



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Labor and Industries

- Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: WAC 296-127-018, Coverage and exemptions of workers involved in the production and delivery of gravel, concrete, asphalt, or similar materials. See attachment 1 for purpose statement.

Citation of existing rules affected by this order:

Repealed: None.
 Amended: WAC 296-127-018
 Suspended: None.

Statutory authority for adoption: Chapter 39.12 RCW, RCW 43.22.051, and RCW 43.22.270

Other authority : None.

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-19-085 on September 16, 2008.
 Describe any changes other than editing from proposed to adopted version: No changes were made from the proposed to adopted version.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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EMERGENCY RULE ONLY

- Under RCW 34.05.350 the agency for good cause finds:
- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 - That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: December 2, 2008

NAME (TYPE OR PRINT)
Judy Schurke

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED
 DATE: December 02, 2008
 TIME: 1:58 PM
 WSR 08-24-101

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

Attachment 1 – Purpose Statement

During the last decade the prevailing wage program has seen a number of court decisions identify the extent to which prevailing wages are required to be paid for incorporation and delivery of material on public works projects. In particular, the recent *Silverstreak* case (2007), after several years of court action, clarified coverage for the delivery and incorporation of fill material via belly dump and end-dump trucks. In addition, a series of other published cases (*Heller*, *Superior Asphalt 1 & 2*) provided coverage for repairing and maintaining machinery and the delivery and incorporation of asphalt, sand, dirt, gravel, and crushed rock.

A June 1999 department policy pertaining to the delivery of wet concrete exempts that type of delivery and incorporation from prevailing wage coverage unless the workers operate machinery or use tools that screed, float, or put a finish on the concrete. As a result, the coverage of concrete work is treated differently from other delivery and incorporation work. This policy was developed in response to an unpublished court case (*Holroyd* 1999) and was put in place prior to the rulings of the court in *Silverstreak* and in *Superior Asphalt 2*. The June 1999 policy pertains to the existing version of WAC 296-127-018 and will be superseded by this rulemaking. One change implemented through this rulemaking is that the delivery of wet cement upon a public works project will be subject to prevailing wage because it amounts to incorporation of material.

It is the department's intention, through the rule process, to clarify the coverage of production and delivery services and make the coverage of work and payment of wages consistent with published case law and RCW 39.12's requirement that all work upon public works is paid at prevailing wage rates. The department also seeks to ensure businesses do not encounter unanticipated costs due to a lack of understanding on coverage requirements.