (1) All equipment used for cultivation or harvesting of grapes in the grape insect pest quarantine areas must be thoroughly washed or steam cleaned to remove all soil and plant material prior to entry into the state of Washington. Such equipment shall be subject to inspection by authorized inspectors of the department.

(2) Any equipment found to be in violation of this cleaning requirement shall be subject to detention by the department until such equipment is thoroughly cleaned at the expense of the owner or shipper or provisions are made to transport the equipment directly out of the state.

NEW SECTION

WAC 16-483-037 Notification requirement. The department shall be notified by U.S. mail, e-mail, or telefacsimile to: Plant Protection Division, Washington State Department of Agriculture, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560; e-mail: Plant Services@agr.wa.gov; fax: 360-902-2094, prior to the shipment of grapevines or cuttings under the grape pest quarantine into this state from an infested area. Such notice shall include, but not be limited to, the approximate number of grapevines, rootstock, or softwood cuttings; the shipper; the consignee; the method of treatment used, if applicable; and the approximate date of delivery.

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-040 ((~~Grape virus quarantine—~~))Disposition of ((~~material~~)) products shipped in violation of this quarantine—Violations. ((~~The department will refuse admittance into the state grape planting stock not meeting the requirements of this chapter. For grape planting stock shipped into the state in violation of this chapter, the department will give the owner or the owner's responsible agent the option of destroying the material or immediately sending it out of the state.~~)) Any shipment of grapevines, rootstock, or softwood shipped into or entering the state of Washington from an infested area and not accompanied by the required certificate or not complying with the notification requirement in WAC 16-483-037 shall be returned to the point of origin, or destroyed at the option and expense of the owner or owners, or their responsible agent or agents.

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-050 Grape ((~~virus~~)) pest quarantine—Exemption. The restrictions on the movement of regulated articles set forth in this chapter do not apply to grape planting stock imported for experimental or trial purposes by the United States Department of Agriculture or Washington State University: Provided, ((~~a permit issued by~~)) the ((~~director~~)) director's written permission is obtained.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-481-010	Establishing quarantine.
WAC 16-481-015	Definitions.
WAC 16-481-020	Quarantine area.
WAC 16-481-025	Regulated products.
WAC 16-481-030	Conditions governing shipments—External.
WAC 16-481-050	Equipment cleaning requirements.
WAC 16-481-060	Notification requirements.
WAC 16-481-070	Disposition of products shipped in violation of this quarantine—Violations.

WSR 14-17-126
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed August 20, 2014, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-119.

Title of Rule and Other Identifying Information: WAC 388-15-089 What happens if the alleged perpetrator does not request CPS to review the founded CPS finding within thirty days? and 388-15-069 How does CPS notify the alleged perpetrator of the finding?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on September 23, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 23, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by September 9, 2014, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In WAC 388-15-089, children's administration (CA) needs to replace "twenty days" with "thirty days" to accurately reflect the new thirty day appeal deadline for CAPTA internal review requests. This change will better align with the federal requirements. WAC 388-15-085 and 388-15-093 were already changed to reflect the correct timeframe.

In WAC 388-15-069, CA needs to remove the language stated in subsection (2) "In cases where certified mailing may not be either possible or advisable, the CPS social worker may personally deliver or have served the CPS finding notice to the alleged perpetrator.["] This is being deleted as it is not required per RCW 26.44.100.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 26.44.100.

Statute Being Implemented: P.L. 111-320; the CAPTA Reauthorization Act of 2010.

Rule is necessary because of federal law, P.L. 111-320; the CAPTA Reauthorization Act of 2010.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Keli Drake, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, (360) 902-7871.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules are adopted without material change and ensure WACs are consistent with federal requirements and consistent with RCW 26.44.100.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b)(iii). Rules adopted by reference without material change to ensure the WACs are consistent with federal requirements and consistent with RCW 26.44.100. The rule content is dictated by statute.

August 14, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding? (1) CPS notifies the alleged perpetrator of the finding by sending the CPS finding notice via certified mail, return receipt requested, to the last known address. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(((~~(2) In cases where certified mailing may not be either possible or advisable, the CPS social worker may personally deliver or have served the CPS finding notice to the alleged perpetrator.~~)))

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-089 What happens if the alleged perpetrator does not request CPS to review the founded CPS finding within ((~~twenty~~)) thirty days? (1) If the alleged perpetrator does not submit a written request within ((~~twenty~~)) thirty calendar days for CPS to review the founded CPS finding, no further review or challenge of the finding may occur.

(2) If the department has exercised reasonable, good faith efforts to provide notice of the CPS finding to the alleged perpetrator, the alleged perpetrator shall not have further opportunity to request a review of the finding beyond thirty days from the time the notice was sent.

WSR 14-17-127
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 20, 2014, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-110.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-450-0035 Educational benefits.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on September 23, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., September 23, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by September 9, 2014, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This department is proposing to amend the rule to remove obsolete information that state-funded work study can be categorized under Title IV Higher Education or Bureau of Indian Affairs sources. The proposed change does not impact cash assistance programs.

Proposed changes are not expected to impact eligibility and benefits for the Washington Basic Food program and the state-funded food assistance program (FAP) for legal immigrants as these rules and procedures are already in effect and being applied to Basic Food eligibility decisions. Under RCW 74.08A.120, rules for FAP shall follow exactly the rules of the federal food stamp program except for the provisions pertaining to immigrant status.

Reasons Supporting Proposal: The state work study (SWS) 2012-2013 program manual contains information about changes in funding sources for SWS. The federal government eliminated Title IV funding for two federal education assistance programs (special leveraging educational assistance partnership (SLEAP) and the leveraging educational assistance partnership (LEAP)).

- Formerly, the comingling of federal Title IV funds from LEAP and SLEAP with SWS funding exempted student earnings from welfare benefit income control calculations.
- With the elimination of LEAP and SLEAP, SWS earnings no longer can be classified as Title IV and will now be counted as income for Basic Food for SWS students in this category.
- Income from SWS will remain exempt for cash assistance eligibility.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090, 7 C.F.R. 273.2(j).

Rule is necessary because of federal law, 7 C.F.R. 273.2(j).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain households with students served by DSHS who receive food assistance under Basic Food and receive education assistance income from an SWS program.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 14, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-007, filed 8/22/13, effective 10/1/13)

WAC 388-450-0035 Educational benefits. This section applies to cash assistance and food assistance.

(1) We do not count:

(a) Educational assistance in the form of grants, loans or work study, issued from Title IV of the Higher Education Amendments (Title IV - HEA) and Bureau of Indian Affairs (BIA) education assistance programs. Examples of Title IV - HEA and BIA educational assistance include but are not limited to:

(i) ((~~College work-study (federal and state);~~

~~(ii)~~)) Pell grants; and

(((~~(iii)~~))) (ii) BIA higher education grants.

(b) Educational assistance in the form of grants, loans or work-study made available under any program administered by the Department of Education (DOE) to an undergraduate student. Examples of programs administered by DOE include, but are not limited to:

(i) Christa McAuliffe Fellowship Program;

(ii) Jacob K. Javits Fellowship Program; and

(iii) Library Career Training Program.

(2) For assistance in the form of grants, loans or work-study under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392:

(a) If you are attending school half-time or more, we subtract the following expenses:

(i) Tuition;

(ii) Fees;

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;

(iv) Books;

(v) Supplies;

(vi) Transportation;

(vii) Dependent care; and

(viii) Miscellaneous personal expenses.

(b) If you are attending school less than half-time, we subtract the following expenses:

(i) Tuition;

(ii) Fees; and

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(c) For cash assistance, we also subtract the difference between the appropriate need standard and payment standard for your family size.

(d) Any remaining income is unearned income and budgeted using the appropriate budgeting method for the assistance unit.

(3) If you are participating in WorkFirst work study or state-funded college work study, that work study income is:

(a) Not counted for cash assistance;

(b) Counted as earned income for food assistance.

(4) If you are participating in a work study program that is not excluded in subsection (1), or for cash assistance, under subsection (3) of this section, we count that work study income as earned income:

(a) You get any applicable earned income disregards;

(b) For cash assistance, we also subtract the difference between the need standard and payment standard for your family size as described in chapter 388-478 WAC; and

(c) Budgeting remaining income using the appropriate budgeting method for the assistance unit.

(5) If you get Veteran's Administration Educational Assistance:

(a) All applicable attendance costs ((~~as~~)) is subtracted; and

(b) The remaining unearned income is budgeted using the appropriate budgeting method for the assistance unit.

WSR 14-17-128
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed August 20, 2014, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-101.

Title of Rule and Other Identifying Information: Amending chapter 388-145 WAC, Licensing requirements for group care facilities and services; chapter 388-147 WAC, Licensing requirements for child-placing agencies and adoption services; and chapter 388-148 WAC, Licensing requirements for child foster homes; and repealing chapter 388-160 WAC.

See Reviser's note below.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on October 21, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 22, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., October 21, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by October 7, 2014, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New legislation regarding crisis residential centers, resource and assessment centers, prudent parent legislation, extended foster care and recommendations from the committee on the severe abuse of adopted children, require new rules for licensed foster homes, child-placing agencies, adoption centers and group care facilities. Improvements to the rules include: Plaintalk format to improve content and accessibility, a restructured sequence of specific rules to provide a logical flow to content, and a division of specific license types to improve clarity of rules for each license category. Licensed foster parents, child-placing agencies, adoption centers, and group care facilities may be impacted by these requirements. Group care facilities include

semi-secure and secure crisis residential centers, emergency respite centers, group homes, group receiving centers, overnight youth shelters, resource and assessment centers, and staffed residential homes. Services provided by these license types include services to medically fragile and intellectual and developmental disabilities (formerly severe developmental disabilities), pregnant and parenting youth and maternity services, and day treatment services.

Reasons Supporting Proposal: Foster home requirements are currently combined with other types of licensing requirements, such as requirements for child-placing agencies, adoption centers and group care facilities. New chapters are specific to license type, providing foster parents a stand-alone chapter specific to foster home licensing. Single clearly-defined chapters for foster homes, child-placing agencies and adoption centers, and group care facilities will assist stakeholders with accessing requirements specific to their license type.

Statutory Authority for Adoption: Chapters 13.34, 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), Severe Abuse of Adopted Children Committee Report Recommendations (9/2012).

Statute Being Implemented: RCW 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Randy Roberts, OB2, Olympia, Washington, (360) 902-7872; and Enforcement: Darcey Hancock, OB2, Olympia, Washington, (360) 902-0288.

Small Business Economic Impact Statement

See Reviser's note below.

A copy of the statement may be obtained by contacting Randy Roberts, 1115 Washington Street, Olympia, WA 98504-5710, phone (360) 902-7872, fax (360) 902-7903, e-mail roberrm@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Randy Roberts, 1115 Washington Street, Olympia, WA 98504-5710, phone (360) 902-7872, fax (360) 902-7903, e-mail roberrm@dshs.wa.gov.

August 19, 2014
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-19 issue of the Register.

WSR 14-17-130
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 20, 2014, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-118.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-420-010 Alcohol and drug treatment centers and 388-408-0040 How does living in an institution affect my eligibility for Basic Food?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on September 23, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., September 23, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by September 9, 2014, TTY (360) 664-6178 or (360) 664-6094 [664-6092] or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend rules to update information concerning the division that licenses behavioral health agencies and certifies the services the agencies provide. References to the division of alcohol and substance abuse should be removed and replaced with division of behavioral health and recovery (DBHR).

Reasons Supporting Proposal: Proposed changes are not expected to impact eligibility and benefits for the Washington Basic Food program and the state-funded food assistance program (FAP) for legal immigrants as these rules and procedures are already in effect and being applied to Basic Food eligibility decisions. The changes provide updates to agency names and clarification only. Under RCW 74.08A.120, rules for FAP shall follow exactly the rules of the federal food stamp program except for the provisions pertaining to immigrant status.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.11.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The pro-

posed amendment only affects certain Basic Food recipients receiving services from DBHR and living in DBHR institutions.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to…rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 14, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-024, filed 11/29/06, effective 1/1/07)

WAC 388-408-0040 How does living in an institution affect my eligibility for Basic Food? (1) For Basic Food, an "institution" means a place where people live that provides residents more than half of three meals daily as a part of their normal services.

(2) Most residents of institutions are not eligible for Basic Food.

(3) If you live in one of the following institutions, you may be eligible for Basic Food even if the institution provides the majority of your meals:

(a) Federally subsidized housing for the elderly;

(b) Qualified drug and alcohol treatment centers when an employee of the treatment center is the authorized representative as described under WAC 388-460-0010;

(c) Qualified DDD group homes for persons with disabilities;

(d) A shelter for battered women and children when the resident left the home that included the abuser; or

(e) Nonprofit shelters for the homeless.

(4) A qualified DDD group home is a nonprofit residential facility that:

(a) Houses sixteen or fewer persons with disabilities as defined under WAC 388-400-0040(6); and

(b) Is certified by the division of developmental disabilities (DDD).

(5) A qualified drug and alcohol treatment center is a residential facility that ((~~is~~)):

(a) ((~~Authorized~~)) Is authorized as a retailer by the U.S. Department of Agriculture, Food and Nutrition Service((~~,~~)) or

(((~~(b) Operated~~)) operated by a private nonprofit organization; and

(((~~(c) Certified by the division of alcohol and substance abuse (DASA) as:~~)) (b) Meets the division of behavioral health and recovery (DBHR) chemical dependency residential licensing and certification rules in WAC 388-877B-0200.

(6) The qualified drug and alcohol treatment center described in subsection (5) in this section must be:

((~~(i)~~)) (a) Receiving funds under part B of Title XIX of the Public Health Service Act;

((~~(ii)~~)) (b) Eligible to receive funds under part B of Title XIX of the Public Health Service Act, but does not receive these funds; or

((~~(iii)~~)) (c) Operating to further the purposes of part B of the Public Health Service Act to provide treatment and rehabilitation of drug addicts or alcoholics.

((~~(6)~~)) (7) Elderly or disabled individuals and their spouses may use Basic Food benefits to buy meals from the following meal providers if FNS has approved them to accept Basic Food benefits:

(a) Communal dining facility; or

(b) Nonprofit meal delivery service.

((~~(7)~~)) (8) If you are homeless, you may use your Basic Food benefits to buy prepared meals from nonprofit organizations the department has certified as meal providers for the homeless.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-420-010 Alcohol and drug treatment centers. (1) Food assistance is only available to a resident of a drug ((~~or~~)) and alcohol treatment center when the treatment center is((~~:~~

(~~a) Administered~~)) administered by a public or private nonprofit agency((~~; and~~)). In addition, the residential treatment center must be:

(((~~(b) Certified by the division of alcohol and substance abuse (DASA).~~)) (a) Licensed by the division of behavioral health and recovery (DBHR) as a behavioral health agency (see chapter 388-877 WAC); and

(b) Certified by DBHR to provide chemical dependency residential treatment services (see WAC 388-877B-0200).

(2) A resident is considered a one person assistance unit. However if the resident's spouse or child is also living in the treatment center, the spouse or child is included in the resident's assistance unit.

(3) The resident must have a designated employee of the treatment center act as an authorized representative as specified in chapter 388-460 WAC.

(4) The authorized representative receives and uses the food assistance benefits for meals the resident is served in the treatment center.

(5) The authorized representative also has responsibilities as specified in chapter 388-460 WAC.

WSR 14-17-131
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed August 20, 2014, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-084.

Title of Rule and Other Identifying Information: WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on September 24, 2014, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. *Call-in option can be provided*

upon request no later than three days before the hearing date.

Date of Intended Adoption: October 1, 2014.

Submit Written Comments to: Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, by September 24, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514 no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue has authorized county auditors and the department of licensing to collect the use tax when a person applies to transfer a certificate of title of a vehicle under the authority of RCW 82.12.045. The department of licensing provides an automated system to help in the determination of the measure of use tax due at the time of transfer. Currently, if the vehicle's average retail value, as provided by the system, is less than $3,000 the purchase price is presumed to represent the vehicle's true value. The department of revenue is proposing to revise this rule for general updating and to raise the $3,000 threshold to $5,000.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 82.12.045.

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

Name of Proponent: Department of revenue.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

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

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

August 20, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-22-008, filed 10/26/01, effective 11/26/01)

WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax. (1) **Introduction.** The department of revenue (department) has authorized county auditors and the department of licensing to collect the use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of ((~~ownership~~)) title of a ((~~motor~~)) vehicle acquired without the payment of sales tax. See RCW 82.12.045. This rule explains how county auditors, their subagents, and the department of licensing determine the measure of the use tax. This rule does not relieve a seller registered with the department ((~~of revenue~~)) of the statutory requirement to collect sales tax when selling tangible personal property, including ((~~motor~~)) vehicles. RCW 82.08.020 and 82.08.0251. The use tax reporting responsibilities of Washington residents in other situations and the general nature of the use tax are addressed in WAC 458-20-178 (Use tax). ((~~The various use tax exemptions provided by chapter 82.12 RCW are discussed in WAC 458-20-17801 (Use tax exemptions).~~)) The application of tax to vehicles acquired by Indians and Indian tribes is discussed in WAC 458-20-192 (Indians—Indian country).

Vehicle licensing locations and information about vehicle titles and registration are available from the department of licensing on ((~~the internet~~)) their web site at: ((~~http://www.wa.gov/dol/, under "vehicles list."~~)) dol.wa.gov. This information is also available by contacting the local county auditor's office listed in the government pages of ((~~the~~)) a telephone directory.

(2) **What is use tax based on?** For purposes of computing the amount of use tax due, the value of the article used is the measure of tax. The value of the article used is generally the purchase price. If the purchase price does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar vehicles of like quality and character. RCW 82.12.010.

(3) **Use of automated system to verify measure of tax.** When a person applies to transfer the certificate of ((~~ownership~~)) title of a ((~~motor~~)) vehicle, county auditors, their subagents, or the department of licensing must verify that the purchase price represents the true value. In doing so, county auditors, their subagents, or the department of licensing compare the vehicle's purchase price to the average retail value of comparable vehicles using an automated valuing system. The automated valuing system identifies the average retail value using a data base that is provided by a regional industry standard source specializing in providing valuation services to local, state, and federal governments, and the private sector.

In limited situations, the automated valuing system's data base may not provide the average retail value for a ((~~motor~~)) vehicle. For example, the automated valuing system's data base does not provide average retail value information for collectible vehicles or vehicles that are over twenty years of age. In the absence of an average retail value, county auditors, their subagents, or the department of licensing will determine the true value as nearly as possible according to the retail selling price at place of use of similar vehicles of like character and quality. To assist in this process, the department of revenue and the department of licensing may approve the use of alternative valuing authorities as necessary.

(4) **What happens when the purchase price is presumed to represent the true value?** County auditors, their subagents, or the department of licensing will use the purchase price to compute the amount of use tax due when the purchase price represents the vehicle's true value. County auditors, their subagents, or department of licensing will presume the purchase price represents the vehicle's true value if one of the following conditions is met:

(a) The vehicle's average retail value, as provided by the automated valuing system, is less than ((~~$3,000~~)) $5,000.

For example, a person buys a ((~~motor~~)) vehicle for ((~~$800~~)) $2,800. The automated valuing system indicates that the vehicle's average retail value is ((~~$2,900~~)) $4,900. The purchase price is presumed to represent the vehicle's true value because the average retail value is less than ((~~$3,000~~)) $5,000.

(b) The vehicle's purchase price is not more than $2,000 below the average retail value as provided by the automated valuing system.

For example, a person buys a used ((~~motor~~)) vehicle for ((~~$4,500~~)) $10,000. The automated valuing system indicates the vehicle's average retail value is ((~~$6,000~~)) $11,500. When compared to the average retail value, the purchase price is not more than $2,000 below the average retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(5) **What happens when the purchase price is not presumed to represent the true value?** If the vehicle's purchase price is not presumed to be the true value as explained in subsection (4) of this rule, a person may remit use tax based on the average retail value as indicated by the automated valuing system or substantiate the true value of the vehicle using any one of the following methods.

(a) **Industry-accepted pricing guide.** A person applying to transfer a certificate of ((~~ownership~~)) title may provide the county auditor, a subagent, or the department of licensing with documentation from one of the various industry-accepted pricing guides. The value from the industry-accepted pricing guide must represent the retail value of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The purchase price is presumed to represent the vehicle's true value if the purchase price is not more than $2,000 below the retail value.

For example, a person buys a vehicle for $3,500. The automated valuing system indicates that the vehicle's average retail value is $5,700. An industry-accepted pricing guide shows that the retail value of a similarly-equipped vehicle in a comparable condition of the same make, model, and year is $5,000. When compared to the retail value established by the industry-accepted pricing guide, the purchase price is not more than $2,000 below the retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(b) **Declaration of buyer and seller.** A person applying to transfer a certificate of ((~~ownership~~)) title may provide to the county auditor, a subagent, or the department of licensing a Declaration of Buyer and Seller Regarding Value of Used Vehicle Sale (REV 32 2501) to substantiate that the purchase price is the true value of the vehicle. The declaration must be signed by both the buyer and the seller and must certify to the purchase price and the vehicle's condition under penalty of perjury. The department ((~~of revenue~~)) may review a declaration and assess additional tax, interest, and penalties. A person may appeal an assessment to the department ((~~of revenue~~)) as provided in WAC 458-20-100 (Appeals((~~, small claims and settlements~~))).

The declaration is available ((~~from~~)) on the ((~~department of revenue on the internet at http://dor.wa.gov/ under "other forms and schedules."~~)) department's web site at dor.wa.gov. It is also available at all vehicle licensing locations, ((~~department of revenue~~)) department's field offices, or by writing:

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

(c) **Written appraisal.** A person applying to transfer a certificate of ((~~ownership~~)) title may present to the county auditor, a subagent, or the department of licensing a written appraisal from an automobile dealer, insurance or other vehicle appraiser to substantiate the true value of the vehicle. If an automobile dealer performs the appraisal, the dealer must be currently licensed with the department of licensing's dealer services division or be a licensed vehicle dealer in another jurisdiction.

The written appraisal must appear on company stationery or have the business card attached and include the vehicle description, including the vehicle make, model, and identification number (VIN). The person performing the appraisal must certify that the stated value represents the retail selling price of a ((~~similarly-equipped~~)) similarly equipped vehicle of the same make, model, and year in a comparable condition. The department ((~~of revenue~~)) may review an appraisal and assess additional tax, interest, and penalties. A person may appeal an assessment to the department ((~~of revenue~~)) as provided in WAC 458-20-100 (Appeals((~~, small claims and settlements~~))).

(d) **Declaration of use tax.** A person applying to transfer a certificate of ((~~ownership~~)) title may present to the county auditor, a subagent, or the department of licensing a Declaration of Use Tax (REV 32 2486e) to substantiate the true value of the vehicle. An authorized employee of the department ((~~of revenue~~)) must complete the declaration. Determining the true value may require a visual inspection that is not available at all department ((~~of revenue~~)) locations.

(e) **Repair estimate.** A person applying to transfer a certificate of ((~~ownership~~)) title may present to the county auditor, a subagent, or the department of licensing a written repair estimate, prepared by an auto repair or auto body repair business. This estimate will then be used to assist with determining the true value of the vehicle. The written estimate must appear on company stationery or have the business card attached. In addition, the written estimate must include the vehicle description, including the vehicle make, model, and identification number (VIN), and an itemized list of repairs. The department ((~~of revenue~~)) may review an appraisal and assess additional tax, interest, and penalties. A person may appeal an assessment to the department ((~~of revenue~~)) as provided in WAC 458-20-100 (Appeals((~~, small claims and settlements~~))).

The purchase price is presumed to represent the true value if the total of the purchase price and the repair estimate is not more than $2,000 below the average retail value. For example, a person purchases a vehicle with extensive bumper damage for $1,700. The automated valuing system indicates that the vehicle's average retail value is $6,000. An estimate from an auto body repair business indicates a cost of $2,500 to repair the bumper damage. The purchase price is presumed to represent the vehicle's true value because when the total of

the purchase price and the repair estimate ($1,700 + $2,500 = $4,200) is compared to the average retail value, the total is not more than $2,000 below the average retail value ($6,000).

WSR 14-17-132
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)
[Filed August 20, 2014, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-086.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-400-0047 Am I eligible for the heat and eat program?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on September 23, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., September 23, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by September 9, 2014, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes proposed under this filing support providing an energy assistance payment to select Basic Food and food assistance program (FAP) for legal immigrants households who are not eligible for the standard utility allowance income deduction for federal food stamp program (SNAP), and do not receive the maximum monthly benefit for Basic Food or FAP.

Reasons Supporting Proposal: The Agricultural Act of 2014, Public Law 113-79, increased the amount of energy assistance though the low income home energy assistance program a SNAP household must receive in order for the household to be eligible for the standard utility allowance.

Changes proposed under this filing are expected to impact benefits for certain households receiving the Washington Basic Food program and the state-funded FAP for legal immigrants. Under RCW 74.08A.120, rules for FAP shall follow exactly the rules of SNAP except for the provisions pertaining to immigrant status.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090, 74.04.500, 74.08A.010, 74.08A.903.

Statute Being Implemented: Food and Nutrition Act of 2008 (P.L. 110-246, 7 U.S.C.) as amended by P.L. 113-79.

Rule is necessary because of federal law, P.L. 113-79.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact of small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 14, 2014
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-400-0047 Am I eligible for the heat and eat program? (1) What is the heat and eat program?

The heat and eat is a special energy assistance program for certain assistance units receiving basic food or the food assistance program for legal immigrants (FAP).

An assistance unit (AU) in heat and eat receives up to $20.01 in federal low income home energy assistance program (LIHEAP) benefits. This LIHEAP benefit makes the AU eligible for the standard utility allowance under WAC 388-450-0195 for twelve months.

(2) Is my assistance unit eligible for heat and eat?

Your AU is eligible for heat and eat if you meet all of the following:

(a) You receive at least $1 in basic food or FAP benefits, prior to any recoupments;

(b) You **do not** receive WASHCAP;

(c) You **do not** receive transitional food assistance (TFA);

(d) You **are not** eligible for the standard utility allowance (SUA) under WAC 388-450-0195 based on having out of pocket costs for heating or cooling;

(e) You have not received a regular LIHEAP benefit amount of more than twenty dollars in the past twelve months; and

(f) You **do not** receive the maximum allotment for your AU size under WAC 388-478-0060 without using the SUA.

(3) How do I receive heat and eat?

If you are eligible for heat and eat, we deposit the benefit on your EBT card. The heat and eat benefit is good for twelve months. After twelve months, we look at your circumstances to see if you are still eligible for heat and eat.

(4) How do I apply for heat and eat?

You do not apply for heat and eat. We will determine if your AU is eligible to receive heat and eat and automatically provide you the benefit.

WSR 14-17-134
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING
[Filed August 20, 2014, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-051.

Title of Rule and Other Identifying Information: WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps, 170-290-0205 Daily child care rates—Licensed or certified family home child care providers, and 170-290-0240 Child care subsidy rates—In-home/relative providers.

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on September 23, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than September 24, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by September 23, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by September 11, 2014, or (360) 725-4523.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase working connections and seasonal child care subsidy program base rates.

Reasons Supporting Proposal: The 2014 supplemental budget, chapter 221, Laws of 2014, provided for a four percent increase to the working connections and seasonal child care subsidy program base rates, effective July 1, 2014. Rule making is needed to make permanent emergency rules currently in effect implementing these rate increases.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Kay Quinlan, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

August 20, 2014
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 14-12-050, filed 5/30/14, effective 6/30/14)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$((~~29.10~~)) 30.26	$((~~24.47~~)) 25.45	$((~~23.12~~)) 24.04	$((~~21.77~~)) 22.64
	Half-Day	$((~~14.57~~)) 15.13	$((~~12.24~~)) 12.73	$((~~11.57~~)) 12.02	$((~~10.88~~)) 11.32
Spokane County	Full-Day	$((~~29.76~~)) 30.95	$((~~25.03~~)) 26.03	$((~~23.65~~)) 24.60	$((~~22.27~~)) 23.16
	Half-Day	$((~~14.90~~)) 15.48	$((~~12.53~~)) 13.02	$((~~11.84~~)) 12.30	$((~~11.13~~)) 11.58
Region 2	Full-Day	$((~~29.39~~)) 30.57	$((~~24.53~~)) 25.51	$((~~22.75~~)) 23.66	$((~~20.12~~)) 20.92
	Half-Day	$((~~14.70~~)) 15.29	$((~~12.27~~)) 12.76	$((~~11.37~~)) 11.83	$((~~10.08~~)) 10.46
Region 3	Full-Day	$((~~38.89~~)) 40.45	$((~~32.43~~)) 33.73	$((~~28.01~~)) 29.13	$((~~27.20~~)) 28.29
	Half-Day	$((~~19.45~~)) 20.23	$((~~16.21~~)) 16.87	$((~~14.00~~)) 14.57	$((~~13.61~~)) 14.15
Region 4	Full-Day	$((~~45.27~~)) 47.08	$((~~37.80~~)) 39.31	$((~~31.71~~)) 32.98	$((~~28.56~~)) 29.70
	Half-Day	$((~~23.08~~)) 23.54	$((~~18.91~~)) 19.66	$((~~15.86~~)) 16.49	$((~~14.28~~)) 14.85
Region 5	Full-Day	$((~~33.19~~)) 34.52	$((~~28.56~~)) 29.70	$((~~25.14~~)) 26.15	$((~~22.32~~)) 23.21
	Half-Day	$((~~16.59~~)) 17.26	$((~~14.28~~)) 14.85	$((~~12.57~~)) 13.08	$((~~11.17~~)) 11.61
Region 6	Full-Day	$((~~32.63~~)) 33.94	$((~~28.01~~)) 29.13	$((~~24.47~~)) 25.45	$((~~23.93~~)) 24.89
	Half-Day	$((~~16.33~~)) 16.97	$((~~14.00~~)) 14.57	$((~~12.24~~)) 12.73	$((~~11.97~~)) 12.45

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 14-12-050, filed 5/30/14, effective 6/30/14)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$((~~24.78~~))	$((~~24.78~~))	$((~~21.54~~))	$((~~21.54~~))	$((~~19.16~~))
	Half-Day	25.77	25.77	22.40	22.40	19.93
		$((~~12.38~~))	$((~~12.38~~))	$((~~10.77~~))	$((~~10.77~~))	$ ((~~9.58~~))
		12.89	12.89	11.20	11.20	9.97
Spokane County	Full-Day	$((~~25.34~~))	$((~~25.34~~))	$((~~22.03~~))	$((~~22.03~~))	$((~~19.59~~))
	Half-Day	26.35	26.35	22.91	22.91	20.37
		$((~~12.67~~))	$((~~12.67~~))	$((~~11.02~~))	$((~~11.02~~))	$ ((~~9.79~~))
		13.18	13.18	11.46	11.46	10.19
Region 2	Full-Day	$((~~26.16~~))	$((~~26.16~~))	$((~~22.75~~))	$((~~20.35~~))	$((~~20.35~~))
	Half-Day	27.21	27.21	23.66	21.16	21.16
		$((~~13.08~~))	$((~~13.08~~))	$((~~11.37~~))	$((~~10.17~~))	$((~~10.17~~))
		13.61	13.61	11.83	10.58	10.58
Region 3	Full-Day	$((~~34.71~~))	$((~~34.71~~))	$((~~29.92~~))	$((~~26.33~~))	$((~~23.93~~))
	Half-Day	36.10	36.10	31.12	27.38	24.89
		$((~~17.36~~))	$((~~17.36~~))	$((~~14.96~~))	$((~~13.17~~))	$((~~11.97~~))
		18.05	18.05	15.56	13.69	12.45
Region 4	Full-Day	$((~~40.84~~))	$((~~40.84~~))	$((~~35.51~~))	$((~~29.92~~))	$((~~28.72~~))
	Half-Day	42.47	42.47	36.93	31.12	29.87
		$((~~20.43~~))	$((~~20.43~~))	$((~~17.77~~))	$((~~14.96~~))	$((~~14.36~~))
		21.24	21.24	18.47	15.56	14.94
Region 5	Full-Day	$((~~27.53~~))	$((~~27.53~~))	$((~~23.93~~))	$((~~22.75~~))	$((~~20.35~~))
	Half-Day	28.63	28.63	24.89	23.66	21.16
		$((~~13.77~~))	$((~~13.77~~))	$((~~11.97~~))	$((~~11.37~~))	$((~~10.17~~))
		14.32	14.32	12.45	11.83	10.58
Region 6	Full-Day	$((~~27.53~~))	$((~~27.53~~))	$((~~23.93~~))	$((~~23.93~~))	$((~~22.75~~))
	Half-Day	28.63	28.63	24.89	24.89	23.66
		$((~~13.77~~))	$((~~13.77~~))	$((~~11.97~~))	$((~~11.97~~))	$((~~11.37~~))
		14.32	14.32	12.45	12.45	11.83

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 13-21-113, filed 10/22/13, effective 11/22/13)

WAC 170-290-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When a consumer employs an in-home/relative provider, DSHS pays the lesser of the following to an eligible in-home/relative provider for child care:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy rate of two dollars and ((~~twenty-four~~)) thirty-three cents per hour for the child who needs the greatest number of hours of care and two dollars and ((~~twenty-one~~)) thirty cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DSHS pays the employer's share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

WSR 14-17-135
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed August 20, 2014, 11:42 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 2.02 (adoption by reference).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 25, 2014, at 8:45 a.m.

Date of Intended Adoption: September 25, 2014.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 24, 2014.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 18, 2014, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In April 2014, the Washington state department of ecology (ecology) revised a number of its State Environmental Policy Act (SEPA) regulations (effective May 10, 2014). The agency's SEPA regulations incorporate nine of these amended regulations by reference: WAC 197-11-508, 197-11-510, 197-11-610, 197-11-756, 197-11-800, 197-11-920, 197-11-936, 197-11-938, and 197-11-960. To ensure consistency between the two sets of regulations and to allow the agency to rely upon the updated version of ecology's regulations, the agency staff proposes to amend and update the effective date reference in Section 2.02 (adoption by reference) of its SEPA rules.

Reasons Supporting Proposal: Updating the effective date of Regulation I, Section 2.02 would allow the agency to rely upon the most current version of ecology's SEPA rules.

There are no costs associated with this proposed amendment.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Dold, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4015; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 20, 2014
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 2.02 ADOPTION BY REFERENCE

For purposes of this regulation, the Agency adopts by reference the following sections of chapter 197-11 WAC, in effect as of ((~~January 28, 2013~~)) May 10, 2014:

197-11-040 Definitions.

197-11-050 Lead agency.

197-11-055 Timing of the SEPA process.

197-11-060 Content of environmental review.

197-11-070 Limitations on actions during SEPA process.

197-11-080 Incomplete or unavailable information.

197-11-090 Supporting documents.

197-11-100 Information required of applicants.

197-11-250 SEPA/Model Toxics Control Act integration.

197-11-253 SEPA lead agency for MTCA actions.

197-11-256 Preliminary evaluation.

197-11-259 Determination of nonsignificance for MTCA remedial actions.

197-11-930 Lead agency for private projects with one agency with jurisdiction.

197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.

197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

197-11-936 Lead agency for private projects requiring licenses from more than one state agency.

197-11-938 Lead agencies for specific proposals.

197-11-940 Transfer of lead agency status to a state agency.

197-11-942 Agreements on lead agency status.

197-11-944 Agreements on division of lead agency duties.

197-11-946 DOE resolution of lead agency disputes.

197-11-948 Assumption of lead agency status.

197-11-960 Environmental checklist.

197-11-965 Adoption notice.

197-11-970 Determination of nonsignificance (DNS).

197-11-980 Determination of significance and scoping notice (DS).

197-11-985 Notice of assumption of lead agency status.

197-11-990 Notice of action.

WSR 14-17-136
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed August 20, 2014, 11:44 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 25, 2014, at 8:45 a.m.

Date of Intended Adoption: September 25, 2014.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 24, 2014.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 18, 2014, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section 3.11 – The agency's practice for many years has been to adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70.94.431 and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The CPI for the Seattle/Tacoma/Bremerton area increased by 1.5 percent for the 2013 calendar year, which amounts to an increase of $256 in the maximum civil penalty amount.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25 – This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2013. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2014. Note: This action is also intended to support the delegation request for 40 C.F.R. 63, Subpart M, as explained in the board memo dated July 24, 2014.

Reasons Supporting Proposal: There are no benefits or costs associated with the proposed amendments.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 20, 2014
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed $((~~17,525.00~~)) 17,781.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than $((~~17,525.00~~)) 17,781.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may

apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I, SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ((~~2013~~)) 2014.