

WSR 23-02-014

PROPOSED RULES

DEPARTMENT OF COMMERCE

(Public Works Board)

[Filed December 22, 2022, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-074.

Title of Rule and Other Identifying Information: WAC 399-80-010
Broadband service expansion grant and loan program.

Hearing Location(s): On February 7, 2023, at 10:00 a.m., at Department of Commerce, Building 5, Columbia Room (110), 1011 Plum Street [S.E.], Olympia, WA 98501. In-person and virtual meeting available <https://wastatecommerce.zoom.us/j/81071547463?pwd=M1VlVmpDSllLVkw3cC9NT1JRbmZpUT09>, Meeting ID 810 7154 7463, Passcode 710301.

Date of Intended Adoption: February 15, 2023.

Submit Written Comments to: Sheila Richardson, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, email Sheila.richardson@commerce.wa.gov, 564-999-1927, by February 7, 2023.

Assistance for Persons with Disabilities: Contact Sheila Richardson, phone 564-999-1927, email Sheila.richardson@commerce.wa.gov, by February 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington legislature has approved several changes regarding administration of the public works board broadband programs under ESHB 1673, some of which will require an update to chapter 399-80 WAC.

Changes to RCW 43.155.160. This includes the following updates:

- Enablement and creation of a preapplication process for the broadband program (subsections (4)(a), (4)(b), and (5)).
- Updates the application notice requirements to broadband providers and removes previous contact requirements (subsection (5)(o)).
- States the public works board must publish proposed geographic broadband project service areas on its website as well as preapplications (within three business days of the close of the preapplication cycle), and sets an objection period for 30 days for the proposed project (subsections (7)(a), (7)(b), and (7)(c)).
- Removes the utilities and transportation commission (UTC) technical feasibility review (subsection (10)).
- Authorizes the public works board to make low-interest or interest-free loans or grants to eligible applicants for emergency public works broadband projects (subsection (14)).

It also includes updates for RCW 42.56.270(4). Changes were made to protect financial, commercial, and proprietary information.

Reasons Supporting Proposal: The proposed rule will support public, private, and nonprofit broadband service providers' access to grants and loans from the public works board's broadband program. Without this rule making, the public works board would be unable to open future funding cycles in a manner consistent with enacted legislation.

Statutory Authority for Adoption: RCW 43.155.040(5), 43.155.160(9)(e), and 43.155.160(14)(a).

Statute Being Implemented: RCW 43.155.160.

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

Name of Proponent: Public works board, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Sheila Richardson, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 564-999-1927; Implementation: Public Works Board, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 564-999-1927.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Public works board (department of commerce) is not explicitly listed in subsection (5)(b)(i) and does not intend to make this section voluntarily applicable to this rule update per subsection [(5)(b)](ii). One of the primary purposes for the rule amendments is to clarify language, consistent with the provisions of RCW 34.05.328 (5)(b)(iv). Therefore, unless subsection [(5)(b)](ii) is invoked by the joint administrative rules review committee after filing the CR-102, no cost-benefit analysis is required.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

December 27, 2022
Amanda Hathaway
Rules Coordinator

OTS-4271.1

AMENDATORY SECTION (Amending WSR 20-09-144, filed 4/21/20, effective 5/22/20)

WAC 399-80-010 Broadband service expansion grant and loan program. (1) The board, in collaboration with the office, shall establish a competitive grant and loan program to award funding to eligible applicants in order to promote the expansion of access to broadband service in unserved areas of the state.

(2)(a) Grants and loans may be awarded under this section to assist in funding acquisition, installation, and construction of middle mile and last mile infrastructure that supports broadband services and

to assist in funding strategic planning for deploying broadband service in unserved areas.

(b) The board may choose to fund all or part of an application for funding, provided that the application meets the requirements of subsection ~~((9))~~ (11) of this section.

(3) Eligible applicants for grants and loans awarded under this section include:

(a) Local governments;

(b) Tribes;

(c) Nonprofit organizations;

(d) Cooperative associations;

(e) Multiparty entities comprised of public entity members;

(f) Limited liability corporations organized for the purpose of expanding broadband access; and

(g) Incorporated businesses or partnerships.

(4) (a) The board shall develop administrative procedures governing the ~~((application))~~ preapplication and award process. The board shall act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding funds under this section.

(b) At least ~~((sixty))~~ 60 days prior to the first day ~~((applications))~~ preapplications may be submitted each fiscal year, the board must publish on its website the specific criteria and any quantitative weighting scheme or scoring system that the board will use to evaluate or rank applications and award funding.

(c) The board may maintain separate accounting in the statewide broadband account created in RCW 43.155.165 as the board deems necessary to carry out the purposes of this section.

(d) The board must provide a method for the allocation of loans, grants, provision of technical assistance, and interest rates under this section.

(5) An applicant for a grant or loan under this section must provide the following information on the ~~((application))~~ preapplication:

(a) The location and description of the project;

(b) Evidence regarding the unserved nature of the community in which the project is to be located;

(c) Evidence that proposed infrastructure will be capable of scaling to greater download and upload speeds;

(d) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;

~~(e) ((The estimated cost of retail services to end users facilitated by a project;~~

~~(f) The proposed actual download and upload speeds experienced by end users;~~

~~(g) Evidence of significant community institutions that will benefit from the proposed project;~~

~~(h) Anticipated economic, educational, health care, or public safety benefits created by the project;~~

~~(i) Evidence of community support for the project;~~

~~(j) If available, a description of the applicant's user adoption assistance program and efforts to promote the use of newly available broadband services created by the project;~~

~~(k) The estimated total cost of the project;~~

~~(l) Other sources of funding for the project that will supplement any grant or loan award;~~

~~(m) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;~~

~~(n) A strategic plan to maintain long-term operation of the infrastructure;~~

~~(o)) Evidence that ((no later than six weeks)) before submission of the application, the applicant contacted, in writing, all entities providing broadband service near the proposed project area to ask each broadband service provider's plan to upgrade broadband service in the project area to speeds that meet or exceed the state's definition for broadband service as defined in RCW 43.330.530, within the time frame specified in the proposed grant or loan activities;~~

~~((p)) (f) If applicable, the broadband service providers' written responses to the inquiry made under ((o)) (e) of this subsection; (and~~

~~(q)) (g) The proposed geographic broadband service area and the proposed broadband speeds in the form and manner prescribed by the board;~~

~~(h) Evidence of community support for the project; and~~

~~(i) Any additional information requested by the board.~~

~~(6) An applicant for a grant or loan under this section must provide the following information on the application:~~

~~(a) ((Within thirty days of the close of the grant and loan application process,)) The final location and description of the project;~~

~~(b) Evidence that the proposed infrastructure will be capable of scaling to greater download and upload speeds;~~

~~(c) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;~~

~~(d) The estimated cost of retail services to end users facilitated by a project;~~

~~(e) The proposed actual download and upload speeds experienced by end users;~~

~~(f) Evidence of significant community institutions that will benefit from the proposed project;~~

~~(g) Anticipated economic, educational, health care, or public safety benefits created by the project;~~

~~(h) If available, a description of the applicant's user adoption assistance program and efforts to promote the use of newly available broadband services created by the project;~~

~~(i) The estimated total cost of the project;~~

~~(j) Other sources of funding for the project that will supplement any grant or loan award;~~

~~(k) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;~~

~~(l) A strategic plan to maintain long-term operation of the infrastructure;~~

~~(m) If applicable, documentation describing the outcome of the broadband service providers' written responses to the inquiry made prior to or during the preapplication phase; and~~

~~(n) Any additional information requested by the board.~~

~~(7) (a) The board shall publish on its website for at least 30 days the proposed geographic broadband service area and the proposed broadband speeds for each ((application)) proposed broadband project submitted in the preapplication period.~~

(b) The board shall, within three business days following the close of the preapplication cycle, publish on its website preapplications as described in subsection (5) of this section.

(c) The board shall set an objection period of at least 30 days.

(d) The board shall publish objection information received during the objection period that includes: (i) The objecting provider; (ii) the reason for objection; (iii) a description of how the current or proposed infrastructure meets or exceeds speeds contained in the definition of broadband service in RCW 43.330.530; (iv) existing or planned service plans or tiers and associated speeds; and (v) information about the objector's project status including percentage completed.

(8) (a) Any existing broadband service provider near the proposed project area may, (~~within thirty days of publication of the information under (a) of this subsection,~~) submit in writing to the board, an objection to (~~an application~~) a proposed broadband project. An objection must contain information demonstrating that:

(i) The project would result in overbuild, meaning that the objecting provider currently provides, or has begun construction to provide, broadband service to end users in the proposed project area at speeds equal to or greater than the (~~state speed goals contained in RCW 43.330.536~~) speeds contained in the definition of broadband in RCW 43.330.530(2); or

(ii) The objecting provider commits to complete construction of broadband infrastructure and provide broadband service to end users in the proposed project area at speeds equal to or greater than the (~~state speed goals contained in RCW 43.330.536~~) speeds contained in the definition of broadband in RCW 43.330.530(2), no later than (~~twenty-four~~) 24 months after the date awards are made under this section for the grant and loan cycle under which the (~~application~~) preapplication was submitted.

(~~(e)~~) (b) Objections submitted to the board under this subsection must be certified by affidavit.

(c) The board shall provide a period, as specified, for applicants to submit responses to posted objections.

(d) The board may evaluate the information submitted under this section by the objecting provider and applicant and must consider it in making a determination on the (~~application~~) proposed broadband project objected to. The board may request clarification or additional information. The board may choose to not fund a project if the board determines that the objecting provider's commitment to provide broadband service that meets the requirements of (~~(b)~~) (a) of this subsection in the proposed project area is credible. In assessing the commitment, the board may consider whether the objecting provider has or will provide a bond, letter of credit, or other indicia of financial commitment guaranteeing the project's completion.

(e) If the board denies funding to an applicant as a result of a broadband service provider's objection made under this section, and the broadband service provider does not fulfill its commitment to provide broadband service in the project area, then for the following two grant and loan cycles, the board is prohibited from denying funding to an applicant on the basis of a challenge by the same broadband service provider, unless the board determines that the broadband service provider's failure to fulfill the provider's commitment was the result of factors beyond the broadband service provider's control. The board is not prohibited from denying funding to an applicant for reasons other than an objection by the same broadband service provider.

(f) An applicant or broadband service provider that objected to the application may request a debriefing conference regarding the board's decision on the application. Requests for debriefing must be coordinated by the office and must be submitted in writing in accordance with procedures specified by the office.

(g) ~~((Confidential))~~ An objecting provider may mark any proprietary business and financial information ((submitted by an objecting provider under this subsection is exempt from disclosure)) as confidential that the objecting provider is willing to defend in court as exempt under chapter 42.56 RCW.

~~((7))~~ (9) (a) In evaluating applications and awarding funds, the board shall give priority to applications that are constructed in areas identified as unserved.

(b) In evaluating applications and awarding funds, the board may give priority to applications that:

(i) Provide assistance to public-private partnerships deploying broadband infrastructure from areas currently served with broadband service to areas currently lacking access to broadband services;

(ii) Demonstrate project readiness to proceed;

(iii) Construct infrastructure that is open access, meaning that during the useful life of the infrastructure, service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employing accountable interconnection arrangements published and available publicly;

(iv) Are submitted by tribal governments whose reservations are in rural and remote areas where reliable and efficient broadband services are unavailable to many or most residents;

(v) Bring broadband service to tribal lands, particularly to rural and remote tribal lands or areas servicing rural and remote tribal entities;

(vi) Are submitted by tribal governments in rural and remote areas that have spent significant amounts of tribal funds to address the problem but cannot provide necessary broadband services without either additional state support, additional federal support, or both;

(vii) Serve economically distressed areas of the state as the term "distressed area" is defined in RCW 43.168.020;

(viii) Offer new or substantially upgraded broadband service to important community anchor institutions including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

(ix) Facilitate the use of telemedicine and electronic health records, especially in deliverance of behavioral health services and services to veterans;

(x) Provide technical support and train residents, businesses, and institutions in the community served by the project to utilize broadband service;

(xi) Include a component to actively promote the adoption of newly available broadband services in the community;

(xii) Provide evidence of strong support for the project from citizens, government, businesses, and community institutions;

(xiii) Provide access to broadband service to a greater number of unserved households and businesses, including farms;

(xiv) Utilize equipment and technology demonstrating greater longevity of service;

(xv) Seek the lowest amount of state investment per new location served and leverage greater amounts of funding for the project from other private and public sources;

(xvi) Include evidence of a customer service plan;

(xvii) Consider leveraging existing broadband infrastructure and other unique solutions;

(xviii) Benefit public safety and fire preparedness; or

(xix) Demonstrate other priorities as the board, in collaboration with the office, may prescribe by rule.

(c) The board shall endeavor to award funds under this section to qualified applicants in all regions of the state.

(d) The board shall consider affordability and quality of service to end users in making a determination on any application.

(e) The board, in collaboration with the office, may develop additional rules for eligibility, project reapplications, project applications, the associated objection process, and funding priority, as provided under this subsection and subsections (3), (5), ~~((and))~~ (6), (7), and (8) of this section.

(f) The board, in collaboration with the office, may adopt rules for a voluntary nonbinding mediation between incumbent providers and applicants to the grant and loan program created in this section.

~~((8))~~ (10) To ensure a grant or loan to a private entity under this section primarily serves the public interest and benefits the public, any such grant or loan must be conditioned on a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least ~~((fifteen))~~ 15 years.

~~((9))~~ (11) (a) No funds awarded under this section may fund more than ~~((fifty))~~ 50 percent of the total cost of the project, except as provided in (b) of this subsection.

(b) The board may choose to fund up to ~~((ninety))~~ 90 percent of the total cost of a project in financially distressed areas as the term "distressed area" is defined in RCW 43.168.020, and in areas identified as Indian country as the term "Indian country" is defined in WAC 458-20-192.

(c) Funds awarded to a single project under this section must not exceed ~~((two million dollars))~~ \$2,000,000, except that the board may choose to fund projects qualifying for the exception in (b) of this subsection up to, but not to exceed, ~~((five million dollars))~~ \$5,000,000.

~~((10))~~ Prior to awarding funds under this section, the board must consult with the Washington utilities and transportation commission. The commission must provide to the board an assessment of the technical feasibility of a proposed application. The board must consider the commission's assessment as part of its evaluation of a proposed application.

~~((11))~~ (12) The board shall have such rights of recovery in the event of default in payment or other breach of financing agreement as may be provided in the agreement or otherwise by law.

~~((12))~~ (13) The community economic revitalization board shall facilitate the timely transmission of information and documents from its broadband program to the board in order to effectuate an orderly transition.

~~((13))~~ (14) (a) Emergency public works broadband projects include construction, repair, reconstruction, replacement, rehabilitation, or improvement to critical broadband infrastructure that has been made necessary by a natural disaster or damaged by unforeseen events. To ensure limited resources are provided as efficiently as

possible, the board shall grant priority to emergency public works projects that replace existing infrastructure of the provider whose facilities were damaged by the unforeseen event and shall not provide funds to a new provider to overbuild the existing provider. The loans or grants may be used to help fund all or part of an emergency public works broadband infrastructure project less any reimbursement from any of the following sources: (i) Federal disaster or emergency funds, including funds from the federal emergency management agency; (ii) state disaster or emergency funds; (iii) insurance settlements; and (iv) litigation. Applicants must reimburse the department any moneys received from the above listed sources for four years after formal project closeout. Applicants eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

(b) Eligible applicants for grants and loans awarded under this subsection are the same as those described in subsection (3) of this section.

(c) The board has discretion to waive certain program requirements in subsections (4) through (8) of this section if the applicant seeking emergency funding is the existing provider proposing to replace existing infrastructure impacted by the emergency.

(d) The board allocates funds to the emergency program biennially and the program is open until funds are expended.

(e) Eligible applicants must apply using the application and process provided by the board.

(f) Board deliberations—Emergency loan applications. The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(15) The definitions in RCW 43.330.530 apply throughout this section unless the context clearly requires otherwise.

(16) A "proposed broadband project" in subsections (7) and (8) of this section means a project that has been submitted as a preapplication to the board.

[Statutory Authority: RCW 43.155.040(5). WSR 20-09-144, § 399-80-010, filed 4/21/20, effective 5/22/20.]

WSR 23-02-028
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 28, 2022, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-071.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-450-0015 What types of income are not used by the department to figure out my benefits?, 388-470-0045 How do my resources count toward the resource limits for cash assistance?, and 388-470-0055 How do my resources count toward the resource limit for basic food?

Hearing Location(s): On February 7, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier February 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by February 7, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by January 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments clarify how the Washington working families tax credit will be treated for purposes of cash and food assistance program eligibility.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.300, 74.04.510, 74.08.090, and 74.08A.120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Gary Fryer, P.O. Box 45470, Olympia, WA 98504-5470, 253-720-5306.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is 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."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:
Is fully exempt.

December 22, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4956.1

AMENDATORY SECTION (Amending WSR 17-17-097, filed 8/18/17, effective 9/18/17)

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? (1) We do not count the following types of income when we determine your cash assistance and basic food benefits:

- (a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;
 - (b) Federal income tax refunds, ~~((and))~~ earned income tax credit (EITC), and Washington's working families tax credit (WFTC) payments in the month received;
 - (c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
 - (d) Federal ~~((twenty-five dollar))~~ \$25 supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;
 - (e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;
 - (f) Energy assistance payments;
 - (g) Educational assistance we do not count under WAC 388-450-0035;
 - (h) Native American benefits and payments we do not count under WAC 388-450-0040;
 - (i) Income from employment and training programs we do not count under WAC 388-450-0045;
 - (j) Money withheld from a benefit to repay an overpayment from the same income source;
 - (k) Legally obligated child support payments received by someone who gets temporary assistance for needy families (TANF) or state family assistance (SFA) benefits;
 - (l) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as voluntary agency (VOLAG) payments;
 - (m) Payments we are directly told to exclude as income under state or federal law;
 - (n) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and
 - (o) Distributions for qualified disability expenses from an achieving a better life experience (ABLE) account;
- (2) For basic food only:

(a) We do not count the total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf; and

(b) We do count money withheld because you were overpaid for not meeting requirements of a federal, state, or local means tested programs such as temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and supplemental security income (SSI).

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and 74.04.300. WSR 17-17-097, § 388-450-0015, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, 74.09.530, and 2011 1st sp.s. c 15, 2013 2nd sp.s. c 10, and the 2013 biennial budget. WSR 15-02-006, § 388-450-0015, filed 12/26/14, effective 1/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-08-002, § 388-450-0015, filed 3/21/12, effective 4/21/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-450-0015, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and Worker, Homeownership, and Business Assistance Act of 2009. WSR 10-17-103, § 388-450-0015, filed 8/17/10, effective 8/19/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and P.L. 107-171, section 4101. WSR 09-15-085 and 09-16-095, § 388-450-0015, filed 7/14/09 and 8/4/09, effective 11/15/09. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 74.08.090. WSR 09-09-103, § 388-450-0015, filed 4/20/09, effective 4/21/09; WSR 06-07-078, § 388-450-0015, filed 3/13/06, effective 5/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and Public Law 106-419. WSR 05-03-078, § 388-450-0015, filed 1/17/05, effective 2/17/05. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 02-14-022, § 388-450-0015, filed 6/21/02, effective 6/22/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530 and 2000 2nd sp.s. c 1 § 210(12). 01-18-006, § 388-450-0015, filed 8/22/01, effective 9/22/01. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-17-025, § 388-450-0015, filed 8/10/99, effective 10/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0590.]

AMENDATORY SECTION (Amending WSR 17-17-097, filed 8/18/17, effective 9/18/17)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance? (1) We count the following resources to-

ward your assistance unit's resource limits for cash assistance to decide if you are eligible for benefits under WAC 388-470-0005:

- (a) Liquid resources not specifically excluded in subsection (2) of this section, including but not limited to:
- (i) Cash on hand;
 - (ii) Money in checking or savings accounts;
 - (iii) Money market accounts or certificates of deposit (CD) less any withdrawal penalty;
 - (iv) Available retirement funds or pension benefits less any withdrawal penalty;
 - (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
 - (vi) Available trusts or trust accounts;
 - (vii) Lump sum payments as described in chapter 388-455 WAC; and
 - (viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources;
- (b) The cash surrender value (CSV) of whole life insurance policies;
- (c) The CSV over \$1,500 (~~(dollars)~~) of revocable burial insurance policies or funeral agreements;
- (d) The amount of a child's irrevocable educational trust fund that is over \$4,000 (~~(dollars)~~) per child;
- (e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220;
- (f) Any real property like a home, land, or building not specifically excluded in this section;
- (g) The equity value of vehicles as described in WAC 388-470-0070;
- (h) Resources of a sponsor as described in WAC 388-470-0060;
- (i) Sales contracts; and
- (j) Personal property that is not:
- (i) A household good;
 - (ii) Needed for self-employment; or
 - (iii) Of great sentimental value due to personal attachment or hobby interest.
- (2) The following types of liquid resources do not count when we determine your eligibility:
- (a) Bona fide loans, including student loans;
 - (b) Basic food benefits;
 - (c) Income tax refunds for 12 months from the date of receipt;
 - (d) Earned income tax credit (EITC) in the month received and for up to 12 months;
 - (e) Advance earned income tax credit payments;
 - (f) Washington's working families tax credit (WFTC);
 - ~~((f))~~ (g) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
 - ~~((g))~~ (h) Individual development accounts (IDAs) established under RCW 74.08A.220;
 - ~~((h))~~ (i) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a department decision;
 - ~~((i))~~ (j) Underpayments received under chapter 388-410 WAC;
 - ~~((j))~~ (k) Educational benefits that are excluded as income under WAC 388-450-0035;
 - ~~((k))~~ (l) The income and resources of an SSI recipient;

~~((l))~~ (m) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

~~((m))~~ (n) Foster care payments provided under Title IV-E, state foster care maintenance payments, or both;

~~((n))~~ (o) Adoption support payments;

~~((o))~~ (p) All funds in an achieving a better life experience (ABLE) account;

~~((p))~~ (q) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((q))~~ (r) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan to return to the home and are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty;

(c) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs; and

(d) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment.

(4) Property excluded under subsection (3)(d)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(5) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(6) If you sell your home, you have 90 days to reinvest the sale proceeds into an exempt resource.

(7) If you do not reinvest within 90 days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count your sale proceeds as a resource. Some examples of good cause include:

(a) Closing on your new home is taking longer than anticipated;

(b) You are unable to find a new home that you can afford;

(c) Someone in your household is receiving emergent medical care;

(d) Your children are in school and moving would require them to change schools.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and 74.04.300. WSR 17-17-097, § 388-470-0045, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0045, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-470-0045, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.08.090

and ARRA of 2009, Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix. WSR 10-15-069, § 388-470-0045, filed 7/16/10, effective 8/16/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 74.08.090. WSR 09-09-103, § 388-470-0045, filed 4/20/09, effective 4/21/09. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0045, filed 2/7/03, effective 3/1/03; WSR 99-16-024, § 388-470-0045, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0045, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 17-17-097, filed 8/18/17, effective 9/18/17)

WAC 388-470-0055 How do my resources count toward the resource limit for basic food?

(1) For basic food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources easily changed into cash, including but not limited to:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CD) less any withdrawal penalty;
- (iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (v) Available trusts or trust accounts; and
- (vi) Lump sum payments, which is money owed to you from a past period of time that you get but do not expect to get on a continuing basis;

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) of this section;

(c) Vehicles as described in WAC 388-470-0075; and

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward the resource limit described in WAC 388-470-0005(8):

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A home you do not live in, if you plan to return to the home and are out of the home because of one or more of the following circumstances:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty;
- (c) Property that:
 - (i) You are making a good faith effort to sell;
 - (ii) You intend to build a home on, if you do not already own a home;
 - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

- (iv) Is essential to the employment or self-employment of a household member;
- (v) Is essential for the maintenance or use of an income-producing vehicle; or
- (vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005;
 - (d) Household goods;
 - (e) Personal effects;
 - (f) Life insurance policies, including policies with cash surrender value (CSV);
 - (g) One burial plot per household member;
 - (h) One funeral agreement per household member, up to \$1,500 ((dollars));
 - (i) Pension plans or retirement funds not specifically counted in subsection (1) of this section;
 - (j) Sales contracts, if the contract is producing income consistent with its fair market value;
 - (k) Government payments issued for the restoration of a home damaged in a disaster;
 - (l) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs;
 - (m) Nonliquid resources that have a lien placed against them;
 - (n) Earned income tax credits (EITC) or Washington's working families tax credit (WFTC) for 12 months, if you were a basic food recipient when you got the EITC or WFTC and you remain on basic food for all 12 months (~~(i) For 12 months, if you were a basic food recipient when you got the EITC and you remain on basic food for all twelve months; or (ii) The month you get it and the month after, if you were not getting basic food when you got the EITC~~);
 - (o) Energy assistance payments or allowances;
 - (p) The resources of a household member who gets supplemental security income (SSI), temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, or pregnant women assistance (PWA) benefits;
 - (q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;
 - (r) Education funds or accounts in a tuition program under Title 26 U.S.C. Sec. 529 or 530 of the federal Internal Revenue Code of 1986, as amended;
 - (s) All funds in an achieving a better life experience (ABLE) account;
 - (t) Resources specifically excluded by federal law; and
 - (u) Federal income tax refunds for 12 months whether or not you were receiving basic food assistance at the time you got the refund.
- (3) Property excluded under subsection (2)(c)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.
- (4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. Exception: Federal tax refunds are not counted for 12 months even when mixed with countable resources.
- (5) If you sell your home, you have 90 days to reinvest the sale proceeds into an exempt resource. If you do not reinvest within 90 days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time

based on your circumstances. If you do not have good cause, we will count the sale proceeds as a resource. Some examples of good cause include:

- (a) Closing on your new home is taking longer than anticipated;
- (b) You are unable to find a new home that you can afford;
- (c) Someone in your household is receiving emergent medical care;
- (d) Your children are in school and moving would require them to change schools.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and RCW 74.04.300. WSR 17-17-097, § 388-470-0055, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-08-002, § 388-470-0055, filed 3/21/12, effective 4/21/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-470-0055, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and Public Law 110-234. WSR 08-18-043, § 388-470-0055, filed 8/29/08, effective 10/1/08. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0055, filed 2/7/03, effective 3/1/03; WSR 99-16-024, § 388-470-0055, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0055, filed 7/31/98, effective 9/1/98.]

WSR 23-02-052

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 21-03—Filed January 3, 2023, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-091.

Title of Rule and Other Identifying Information: Ecology proposes to amend chapter 173-180 WAC, Facility oil handling standards and chapter 173-184 WAC, Vessel oil transfer advance notice and containment requirements. Chapter 173-180 WAC establishes oil spill prevention and oil transfer requirements for regulated oil handling facilities. Chapter 173-184 WAC establishes oil transfer requirements for vessels delivering oil in bulk on or over waters of the state. For more information on this rule making, visit our website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-180-173-184>.

Hearing Location(s): On Wednesday, February 8, 2023, at 1:00 p.m., webinar hearing via Zoom. Presentation and question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online <https://waecy-wa-gov.zoom.us/j/87198002821>. For call-in only, dial 253-215-8782 and enter meeting ID 871 9800 2821;

On Tuesday, February 14, 2023, at 9:00 a.m., webinar hearing via Zoom. Presentation and question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online <https://waecy-wa-gov.zoom.us/j/87113425365>. For call-in only, dial 253-215-8782 and enter meeting ID 871 1342 5365; and

On Thursday, February 16, 2023, at 5:00 p.m., webinar hearing via Zoom. Presentation and question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online <https://waecy-wa-gov.zoom.us/j/82099932616>. For call-in only, dial 253-215-8782 and enter meeting ID 820 9993 2616.

Date of Intended Adoption: June 6, 2023.

Submit Written Comments to: Brittany Flittner, US mail: Department of Ecology, Spill Prevention, Preparedness, and Response Program, P.O. Box 47600, Olympia, WA 98504-7600. Parcel delivery services: Department of Ecology, Spill Prevention, Preparedness, and Response Program, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online via ecology's online comment tool <https://sppr.ecology.commentinput.com/?id=6Mx2s>, or at the public hearings, by March 5, 2023.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, TTY or Washington relay service 711 or 877-833-6341, email ecyadacoordinator@ecy.wa.gov, by February 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will amend both chapters to implement updates to RCW 88.46.165. The rule making will also include necessary administrative updates, and will expand on existing requirements and establish new requirements as described below.

In chapters 173-180 and 173-184 WAC:

- Make changes to address inconsistent or unclear direction in the rule(s) and make any corrections needed.
- Evaluate and update codes and standards throughout the rule(s).

- Update and clarify enforcement provisions for expired plans, manuals, reports, and programs requiring reapproval for Class 1 and 2 facilities and delivering vessels.
- Update submittal requirements, recordkeeping requirements, and compliance schedules throughout the rule(s).
- For Rate A deliverers:
 - Clarify safe and effective determination and Boom Reporting Form submission requirements.
 - Expand Safe and Effective Threshold Determination Report content requirements and align report and review requirements.
- Expand advance notice of oil transfer reporting requirements for Class 1, 2, and 3 facilities and delivering vessels.

In chapter 173-180 WAC:

- Clarify and expand plan content and drill requirements for Class 2 facility oil transfer response plans.
- For Class 1 facilities:
 - Establish facility out of service and decommissioning requirements.
 - Establish seismic protection requirements for transfer pipelines and storage tanks.
 - Clarify and expand plan preparation and plan content requirements for prevention plans, including secondary containment permeability and facility spill risk analysis criteria.
 - Clarify training and certification requirements.

In chapter 173-184 WAC:

- Update advance notice reporting time frame requirements for delivering vessels.
- Update and clarify prebooming and safe and effective threshold determination requirements for lightering operations, and for short-term transfer location approval requests for Rate A deliverers.

Reasons Supporting Proposal: Rule amendments are needed to align both rules with statutory changes made in the 2019 legislative session. Through ESHB 1578, codified in RCW 88.46.165, the legislature expanded advance notice of oil transfer reporting requirements for Class 1, 2, and 3 facilities and for vessels delivering oil in bulk on or over waters of the state. Expanding advance notice reporting requirements allows ecology to better prepare for and respond to spills that may impact waters of the state.

Additionally, these chapters have not been updated since 2007. Administrative updates are needed to provide clear direction to the regulated community. Consistent standards provide ease of compliance with ecology's rules and ensure our rules are not overly burdensome. Updates are also needed to streamline process requirements with advances in technology.

Broader policy changes are also needed. As oil spill risk continues to change and new risks emerge, ecology's rules must adapt to address these risks and ensure we are requiring the necessary safeguards to prevent, prepare for, and respond to spills. Ecology has worked closely with the regulated community over the years to implement and enforce the requirements of these two rules. Rule amendments are es-

essential to address gaps identified and provide stronger oil spill protection to the waters of the state.

Expanding requirements for Class 1 facilities is necessary to address gaps identified in oil spill prevention standards. Specifying criteria for reporting secondary containment permeability will allow facilities and ecology to determine whether they are meeting existing standards. Providing criteria for facility spill risk analyses will improve the quality and consistency of risk assessments. Addressing requirements for seismic protection of storage tanks and transfer pipelines will ensure safeguards are in place to help prevent spills during seismic events. Establishing decommissioning requirements provides oil spill prevention measures during the entirety of a facility's life cycle.

Expanding oil transfer response plan requirements for Class 2 facilities provides an additional layer of oil spill preparedness, as oil transfers for these facilities occur broadly throughout the state. Routine exercise of response equipment and notification procedures strengthens the state's readiness when a spill occurs.

Facilities and delivering vessels must ensure safeguards are maintained before and during oil transfer operations. Ecology's requirements take into consideration each aspect of the transfer, minimizing the risk and impact of a spill. This includes ensuring containment measures are in place, effective communication is being practiced, and recovery equipment is readily available in case of an incident. Rule updates are necessary for oil transfer operations to implement lessons learned through years of implementation and provide oil spill prevention improvements in areas where gaps have been identified.

Updating the advance notice reporting time frame requirements for oil transfer information to ecology will allow inspectors time to prepare for and conduct oil transfer inspections. Oil transfer inspections provide enhanced protection to the waters of the state.

Statutory Authority for Adoption: RCW 88.46.160 Refueling, bunkering, or lightering operations—Availability of containment and recovery equipment—Rules, 88.46.165 Oil transfers—Scope of rules—Reporting volumes of oil transferred; chapter 90.56 RCW, Oil and hazardous substance spill prevention and response; RCW 90.56.005 Findings—Purpose, 90.56.050 Rules, 90.56.200 Prevention plans, 90.56.220 Facility operation standards, 90.56.230 Operations manuals.

Statute Being Implemented: RCW 88.46.160 Refueling, bunkering, or lightering operations—Availability of containment and recovery equipment—Rules, 88.46.165 Oil transfers—Scope of rules—Reporting volumes of oil transferred, 90.56.200 Prevention plans, 90.56.220 Facility operation standards, 90.56.230 Operations manuals.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Brittany Flittner, Lacey, Washington, 360-584-4490; Implementation and Enforcement: Brian Kirk and Matt Bissell, Lacey, Washington, 425-395-5800 and 360-280-7061.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Brittany Flittner, Department of Ecology, Spill Prevention, Preparedness, and Response Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-584-4490, TTY or Washington relay service 711 or 877-833-6341, email Brittany.flittner@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA), chapter 19.85 RCW, based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement (SBEIS) below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline. We identify relevant RFA exemptions (if any) for each set of requirements.

The proposed rule does impose more-than-minor costs on businesses.

SBEIS

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washing-

ton state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document (**Ecology publication no. 23-08-001, January 2023**).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- Chapter 88.46 RCW, Vessel oil spill prevention and response.
- Chapter 90.56 RCW, Oil and hazardous substance spill prevention and response.
- Chapter 173-180 WAC, Facility oil handling standards.
- Chapter 173-184 WAC, Vessel oil transfer advance notice and containment requirements.
- Chapter 51-50 WAC, State building code adoption and amendment of the 2021 Edition of the International Building Code.
- Chapter 173-182 WAC, Oil spill contingency plan.
- Chapter 173-185 WAC, Oil movement by rail and pipeline notification.
- Chapter 317-40 WAC, Bunkering operations.
- 29 C.F.R. Part 1910, Occupational safety and health standards.
- 33 C.F.R. Part 154, Facilities transferring oil or hazardous material in bulk.
- 33 C.F.R. Part 155, Oil or hazardous material pollution prevention regulations for vessels.
- 33 C.F.R. Part 156, Oil and hazardous material transfer operations.
- 40 C.F.R. Part 112, Oil pollution prevention.
- 40 C.F.R. Part 302, Designation, reportable quantities, and notification.
- 46 C.F.R. Part 69, Measurement of vessels.
- 49 C.F.R. Part 130, Oil spill prevention and response plans.
- 49 C.F.R. Part 195, Transportation of hazardous liquids by pipeline.
- International Building Code, Chapter 16 (adopted by chapter 51-50 WAC).
- International Fire Code, Chapter 57.
- National Fire Protection Association, Flammable and Combustible Code, No. 30.
- National Preparedness for Response Exercise Program.

PROPOSED RULE AMENDMENTS:

Chapter 173-180 WAC (facilities). Recordkeeping: *Baseline:* The baseline rule includes requirements for recordkeeping and sets a requirement to keep most records for three years. It specifies records that must be kept for other durations, including but not limited to, equipment lifetime for design, construction, and repair records, and five years for training and certification records.

Proposed: The proposed rule would:

- Expand the types of equipment records facilities must keep for the lifetime of the equipment to include certain inspection and testing records.
- Add a five-year retention requirement for inspection, maintenance, and repair records for secondary containment.
- Add a requirement for Class 4 facilities to keep oil transfer personnel training records for five years.

Transfer equipment testing standards: *Baseline:* Under the baseline, under WAC 173-180-205, testing of oil transfer equipment must be completed annually using one of a set of specified methods.

Proposed: The proposed rule would add the option of using another method of equal or higher standards than those listed under the baseline. This method would need to be approved by ecology.

Advance notice of transfer: *Baseline:* Class 1, 2, and 3 facilities transferring more than 100 gallons of oil must notify ecology at least 24 hours before the transfer (or, if 24 hours is not possible, as soon as is possible before the transfer), using the Advance Notice of Transfer (ANT) form. Chapter 88.46 RCW additionally specifies the following must be included in the ANT:

- Region.
- Gravity as measured by American Petroleum Institute (API) standard.
- Type of crude oil.

Chapter 173-185 WAC requires API gravity and sulfur content.

Proposed: The proposed rule would:

- Add a requirement to resubmit the ANT if the start time of the transfer changes by more than six hours.
- Remove the option to submit an ANT by fax.
- Add the following information to the contents of the ANT:
 - Specifying the name of the delivering facility and receiving vessel must be the documented name.
 - Details of oil product type if it is crude oil:
 - Region of origin.
 - Gravity as measured by API standard, or specific gravity.
 - Sulfur content.
 - Viscosity.

Equivalent compliance plan: *Baseline:* Under the baseline, owners or operators must submit a paper and electronic copy of their equivalent compliance plan to ecology. The baseline rule also specifies submittal and approval process requirements, as well as conditional approval.

Proposed: The proposed rule would remove the requirement to submit a paper copy and only require owners and operators to submit one electronic copy of the plan to ecology. It would also clarify the submittal and approval process, and elements of conditional approval. Finally, it would add specification of potential restrictions under conditional approval, as well as timing of the conditional approval requirements.

Oil transfer procedure: *Baseline:* Under the baseline, all oil transfer operations must be performed based on the facility's approved operations manual. Among the requirements for oil transfer procedures:

- Deliveries providing oil to vessels without fixed containment must use back pressure shutoff nozzles and provide sufficient portable containment for each tank vent.
- The persons in charge (PICs) must verify that designated tanks are receiving oil at the expected rate.

Proposed: Under the proposed rule, deliveries providing oil to vessels without fixed containment would no longer be required to use back pressure shutoff nozzles, as this requirement is unfeasible for most vessels, and backpressure shutoff nozzles are ineffective for most vessels. The amendments would also clarify that the facility and vessel PICs should also verify that the designated tanks are receiving or discharging oil at the expected rate, and that no other tanks are receiving or discharging oil.

Seismic requirements - storage tanks: *Baseline:* The baseline sets out requirements for storage tanks, including fire protection codes, and design and manufacturing standards.

Proposed: The proposed rule would add seismic protection requirements for storage tanks at Class 1 facilities. It would require tanks installed before the effective date of the proposed rule to install and maintain one or more of the following:

- Flexible mechanical devices between tanks and pipe connections.
- Foundation driven pilings.
- Anchored storage tanks.
- Another equally protective measure approved by ecology.

It would also require newly constructed tanks to meet baseline building and fire code requirements as well as specific design and manufacturing standards. These new tanks would also need to be designed to meet specific seismic design and inspection requirements from the:

- API, including API Standard 650 - Welded Steel Tanks for Oil Storage.
- American Society of Civil Engineers.
- International Building Code and Washington building code adopting it.

Seismic requirements - transfer pipelines: *Baseline:* The baseline sets out requirements for transfer pipelines, including federal codes, access restrictions, inspection requirements, and requirements for buried pipelines.

Proposed: The proposed rule would add seismic protection requirements for transfer pipelines at Class 1 facilities. It would require pipelines installed before the effective date of the proposed rule to install and maintain one or more of the following:

- Flexible mechanical devices between tanks and pipe connections.
- Flexible mechanical devices between pipe connections.
- Pipeline supports that protect against seismic motion.
- Automatic isolation shutoff valves triggered by seismic events.
- Another equally protective measure approved by ecology.

The proposed rule also specifies the relevant baseline requirements (federal codes) for pipelines that are replaced, moved, or constructed after the effective date of the rule. It adds seismic protection design standards and includes requirements for one or more of the protection measures listed above.

Operations manual submittal: *Baseline:* Under the baseline, Class 1 facilities must submit their operations manual to ecology for re-approval 120 days before beginning oil transfer operations. Class 2 facilities must submit plans for initial approval 90 days before conducting oil transfers and 180 days before for reapproval.

Proposed: The proposed rule would require Class 1 and 2 facilities to submit all operations manuals (initial approval and reapproval) to ecology 120 days before oil transfer operations. It would also remove the option to submit a physical manual.

Substantial change in operations: *Baseline:* Under the baseline, Class 1 and 2 facilities must notify ecology before any significant change. The baseline rule lists examples of significant change, including but not limited to:

- Change in type of oil handled.
- Substantial change in oil handling capacity.
- Noncompliance with the Federal Oil Pollution Act of 1990.
- Substantial change in spill prevention technology, or facility technology, operations, or personnel procedures.

Proposed: The proposed rule would classify failure to notify ecology of a significant change as noncompliance. It would also define a substantial change in oil handling capacity as at least five percent for Class 1 facilities.

Follow-up training: *Baseline:* Under the baseline, Class 1 and 2 facilities must develop follow-up remedial training for personnel clearly responsible for causing an oil spill while functioning in their position, unless they no longer occupy that position.

Proposed: The proposed rule would eliminate the use of "remedial" and "clearly" while adding clarity that the training must address the causes of the spill and measures to prevent it [from] happening again, as part of the continuing education program for Class 1 facilities.

Training and certification program: *Baseline:* Under the baseline, Class 1 and 2 facilities must develop and implement their training and certification program at least 90 days prior to oil transfer operations.

Proposed: The proposed rule amendments would require earlier implementation of 120 days before oil transfer operations. Amendments to this section also include clarifications without material change to requirements.

Prevention Plan: *Baseline:* The baseline rule specifies requirements for Class 1 facility prevention plans, including formatting, contents, and submittal. Contents include facility information and baseline secondary containment requirements, and requirements for spill risk analysis. Submittal is required 65 days before beginning operations or plan expiration.

Proposed: The proposed rule would:

- Add name and contact information of the facility's supervising, management, and operations personnel.
- Specify prevention plan details regarding secondary containment permeability.
- Formally define specific elements of the baseline risk analysis requirement.
- Require plan submittal 120 days before the expiration date of the existing plan.

The proposed rule would also remove the baseline requirement option for submittal of a paper copy of the prevention plan to only an electronic submittal requirement.

Oil transfer response plan: *Baseline:* The baseline rule specifies requirements [in] Class 2 facility oil transfer response plans (OTRPs), including formatting, contents, and submittal. Contents includes the requirements of 33 C.F.R Part 154. Submittal of two physical copies and one electronic copy of the plan is required.

Proposed: The proposed rule amendments list the specific requirements of the baseline federal requirements and include adding the following additions to the OTRP:

- Cross-reference table.
- Written statement binding the plan submitter to its use.
- Description of the number of tanks on the largest truck or container.
- For baseline transfer location listing:
 - o Clarified facility location description, of street address or GPS location.
 - o Prior notification to ecology of locations not listed in the plan.
 - o Transfer rates used at each listed facility.
- Written statement that drill records will be kept for three years and made available to ecology.

The proposed rule would also remove the baseline requirement for submittal of paper copies of the OTRP to only an electronic submittal requirement.

Drill requirements: *Baseline:* The baseline includes drill requirements for Class 2 facilities based in the National Preparedness for Response Exercise Program (NPREP) Guidelines.

Proposed: The proposed rule amendments would:

- Add drill credit for a spill.
- Specify requirements of tabletop and deployment drills to be designed with ecology.

Out of service requirements: *Baseline:* The baseline does not include Washington state-specific out of service requirements for storage tanks and transfer pipelines at Class 1 facilities. Storage tanks and transfer pipelines may be placed in caretaker status under 33 C.F.R. Part 154 or permanently closed as defined in 40 C.F.R. Part 112.

Proposed: The proposed rule would require owners or operators of out of service storage tanks or transfer pipelines to meet the following:

- If not decommissioning the equipment, continue to comply with rule requirements for active equipment.
- If decommissioning the equipment:
 - o Transfer pipelines must be oil-free, certified gas-free, and blanked at both ends.
 - o Marine transfer hoses must be oil-free, certified gas-free, and removed from the dock.
 - o Storage tanks must be oil-free, certified gas-free, and disconnected.
 - Piping connections must be blanked.
 - Connected piping must be air-gapped.
 - Electrified devices must be deenergized.

The owner or operator would also need to notify ecology 30 days before a decommissioning or return to service.

Chapter 173-184 WAC (vessels). Recordkeeping: *Baseline:* The baseline rule does not include recordkeeping requirements.

Proposed: The proposed rule would set three-year records retention requirements and require records to be made available to ecology upon request.

Advance notice of transfer: *Baseline:* The baseline rule sets ANT requirements for delivering vessels, including timing, format, and contents. ANT submission is required at least four hours before transfer and a fax or by ecology form is required.

Chapter 88.46 RCW additionally specifies that the following must be included in the ANT:

- Region.
- Gravity as measured by API standard.
- Type of crude oil.

Chapter 173-185 WAC requires API gravity and sulfur content.

Proposed: The proposed rule would:

- Add a requirement to resubmit the ANT if the start time of the transfer changes by more than six hours.
- Require ANT submission at least 24 hours in advance or the time frame set forth by the applicable United States Coast Guard Captain of the Port, whichever is greater.
- Remove the option to submit an ANT by fax.
- Add the following information to the contents of the ANT:
 - Specifying the name of the delivering vessel and receiving vessel or facility must be the documented name.
 - Details of oil product type if it is crude oil:
 - Region of origin.
 - Gravity as measured by API standard or specific gravity.
 - Sulfur content.
 - Viscosity.

Prebooming requirements: *Baseline:* Under the baseline, Rate A deliverers must preboom transfers when it is safe and effective to do so and identifies determination of safe and effective.

Proposed: The proposed rule would require that:

- Vessels use threshold values specified in rule for locations that are not covered in the safe and effective threshold determination report.
- Vessels to use threshold values specified in the rule for lightering transfers.

Both rules (facilities and vessels). Definitions: *Baseline:* The baseline rule and statute contain definitions relevant to the baseline rule requirements.

Proposed: The proposed rule amendments would:

- Add definitions from the baseline statute.
- Add definitions needed to implement new proposed requirements.

Noncompliance: *Baseline:* Under the baseline, facilities and vessels that violate relevant chapters may be subject to enforcement and penalties under the authorizing statute.

Proposed: The proposed rule amendments would add that in response to noncompliance with any requirement, ecology may conditionally approve or disapprove any approved plan or report.

Compliance schedules: *Baseline:* The baseline inherently does not include compliance deadlines for new rule requirements beyond any added to the rule in a previous rule making.

Proposed: The proposed rules include compliance schedules for existing facilities and vessels:

- Thirty days to meet ANT requirements.
- Sixty days to meet Rate A prebooming requirements.
- By the current safe and effective threshold determination report's expiration date to meet associated requirements.
- Within 10 years from rule effective date or by the next scheduled internal API Standard 653 inspection, whichever is later, for Class 1 facility storage tanks constructed before the effective date to meet seismic protection measures.
- Within 10 years from rule effective date or by the next scheduled API Standard 570 inspection, whichever is later, for Class 1 facility transfer pipelines constructed before the effective date to meet seismic protection measures.
- By the current prevention plan's expiration date to meet associated requirements.
- Twelve months to meet oil transfer response plan requirements.
- Drill program requirements begin after oil transfer response plan requirements are met.

They also include requirements for new facilities and vessels and new owners or operators to meet the new requirements before beginning operations.

Electronic submission: *Baseline:* Under the baseline, requirements for reports and plans variously include submission of physical copies by mail or submission by fax, as well as occasional electronic submission.

Proposed: The proposed amendments throughout the rule would make all records submittable electronically through an online format or using email. Submitting via fax or a paper copy is no longer an option.

Conditional approval: *Baseline:* The baseline includes conditional approval for all plans, reports, manuals, and programs.

Proposed: The proposed rule amendments establish a clear and consistent process and set of requirements for conditional approval.

Rate A prebooming and alternative measures: *Baseline:* Under the baseline, Rate A deliverers must preboom transfers when it is safe and effective to do so and identifies determination of safe and effective.

Proposed: The proposed rules would require:

- Boom reporting forms to include all observed and forecasted conditions that exceed values in the safe and effective threshold determination report.
- Rate A deliverers transferring at anchor to submit follow-up boom reporting forms every four hours if environmental conditions continue to exceed safe and effective values.
- During simultaneous or multiple transfers, it is appropriate to preboom if it is safe and effective, pumping is complete for volatile other products, and at least three hours remain in the transfer.

- Rate A deliverers transferring at a terminal to submit follow-up boom reporting forms every six hours if environmental conditions continue to exceed safe and effective values.

Safe and Effective Threshold Determination Report: *Baseline:* Under the baseline, delivering facilities and vessels conducting Rate A transfers must prepare a safe and effective threshold determination report. The baseline rule includes required format, contents, submittal, and approval.

Proposed: The proposed rules would add specific elements required to be included in the report, including pertaining to:

- Transfer attributes.
- Threshold value analysis.
- Boom attributes.
- Deliverer abilities.
- Determination methodology.
- Monitoring equipment.
- Determination under special circumstances.
- Reevaluation of determination.
- How alternative measures will be met.

Changes without material impact: *Baseline:* Experience with implementing the baseline rules and associated statutes has helped ecology identify areas in which the organization and clarity of the rule can be improved. Ecology reduced complexity and redundancy throughout both rules.

Proposed: The proposed rule amendments make multiple changes that have no material impact on rule requirements. These include:

- Clarifying language.
- Updating codes and standards.
- Combining sections pertaining to the same subject matter.
- Combining sections pertaining to the same entities.
- Correcting typographical, formatting, or other errors that do not affect the rule's contents.

COSTS OF COMPLIANCE: EQUIPMENT: FACILITIES:

Seismic protection costs, storage tanks.

Statistic	Flexible Mechanical Devices	Footing Anchor	Pile Foundation
<i>Minimum*</i>	\$44,285	\$0	\$0
<i>Median</i>	\$211,538	\$1,340,680	\$6,479,776
<i>Maximum</i>	\$1,351,610	\$8,709,317	\$111,828,292
<i>Total for 23 facilities</i>	\$8,659,766	\$52,810,327	\$474,497,083

* Zero reflects cases in which one or more facilities have already installed this type of seismic protection.

Seismic protection costs, transfer pipelines.

Descriptive Statistic	Emergency Valves	Sliding Plates
<i>Minimum</i>	\$230,546	\$164,970
<i>Median</i>	\$396,894	\$513,889
<i>Maximum</i>	\$1,341,731	\$13,614,624
<i>Total for 23 facilities</i>	\$12,436,183	\$38,641,144

We estimated Class 1 facilities would incur an equivalent state-wide annual cost of \$29,000 to \$58,000 for decommissioning.

COSTS OF COMPLIANCE: SUPPLIES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

COSTS OF COMPLIANCE: LABOR: FACILITIES: We assumed the proposed rule amendments would result in an additional hour every three months spent ensuring records are being retained as required. Using the median hourly wage for "Information and records clerks, all other" of \$23.58 per hour (2022-dollars), this would result in a statewide annual cost of \$12,358.

We assumed the proposed rule amendments would result in a share of ANTs being resubmitted. As we could not identify precisely what this share would be, we estimated between five percent and 25 percent would be resubmitted due to a time change of greater than six hours. There are currently over 12,200 ANTs submitted each year, on average. We assumed the proposed amendments would result in 0.25 hours per resubmitted ANT. Using the median hourly wage for "Petroleum Pump System Operators, Refinery Operators, and Gaugers" of \$51.81 (2022-dollars), this would result in a statewide annual cost of between \$8,000 and \$40,000.

We assumed the proposed rule amendments would result in 10 additional minutes (0.167 hours) of additional effort to complete the crude oil information required for an ANT, for an annual average of 263.2 crude oil ANTs. Using the median hourly wage for "Petroleum Pump System Operators, Refinery Operators, and Gaugers" of \$51.81 (2022-dollars), this would result in a statewide annual cost of \$2,273.

We assumed the proposed rule amendments would result in an additional 0.1 hour per ANT to make additional verifications. On average, there are currently 2,400 ANTs submitted each year this clarification may apply to. Using the median hourly wage for "Petroleum Pump System Operators, Refinery Operators, and Gaugers" of \$51.81 (2022-dollars), this would result in an annual cost of \$12,400.

These proposed amendments would result in costs associated with:

- Providing additional information regarding personnel and contact information:
 - We estimated costs for 23 Class 1 facilities. We assumed the proposed rule amendments would result in an additional hour updating prevention plan contents (excluding the items below) in line with the proposed rule amendments. Using the median hourly wage for "Petroleum engineers" of \$64.27 per hour (2022-dollars), this would result in a one-time cost of \$1,478 in each planning cycle.
- Potential additional analysis and documentation of secondary containment permeability, depending on interpretation of baseline requirements:
 - We assumed the proposed rule amendments could result in an additional 16 hours of labor. Using the median hourly wage for "Petroleum engineers" of \$64.27 per hour (2022-dollars), and adding overhead costs (reflecting external labor costs) to estimate a loaded hourly wage of \$116.95, this would result in a one-time cost of \$23,651 in each planning cycle. We also examined higher costs associated with wages, overhead, and consultant markup, using a loaded hourly wage of \$400, resulting in a one-time cost of \$147,200 in each planning cycle.
 - If this analysis identifies needed changes to secondary containment permeability, a facility may incur additional costs. These costs would vary depending on the identified needs. If no such changes are identified, no additional costs would be incurred.

- Potential additional risk analysis, depending on interpretation of baseline requirements:
 - We assumed the proposed rule amendments could result in an additional 120 hours of labor. Using the median hourly wage for "Petroleum engineers" of \$64.27 per hour (2022-dollars), and adding overhead costs (reflecting external labor costs) to estimate a loaded hourly wage of \$116.95, this would result in a one-time cost of \$177,000 in each planning cycle. We also examined higher costs associated with wages, overhead, and consultant markup, using a loaded hourly wage of \$400, resulting in a one-time cost of \$1.1 million in each planning cycle.

We assumed the proposed rule amendments could result in an additional four hours of labor toward response plans. Using the median hourly wage for "Petroleum engineers" of \$64.27 per hour (2022-dollars), this would result in a one-time cost of \$5,913 in each planning cycle.

We assumed the proposed rule amendments could result in an additional 16 hours of labor. Using the median hourly wage for "Health and safety engineers, except mining safety engineers and inspectors" of \$53.31 per hour (2022-dollars), this would result in a one-time cost of \$22,177 in each planning cycle toward drill requirements.

Using the median hourly wage for "Petroleum engineers" of \$64.27 per hour (2022-dollars), this would result in an annual cost of \$148 to \$296 for out-of-service notification.

VESSELS: We assumed the proposed rule amendments would result in an additional hour quarterly, ensuring records are being retained as required. Using the median hourly wage for "Information and records clerks, all other" of \$23.58 per hour (2022-dollars), this would result in an annual cost of \$283.

Due to data attributes, costs to vessels related to ANTs are reflected in the estimate in the previous section.

FACILITIES AND VESSELS: The proposed rule amendments would result in additional costs to resubmit the boom reporting forms.

Resubmittal: There are currently over 12,200 ANTs submitted each year, on average. We assumed between 25 and 50 percent of those were Rate A transfers impacted by the proposed rule amendments in their use of boom reporting forms. We assumed 50 percent of boom reporting forms would need to be resubmitted due to ongoing conditions that exceed safe and effective values. Using the median hourly wage for "Petroleum engineers" of \$64.27 per hour (2022-dollars), this would result in a statewide annual cost of between \$159,000 and \$318,000.

The 20-year present value of this cost estimate is between approximately \$2.9 million and \$5.8 million.

Multiple transfers: We were not able to identify or make reasonable assumptions about the frequency with which circumstances would arise during which additional prebooming is done under the proposed rule amendments relating to multiple simultaneous transfers. In such cases, additional labor would be required to preboom.

We conservatively assumed all Class 1 facilities and three delivering vessel companies would be impacted by these proposed amendments, totaling 26 entities. We assumed facilities and vessels would need an additional 16 hours of labor to complete the additional requirements. Using the median hourly wage for "Petroleum engineers" of \$64.27 per hour (2022-dollars), this would result in a cost of \$27,000 in each planning cycle.

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS: Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services above.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: Twenty-year present value compliance costs per employee.

<i>WAC Chapter</i>	<i>Amendment Category</i>	Average Employment - Small Businesses	Average Employment - Largest 10% of Businesses	PV Cost per Employee - Small Businesses (high)	PV Cost per Employee - Largest 10% of Businesses (high)
173-180	<i>Recordkeeping</i>	9	13,060	\$24,620	\$17
173-180	<i>Oil transfer procedure</i>	14	31,500	\$15,882	\$7
173-180	<i>Seismic - Tanks</i>	n/a	n/a	---	---
173-180	<i>Seismic - Transfer pipelines</i>	n/a	n/a	---	---
173-180	<i>Follow-up training</i>	n/a	n/a	---	---
173-180	<i>Prevention plan</i>	n/a	n/a	---	---
173-180	<i>OTRP</i>	n/a	n/a	---	---
173-180	<i>Drills</i>	17	31,500	\$4,845	\$3
173-180	<i>Out of service</i>	n/a	n/a	---	---
173-184	<i>Recordkeeping</i>	n/a	n/a	---	---
173-184	<i>Prebooming</i>	n/a	n/a	\$0	\$0
<i>Both rules</i>	<i>ANT</i>	16	23,166	\$47,874	\$33
<i>Both rules</i>	<i>Prebooming</i>	16	23,166	\$362,257	\$250
<i>Both rules</i>	<i>SETD report</i>	n/a	n/a	---	---

CONSIDERATION OF LOST SALES OR REVENUE: We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: Interindustry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time.

Many of the likely affected businesses operate in a variety of industries. To reflect this, we ran multiple REMI model scenarios, varying assumptions about which industries incur costs, as well as the size of costs (based on ranges estimated in Chapter 3), to develop a range of estimated impacts across the state. Across 24 modeled scenarios:

- The lowest impacts resulted from low-end estimates of costs, and most costs being borne by the petroleum manufacturing industry except those costs isolated by their applicability to wholesale or water transportation industries.

This resulted in statewide aggregate impacts of:

- o Output losses of \$4 million in 2023, rising to \$21 million by 2027, and falling thereafter.
- o No significant impact to prices.

- The highest impacts resulted from high-end estimates of costs, most costs being borne by the petroleum manufacturing industry, with a higher proportion of costs that are applicable to them being borne by marinas and marine services. This resulted in state-wide aggregate impacts of:
 - o Output losses of \$86 million in 2023, rising to \$0.5 billion by 2027, and falling thereafter.
 - o Small impacts on prices, up to a maximum of 0.04 percent in 2027.

We note that baseline state output is forecast to be over \$1.2 trillion by 2027, of which the highest impact scenario impact of \$0.5 billion is approximately 0.04 percent.

MITIGATION OF DISPROPORTIONATE IMPACT: We considered all of the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

Ecology was not able to reduce substantive regulatory requirements beyond eliminating requirements that were not effective in achieving the objectives of the authorizing statutes, as they are necessary to implement the statutes, but multiple elements of the proposed rule amendments make the rules more consistent across the regulatory requirements faced by covered facilities and vessels, reducing the compliance burden of undertaking different actions or making different assumptions in compliance. This includes clear and streamlined processes and reporting requirements (including electronic submission of reports, manuals, and plans).

During this rule making, ecology also considered requiring universal inspections by ecology outside of already required inspections. This would have increased compliance burden (costs) and was excluded from the proposed rule amendments.

Ecology delayed compliance timetables using compliance schedules, allowing businesses additional time to take necessary actions to comply with the proposed rule amendments.

Regarding noncompliance, the proposed rule amendments clarify and streamline conditional approval requirements. This allows businesses to avoid noncompliance, to continue operations and avoid business losses, and take necessary actions to meet the objectives of the authorizing statutes.

As discussed in the Least-Burdensome Alternative Analysis (see Chapter 6), ecology also considered the following alternative rule contents, but did not include it [them] in the proposed rule amendments due, at least in part, to the additional compliance burden it would impose:

- A smaller percentage to define substantive change in oil handling capacity.
- Requiring prebooming equipment that is appropriate for "above average" environmental conditions.
- Requiring facilities to include nonfloating oil identification in their prevention plans.
- Prohibiting transfers that are not preboomed.
- Requiring all oil transfers, regardless of transfer rate, to pre-boom when it is safe and effective to do so.

- Prohibiting transfers that are not preboomed, unless resources are staged for a worst-case spill.
- Requiring facilities and vessels to use data that can be independently verified in their safe and effective threshold determinations.
- Limiting transfer locations to locations with approved safe and effective threshold determination reports.
- Prohibiting transfers that occur outside of daylight hours.
- Prohibiting transfers in anchorage areas when they are not pre-boomed and there are not resources available for a worst-case spill.
- Prohibiting transfers in anchorage areas when resources are not available for a worst-case spill, regardless of prebooming.
- Removing the baseline time frame set forth by the United States Coast Guard Captain of the Port from the advance notice requirements for delivering vessels.
- Including refined products in the proposed advance notice requirements.
- Requiring unannounced drills for Class 2 facilities.
- Keeping the baseline requirement for certified personnel to carry proof of training program certification.
- Expanding secondary containment requirements.
- Requiring facilities to use a prescribed process for risk assessments.
- More stringent seismic protection measures.
- Defining a storage tank or transfer pipeline as out of service after 120 days of being offline.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in its [the] development of the proposed rule amendments, using:

- Notice of rule making (preproposal statement of inquiry, form CR-101), emails, updates, and workshop invitations directly to likely impacted entities, as well as entities that would not be impacted by the proposed rule amendments.
- Notice of rule making directly to state, regional, and local emergency and air quality bodies.
- Notice of rule making directly to 63 associations and organizations representing.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: 2111 Oil and Gas Extraction; 2131 Support Activities for Mining; 2211 Electric Power Generation, Transmission and Distribution; 2379 Other Heavy and Civil Engineering Construction; 2389 Other Specialty Trade Contractors; 3117 Seafood Product Preparation and Packaging; 3211 Sawmills and Wood Preservation; 3219 Other Wood Product Manufacturing; 3241 Petroleum and Coal Products Manufacturing; 3366 Ship and Boat Building; 4244 Grocery and Related Product Merchant Wholesalers; 4247 Petroleum and Petroleum Products Merchant Wholesalers; 4412 Other Motor Vehicle Dealers; 4413 Automotive Parts, Accessories, and Tire Retailers; 4451 Grocery and Convenience Retailers; 4831 Deep Sea, Coastal, and Great Lakes Water Transportation; 4832 Inland Water Transportation; 4872 Scenic and Sightseeing Transportation, Water; 4883 Support Activities for Water Transportation; 4885 Freight Transportation Arrangement; 5416 Management, Scientific, and Technical Consulting Services; 5417 Scientific Research and Development Services; 5614 Business Support Services; 5615 Travel Arrangement and Reservation Services; 5621 Waste

Collection; 5622 Waste Treatment and Disposal; 5629 Remediation and Other Waste Management Services; 7139 Other Amusement and Recreation Industries; 7211 Traveler Accommodation; 7212 RV (Recreational Vehicle) Parks and Recreational Camps.

IMPACT ON JOBS: Many of the likely affected businesses operate in a variety of industries. To reflect this, we ran multiple REMI model scenarios, varying assumptions about which industries incur costs, as well as the size of costs (based on ranges estimated in Chapter 3), to develop a range of estimated impacts across the state. Across 24 modeled scenarios:

- The lowest impacts resulted from low-end estimates of costs, most costs being borne by the petroleum manufacturing industry except those costs isolated by their applicability to wholesale or water transportation industries.
This resulted in statewide aggregate employment loss of:
 - o Ten full-time employee (FTE) equivalents in 2023.
 - o Fourty-four FTE equivalents in 2027, falling thereafter.
- The highest impacts resulted from high-end estimates of costs, most costs being borne by the petroleum manufacturing industry, with a higher proportion of costs that are applicable to them being borne by marinas and marine services. This resulted in statewide employment losses of:
 - o Two hundred four FTE equivalents in 2023.
 - o One thousand forty-nine FTE equivalents in 2027, falling thereafter.

We note that baseline state employment is forecast to be over five million FTE equivalents by 2027, of which, the highest impact scenario impact is approximately 0.02 percent.

A copy of the statement may be obtained by contacting Brittany Flittner, Department of Ecology, Spill Prevention, Preparedness, and Response Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-584-4490, TTY or Washington relay service 711 or 877-833-6341, email Brittany.flittner@ecy.wa.gov.

January 3, 2023
Heather R. Bartlett
Deputy Director

OTS-4167.3

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-010 Applicability of this chapter. ((The requirements in)) (1) This chapter ((apply)) applies to all classes of oil handling facilities. This includes transfer operations involving any size nonrecreational vessel.

(2) This chapter does not apply to vacuum trucks when used to remove waste oil, bilge slops, contaminated ballast or fuel, or excess fuels for shoreside disposal.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-010, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-015 Purpose. This chapter establishes minimum standards for safe oil transfer operations to meet a zero spill goal established by the legislature. This chapter emphasizes:

- (1) Using a scaled approach to protect people and the environment;
- (2) Preventing oil spills from occurring and emphasizing that oil spill prevention is the top priority strategy for reaching the legislature's goal of zero spills;
- (3) Providing improved protection of Washington waters and natural resources from the impacts of oil spills caused by operational errors, human errors, and improper (~~oil handling~~) oil handling equipment, design, and operations;
- (4) Minimizing the size and impacts of those oil spills which do occur; and
- (5) Facilitating coordination of local, state, regional, tribal, and other prevention and contingency plans.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-015, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-020 Authority. The legislature granted ecology the authority to adopt and enforce these rules under the following statutes:

- (1) RCW 88.46.160 and 88.46.165 provide statutory authority for regulating the transfer of oil on or over waters of the state.
- (2) RCW 90.56.220 provides statutory authority for developing equipment, operations, and design standards for the transfer, storage, and handling of oil to ensure best achievable protection and (~~implementing~~) to implement a compliance program established by this chapter.
- (3) RCW 90.56.230 provides statutory authority for operations manual preparation and review requirements established by this chapter.
- (4) RCW 90.56.220 provides statutory authority for the personnel training and certification requirements established by this chapter.
- (5) RCW 90.56.200, 90.56.300, and 90.56.310 provide statutory authority for the prevention plan preparation and review requirements established by this chapter.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-020, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 07-22-119, filed 11/7/07, effective 12/8/07)

WAC 173-180-025 Definitions. (1) "American Petroleum Institute (API) gravity" is a measure of how heavy or light a petroleum liquid is compared to water.

(2) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection available. ~~((The director's))~~ Ecology's determination of best achievable protection must be guided by the critical need to protect the state's natural resources and waters, while considering:

(a) The additional protection provided by the measures ~~((τ))~~;

(b) The technological achievability of the measures ~~((τ))~~; and

(c) The cost of the measures.

~~((2))~~ (3) "Best achievable technology" means the technology that provides the greatest degree of protection ~~((taking))~~. Ecology's determination of best achievable technology will take into consideration:

(a) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; ~~((and))~~

(b) Processes that are currently in use ~~((τ))~~; and

(c) In determining what is best achievable technology ~~((is, the director))~~, ecology must consider the effectiveness, engineering feasibility, and commercial availability of the technology.

~~((3) "Boatyard" means a Class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.)~~

(4) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection, or recovery of oil that is discharged onto the surface of the water. Boom will be classified using criteria found in the ASTM International F 1523-94 (2018) and ASTM International ASTM F625/F625M-94 (2017), and the Resource Typing Guidelines found in the Worldwide Response Resource List (WRR) user manual.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, ~~((three hundred))~~ 300 or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(7) "Certification" means the documentation that a facility employee has met all requirements of an oil transfer training and certification program that meets the requirements of this chapter.

(8) "Class 1 facility" means a facility as defined in RCW 90.56.010 as:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) ~~((A-Class 1))~~ For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.

(c) Except as provided in (b) of this subsection, a facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter ~~((90.76))~~ 70A.355 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than ~~((three thousand))~~ 3,000 gallons of fuel to a ship that is not a covered vessel, in a single transaction.

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

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

(a) Transfers oil to a nonrecreational vessel with a capacity of ~~((ten thousand five hundred))~~ 10,500 or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter ~~((90.76))~~ 70A.355 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

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

(a) Is a marina, boatyard, marine fueling outlet, and other fueling installation~~((s))~~ that transfers to a nonrecreational vessel with a capacity to hold less than ~~((ten thousand five hundred))~~ 10,500 gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter ~~((90.76))~~ 70A.355 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

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

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

~~(14))~~ "Crude oil" means any naturally occurring hydrocarbons coming from the earth that are liquid at 25 degrees Celsius and one

atmosphere of pressure including, but not limited to, crude oil, bitumen and diluted bitumen, synthetic crude oil, and natural gas well condensate.

(14) "Decommission" means to take specific actions to prevent spills from out of service storage tanks and transfer pipelines.

(15) "Demise charter" means the owner gives possession of the vessel to the charterer and the charterer hires its own captain and crew.

(16) "Directly impact" means without treatment.

~~((15))~~ (17) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping ((regardless of quantity)).

~~((16))~~ (18) "Ecology" means the state of Washington department of ecology.

~~((17))~~ (19) "Gross tons" means a vessel's approximate volume as defined ((in Title 46, United States Code of Federal Regulations (()) under 46 C.F.R. ((,)) Part 69.

~~((18))~~ (20) "Innage" means the difference from the surface of the liquid to the tank bottom.

~~((19))~~ (21) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

~~((20))~~ (22) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

~~((21))~~ (23) "Offshore facility" means any class facility, as defined in this section, located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(24) "Oil" or "oils" means oil of any kind that is liquid at ((atmospheric temperature and)) 25 degrees Celsius and one atmosphere of pressure and any fractionation thereof((,)) including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, ((biological oils and blends,)) and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ((101(14)) 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

~~((22))~~ "Offshore facility" means any class facility, as defined in this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

~~(23))~~ (25) "Onshore facility" means any class facility, as defined in this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

~~((24))~~ (26) "Owner" or "operator" means:

(a) In the case of a vessel, ((a)) any person ((who owns, operates, or charts)) owning, operating, or chartering by demise, ((a)) the vessel;

(b) In the case of an onshore or offshore facility, ~~((a))~~ any person ~~((who owns or operates this type of))~~ owning or operating the facility;

(c) In the case of an abandoned vessel or ~~((abandoned))~~ onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

~~((25))~~ (27) "Out of service" means:

(a) For storage tanks, no oil has been added to or removed from the storage tank in one year or more;

(b) For transfer pipelines, no oil has been transferred through the transfer pipeline in one year or more.

(28) "Passenger vessel" means a ship of ~~((three hundred))~~ 300 or more gross tons with a fuel capacity of at least ~~((six thousand))~~ 6,000 gallons carrying passengers for compensation.

~~((26))~~ (29) "Permeability" means the intrinsic permeability, (k), which is a measure of the ability of a porous material or soil to allow fluids to pass through it, in square feet.

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

~~((27))~~ (31) "Person in charge (PIC)" means a person qualified and designated as required under 33 C.F.R. Part 155 for vessels, 33 C.F.R. Part 154 for Class 1, 2, or 3 facilities, or if not designated, the person with overall responsibility for oil transfer operations.

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

~~((28) "Person in charge" or "PIC" means a person qualified and designated as required under 33 C.F.R. 155, for vessels, 33 C.F.R. 154 for Class 1, 2, or 3 facilities, or if not designated, the person with overall responsibility for oil transfer operations.~~

~~((29))~~ (33) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(34) "Process ~~((pipelines))~~ piping" means ~~((a pipeline))~~ piping used to carry oil within the oil refining/processing units of a Class 1 facility, process unit to tankage piping, and tankage interconnecting piping ~~((tank to tank))~~. Process ~~((pipelines do))~~ piping does not include transfer pipelines used to transport oil to or from a tank vessel or transmission pipeline.

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

~~((31))~~ (35) "Qualified individual (QI)" means a person who meets the requirements under 33 C.F.R. Part 154.1026.

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

~~((32))~~ (37) "Secondary containment" means containment systems, which prevent the discharge of oil from reaching the waters of the state.

~~((33))~~ (38) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((34))~~ (39) "Spill" means an unauthorized discharge of oil into the waters of the state.

~~((35))~~ (40) "State" means the state of Washington.

~~((36))~~ (41) "Storage tank" means all aboveground containers connected to transfer pipelines or any aboveground containers greater than ~~((ten thousand gallons (two hundred thirty eight barrels)))~~ 10,000 gallons, including storage and surge tanks, used to store bulk quantities of oil. Storage tanks do not include those tanks regulated by chapter ~~((90.76))~~ 70A.355 RCW, rolling stock, wastewater treatment equipment, process pressurized vessels or other tanks used in the process flow through portions of the facility.

~~((37))~~ (42) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

~~((38) "Transmission pipeline" means an interstate or intrastate pipeline subject to regulation by the United States Department of Transportation under 49 C.F.R. 195 in effect on the effective date of this section, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.~~

~~(39))~~ (43) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

~~((40))~~ (44) "Transfer pipeline" is a buried or aboveground pipeline used to carry oil to or from a tank ~~((vessel or))~~, transmission pipeline, or ~~((to a))~~ vessel ~~((and the first valve inside secondary containment at the facility))~~, provided that any discharge on the facility side of ~~((that))~~ the first valve inside secondary containment will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process ~~((pipelines))~~ pip-ing, pipelines carrying ballast or bilge water, transmission pipelines, tank vessel, or storage tanks. Instances where the transfer pipeline is not well defined will be determined on a case-by-case basis by ecology.

~~((41))~~ (45) "Transmission pipeline" means all parts of a pipeline whether interstate or intrastate, through which oil moves in transportation, including mainline, laterals, valves, and other appurtenances such as pumping units, and fabricated assemblies associated with pumping units metering and delivery stations and fabricated assemblies therein, and breakout tanks.

(46) "Topping off" means the receipt of oil into the last ~~((ten))~~ 10 percent of available tank capacity in any tank.

~~((42))~~ (47) "Ullage" means the depth of space above the free surface of the liquid to the reference datum of that tank.

~~((43))~~ (48) "Waters of the state" include lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(49) "Worst case spill" means:

(a) For a Class 1 facility, the entire volume of the largest storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(b) For a Class 2 facility, the entire contents of the container(s) in which the oil is stored or transported.

[Statutory Authority: Chapters 90.56, 88.46, 90.48 RCW. WSR 07-22-119 (Order 07-14), § 173-180-025, filed 11/7/07, effective 12/8/07. Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-025, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-030 Compliance with federal rule or law. (1) Any person with oil handling and transfer duties must comply with applicable provisions of federal law and regulation governing licensing and documentation, equipment, operations, and oil transfers.

(2) The following Code of Federal Regulations (C.F.R.) (~~in effect on the effective date of this chapter~~) are incorporated by reference:

(a) 33 C.F.R. Parts 156.120, (~~(33 C.F.R.)~~) 156.150, (~~(33 C.F.R.)~~) and 156.170;

(b) 33 C.F.R. Parts 154.300, 154.310, 154.570, 154.710, 154.1050, and 154.1055 (~~(7 and Subpart F)~~);

(c) 40 C.F.R. Part 112; and

(d) 49 C.F.R. Part 195.

(3) All federal regulations incorporated in this chapter are available through the National Archive and Records Administration website (~~located here: <http://www.gpoaccess.gov/efr/index.html>~~).

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-030, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-035 Inspections. (1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with (~~(RCW 90.56.050, 90.56.410, and 88.46.167)~~) chapters 90.56 and 88.46 RCW.

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

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

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

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

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

~~(3)) Ecology will provide an inspection report to ((the facility at the conclusion of the)) Class 1 and 4 facilities after each inspection.~~

(3) Ecology will notify the facility owner or operator of any deficiencies identified during the inspection.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-035, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-040 Recordkeeping. (1) Records required by this chapter must be maintained and available to ecology for a minimum of three years, except for the following:

(a) Preload plans and declaration of inspection (DOI) must be kept for at least ~~((thirty))~~ 30 days from the date of the oil transfer operation.

(b) ~~((The))~~ Design, construction, inspection, testing, and repair records for storage tanks((,)) and transfer pipelines((, and all oil transfer equipment testing and repair records)) must be kept for the life of the equipment.

(c) Inspection, maintenance, and repair records for pumps, valves, manifolds, and other ancillary equipment used in oil transfers must be kept for ~~((ten))~~ 10 years.

~~((e))~~ (d) Inspection, maintenance, and repair records for secondary containment must be kept for five years.

(e) Oil transfer personnel training and certification records, as applicable, for Class 1 ((and)), 2, and 4 facilities must be kept for five years from the date the persons were trained and/or certified.

(2) All records required in this chapter must be available to ecology ~~((for photocopying))~~ upon request.

(3) A copy of each ASTM, API, ASCE, and ASME Standard, NFPA Code, IBC, IFC, and UL No. 142 referenced in this rule are available for inspection at 300 Desmond Drive S.E., Lacey, Washington 98503.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-040, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-045 Threat of a spill. (1) Ecology may determine that immediate action is necessary to suspend or delay transfer operations from a facility if there is a condition posing a substantial threat of discharge of oil on or over waters of the state, or harm to public health and safety, or both.

- (2) Ecology may coordinate with the United States Coast Guard to:
- (a) Issue an administrative order that may require immediate suspension of oil transfers;
 - (b) Specify each condition requiring immediate action to eliminate the condition; and
 - (c) Notify the persons in charge (PICs) that oil transfers may resume once ecology is satisfied the threat is no longer substantial.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-045, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-050 Oil spills. (1) Facility personnel involved with the oil transfer must immediately stop an oil transfer operation whenever oil could originate from the current oil transfer operation and is:

- (a) Observed or spilled into the water or on the shoreline adjoining the transfer area;
 - (b) Discharged into oil spill containment or on the vessel deck.
- (2) The facility person in charge (PIC) must make notifications as required in RCW 90.56.280.
- (3) The facility PIC may resume an oil transfer once the following conditions are met:
- (a) The source of the spill is controlled, contained, and a proper response is underway; and
 - (b) The PICs must agree there is no further threat of a spill.
- (4) After a spill to water, the facility PIC may resume a transfer if:
- (a) The conditions in subsection (3) of this section are met; and
 - (b) Approval is received from the state on-scene coordinator (~~in conjunction with~~). Facilities and vessels involved in a spill may also need approval to resume a transfer from the federal on-scene coordinator.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-050, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-055 Work hours. (1) Personnel with oil transfer duties may not work more than (~~sixteen~~) 16 hours in any (~~twenty-four-hour~~) 24-hour period, nor more than (~~forty~~) 40 hours in any (~~seventy-two-hour~~) 72-hour period, except in an emergency or spill response operation. For the purposes of this section, "emergency" means an unforeseen situation that poses an imminent threat to human safety, or the environment, or substantial loss of property.

(2) The owner or operator of a Class 1, 2, or 3 facility must maintain records such as maintenance records or payroll records demonstrating compliance with work hour restrictions for three years.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-055, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-060 Personnel qualifications. (1) The owner or operator of a Class 1, 2, or 3 facility must designate a person in charge (PIC) in writing.

A designated PIC must supervise all oil transfer operations.

(2) All Class 1 and 2 facility personnel designated as a PIC must have completed a training and certification program established by the operator and approved under (~~Part E of this chapter~~) WAC 173-180-500 through 173-180-525.

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

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

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

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-060, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-065 Noncompliance. (1) Any violation of this chapter may be subject to enforcement and (~~penalty sanctions of~~) penalties under chapters 90.56, 90.48, and 88.46 RCW.

(2) If an owner or operator of a facility fails to comply with the requirements in approved plans, reports, manuals, or programs, as applicable, or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

(a) Place conditions on approval; or

(b) Revoke its approval.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-065, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-075 Severability. If any provision of this chapter is held invalid, the remainder of (~~this~~) the chapter is not affected.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-075, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-180-080 Compliance schedule. (1) Owners and operators of all facilities in operation at the time this rule is effective must meet the requirements in this rule on the effective date of this rule, except where specified below.

(a) Within 30 calendar days from rule effective date, all delivering facilities must meet advance notice requirements in WAC 173-180-215.

(b) Within 60 calendar days from rule effective date, any delivering facility conducting Rate A transfers must meet prebooming requirements in WAC 173-180-221.

(c) By the current safe and effective threshold determination report's expiration date, any delivering facility conducting Rate A transfers must meet report requirements in WAC 173-180-224.

(d) Within 10 years from rule effective date or by the next scheduled internal API Standard 653 (2014 with Addendum 1 (2018) and 2 (2020)) inspection, whichever is later, any Class 1 facility storage tank constructed before the effective date of this rule must meet seismic protection measures in WAC 173-180-330.

(e) Within 10 years from rule effective date or by the next scheduled API Standard 570 (2016 with Addendum 1 (2017) and 2 (2018), and Errata 1 (2018)) inspection, whichever is later, any Class 1 facility transfer pipeline constructed before the effective date of this rule must meet seismic protection measures in WAC 173-180-340.

(f) By the current prevention plan's expiration date, all Class 1 facilities must meet plan requirements in WAC 173-180-630.

(g) Within 12 months from rule effective date, all Class 2 facilities must meet oil transfer response plan requirements in WAC 173-180-730.

(h) The triennial cycle of the drill program, as required in WAC 173-180-810 and 173-180-815, will begin once the oil transfer response plan for the Class 2 facility has been approved.

(2) Owners and operators of new facilities must meet requirements in this chapter prior to beginning operations in the state, including submittal deadlines outlined in this chapter.

(3) When there is a change in the owner or operator of a facility, the new owner or operator of the facility must meet the requirements in this chapter prior to beginning operations in the state, including submittal deadlines outlined in this chapter.

[]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-205 Oil transfer equipment at Class 1, 2, 3, and 4 facilities. (1) All hoses, pipelines, or piping used in an oil transfer operation must meet the following criteria:

(a) Hoses, pipelines, or piping must be supported so as to avoid crushing or excessive strain. Flanges, joints, hoses, and piping must be visually checked prior to the transfer for cracks and signs of leakage.

(b) All hoses and loading arms are long enough to allow the vessel to move to the limits of its moorings without placing strain on any component of the oil transfer equipment.

(c) Each hose must have no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of oil or hazardous material through the hose material, and no gouges, cuts, or slashes that penetrate the first layer of hose reinforcement (~~(")~~). For the purposes of this section, reinforcement(~~(")~~) means the strength members of the hose, consisting of fabric, cord, and/or metal(~~(+)~~).

(d) Hoses, pipelines, or piping must not be permitted to chafe on the dock or vessel or be in contact with any source that might affect the integrity of the hoses or piping.

(e) Hose or loading arm ends must be blanked tightly when (~~hoses are~~) moved into position for connection(~~(, also)~~) and immediately after they are disconnected(~~(, and)~~). Residue must be drained either into (~~the~~) vessel tanks or (~~into~~) suitable (~~shore~~) shoreside receptacles before (~~they~~) the hose or loading arm ends are moved away from their connections.

(2) Testing of all oil transfer equipment, including, but not limited to, pumps, valves, piping, manifolds, connections, and hoses, must be done annually, and must be conducted by using one of the following methods:

(a) In accordance with manufacturers' recommendations and industrial standards; (~~(or)~~)

(b) Procedures identified in 33 C.F.R. Part 156.170; or

(c) Another standard approved by ecology, as long as the requirements in such standard equal or exceed those required in this section.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-205, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-210 Requirements for Class 4 facilities only. (1) Response and recovery equipment(~~(+)~~). The owner or operator of each Class 4 facility must ensure that cleanup of at least a (~~twenty-five~~) 25 gallon spill can occur by having (~~all of the following~~) response and recovery equipment maintained in a standby condition and available to the receiving vessel, including:

(a) Sufficient and appropriate boom of no less than (~~two hundred~~) 200 feet available in the standby position;

- (b) Oil spill sorbent materials appropriate for use in water and on land;
- (c) Nonsparking hand scoops, shovels, and buckets;
- (d) Containers suitable for holding the recovered oil and oily water; and
- (e) Protective clothing and other appropriate personal protective gear necessary to safely respond to oil spills.
- (2) Trained personnel ~~((+))~~. The owner or operator of each ~~((Class 4))~~ facility must:
- (a) Provide annual training for employees involved in an oil transfer operation ~~((+))~~ that at a minimum includes:
- (i) Dangers and safe practices regarding the petroleum products transferred at that location;
- (ii) Safe and effective use and handling of response and recovery equipment; and
- (iii) Spill notification procedures ~~((+))~~.
- (b) Train all employees with oil transfer duties within ~~((nine-ty))~~ 90 calendar days of the date of hire. No employee may be in charge of an oil transfer operation at the ~~((Class 4))~~ facility without proper training ~~((+))~~.
- (c) Keep a record of oil transfer training at the facility and make the record available to ecology upon request pursuant to WAC 173-180-040.
- (3) Spill notification information ~~((+))~~. The owner or operator of each ~~((Class 4))~~ facility must provide spill notification information on a wallet-sized card for each employee and posted at the dock for fueling customers. The notification information must include:
- (a) Required notifications in RCW 90.56.280;
- (b) A phone number for a spill response contractor; and
- (c) If the ~~((Class 4))~~ facility is not always staffed, a ~~((twenty-four hour))~~ 24-hour phone number where someone designated by the owner or operator of the facility can be reached to start the spill response. The contact phone number must be posted on the dock or transfer location in a location that is easy to see.
- (4) The owner or operator of each ~~((Class 4))~~ facility must ensure all oil transfer equipment is properly inspected and maintained in accordance with WAC 173-180-205.
- (5) ~~((Class 4))~~ Facilities ~~((, also known as marine fueling outlets,))~~ that are transferring less than ~~((three thousand))~~ 3,000 gallons of oil in a single transaction, are exempt from advance notice requirements for oil transfer operations as described in RCW 88.46.165.
- (6) Semiannual reporting ~~((+ Class 4))~~. Facilities must report all bulk oil transfers conducted at the facility.
- (a) The report must include types of oil transferred and total volume of transfers by oil type.
- (b) The facility must submit the report to ecology each year by January ~~((15 and July 15 of each year.))~~
- ~~((c) The facility must submit the report either by email or by U.S. mail to the following address:~~
- Email: ~~oiltransferrnotifications@ecy.wa.gov~~
- U.S. mail:
- Department of Ecology
- Spill Prevention, Preparedness, and Response Program
- P.O. Box 47600
- Olympia, WA 98504-7600

~~(7) **Compliance schedule:** Class 4 facilities must implement the requirements in subsections (1) and (2) of this section within one hundred twenty calendar days from the effective date of this chapter. Class 4 facilities must implement the remaining requirements on the effective date of this chapter))~~ 15th for the period July 1st through December 31st of the previous year, and by July 15th for the period January 1st through June 30th.

(c) The report must be submitted to ecology by email. Ecology will maintain electronic submittal instructions on the spill prevention, preparedness, and response program website.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-210, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-215 Advance notice of transfer for Class 1, 2, and 3 facilities. (1) The delivering facility (or designee) involved in an oil transfer of more than ~~((one hundred))~~ 100 gallons must notify ecology at least ~~((twenty-four))~~ 24 hours prior to an oil transfer operation ~~((except:))~~. If the deliverer cannot meet the notification requirements in this section, notice must be provided as soon as possible prior to the oil transfer.

Advance notice information must be updated if the start time of the oil transfer operation in subsection (2)(b) of this section changes from the original reported time by more than six hours.

(2) The notice of transfer must be submitted ~~((to ecology on the "Advanced"))~~ on ecology's "Advance Notice of Oil Transfer" ~~((form provided by ecology or a facsimile, and))~~ website or by email. Form number ECY 070-175 must be used. The notice must contain the following information ((in the order provided)):

(a) Company name, address, contact person, and telephone number of organization delivering the oil;

(b) Date of transfer operation, estimated starting time, and duration of the oil transfer operation;

(c) Documented name of delivering facility and receiving vessel ((involved in the oil transfer and the)). If a vessel's ((Lloyds Registry/International Maritime Organization (LR/IMO) number or)) documented name is not available, include the official number ((if available)):

(d) City name and either the address or location/anchorage where the oil transfer operation will occur;

(e) Transfer type;

(f) Oil product type ((and)), and if crude oil, include:

(i) Region of origin as stated on the bill of lading;

(ii) Gravity, as measured by standards developed by the American Petroleum Institute, or specific gravity;

(iii) Sulfur content of the oil, percent by weight; and

(iv) Viscosity.

(g) Quantity in gallons or barrels; and

~~((f))~~ (h) Whether or not prebooming will take place? (yes or no).

~~((3) Notification may be made by the deliverer's agent or other contracted representative.~~

~~(4) The notification form may be submitted via internet website that ecology established, by email, or by facsimile. The notification form and contact information is found on ecology's website: <http://www.ecy.wa.gov/programs/spills/spills.html>~~

~~(5) Compliance schedule: All Class 1, 2, and 3 facilities must begin submitting advance notice within thirty calendar days of the effective date of this chapter.)~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-215, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-180-217 Equivalent compliance plan. (1) Any owner or operator may submit a plan for equivalent compliance for the alternative measures required in WAC 173-180-221 and 173-180-222. Any owner or operator who submits a plan must preboom or meet the applicable alternative measures until the equivalent compliance plan is approved.

(a) Rate A deliverers may only submit a plan for alternative measures in WAC 173-180-221(9).

(b) Rate B deliverers may only submit a plan for alternative measures in WAC 173-180-222(2).

(2) Format requirements. The plan must include the following:

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

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

(3) Content requirements. The plan must include the following:

(a) Executive summary of the plan;

(b) A detailed description of the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed; and

(c) A detailed analysis of how the plan offers equivalent or greater level of protection as compared to the requirements in this chapter. This includes:

(i) Methodology of the analysis;

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

(iii) Technical feasibility of the plan versus current requirements.

(4) Submittal requirements. The owner or operator must submit the plan to ecology at least 120 calendar days prior to their planned date for beginning operations under that plan in Washington state.

One electronic copy of the plan must be submitted to ecology. Ecology will maintain electronic submittal instructions on the spill prevention, preparedness, and response program website.

(5) Review and approval process. The owner or operator must submit the plan to ecology for reapproval at least 120 calendar days prior to the plan's expiration date. The owner or operator may request ecology review the plan currently on file at ecology.

(a) If the plan is not submitted within the time frame required for reapproval before the expiration date, the lapse is considered noncompliance and may result in the loss of plan approval.

(b) Upon receipt of the plan, ecology will determine whether the plan is complete. If ecology determines that the plan is not complete, the owner or operator will be notified of any deficiencies.

Ecology may request additional information for the plan such as site specific meteorological, water current velocity, and other monitoring data to support the plan.

(c) Once the plan is determined complete, ecology will make the plan available for a 30 calendar day public review and comment period, which will occur within ecology's 120 calendar day review period. Ecology will accept comments on the plan no later than 30 calendar days after the plan has been made publicly available.

(d) Before the plan's expiration date, ecology will respond with a letter approving, conditionally approving, or disapproving the plan.

Ecology may approve the plan if, based upon the documents submitted and other information available to ecology, it finds that:

(i) The plan is complete and accurate; and

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

(e) If the plan receives approval, the letter will describe the terms of approval, including an expiration date. Plan approval expires five years from the date on the approval letter.

After approval, the owner or operator must ensure the facility's training and certification program are updated to include this plan.

(f) If the plan is conditionally approved, ecology may require the facility to operate with specific restrictions until acceptable components of the plan are revised, resubmitted, and approved.

(i) In the conditional approval, ecology will describe:

(A) Each specific restriction and the duration for which they apply; and

(B) Each required item to bring the plan into compliance.

(ii) Restrictions may include, but are not limited to:

Meeting some or all of the alternative measure requirements in WAC 173-180-221 or 173-180-222, as applicable.

(iii) The owner or operator has 30 calendar days after notification of conditional approval to submit revisions and implement required changes. An extension may be issued at ecology's discretion. Conditional approval expires no later than 18 months from date of notification.

(iv) Owners or operators who fail to meet conditional requirements or provide required changes in the time allowed may lose conditional approval status. Ecology may revoke its conditional approval prior to the expiration date if the owner or operator fails to meet the terms of the conditional approval.

(g) If the plan is disapproved, the owner or operator must receive an explanation of the factors for disapproval and must preboom or meet the applicable alternative measures requirements.

(6) Plan updates. Ecology may review and require changes to the plan following any spill, inspection, or drill.

[]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-220 Transfer containment and recovery requirements.

(1) These ~~((standards))~~ requirements apply to all oil transfers ~~((that involve any jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. These standards do not apply to facilities delivering))~~ regulated by this chapter with the exception of transfers of gasoline, aviation gasoline, ethanol, nonene, and other highly volatile products with similar characteristics.

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

(a) Rate A means oil transfer operations at a rate over ~~((five hundred))~~ 500 gallons per minute. Rate A requirements are found in WAC 173-180-221.

(b) Rate B means oil transfer operations at a rate of ~~((five hundred))~~ 500 gallons per minute or less. Rate B requirements are found in WAC 173-180-222.

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

(4) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design for safe and effective deployment in the expected environmental conditions encountered in the transfer area(s) ~~((based on the manufacturers' specifications))~~ as described in the approved safe and effective threshold determination report including, but not limited to:

(a) Wave height;

(b) Water currents;

(c) Wind; and

(d) Other conditions that may affect booming operations.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-220, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

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

(1) The Rate A deliverer must preboom oil transfers when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measures requirements found in subsection ~~((+7))~~ (9) of this section and submit the Ecology Boom Reporting Form pursuant to subsection (4) of this section.

(2) The determination of safe and effective must be made prior to starting a transfer ~~((or))~~ and reevaluated if conditions change before or during a transfer. To make this determination, the deliverer must use the safe and effective threshold values found in their operations manual ~~((Safe and effective threshold values are determined us-~~

~~ing the safe and effective threshold determination report -- see WAC 173-180-224)) and be based on the conditions at the transfer location in accordance with WAC 173-180-224 (2)(g).~~

~~(3) When water currents are 1 knot or less, facilities must consider prebooming if it is safe to do so, even if the boom may be less than fully effective. When water currents are greater than 1 knot, facilities may consider prebooming based on the expected performance of the boom.~~

~~(4) When it is not safe and effective to preboom, or when conditions develop during a preboomed transfer that require removal of the boom, the Rate A deliverer must report this finding to ecology ((and meet the alternative measures found in subsection (7) of this section. The Ecology Boom Reporting Form must be used for this purpose, and submitted by email or facsimile)) through the Ecology Boom Reporting Form. The form must include all observed and forecasted conditions that exceed the weather and safety values in the safe and effective threshold determination report. The form must be submitted on ecology's website or by email. Form number ECY 070-215 must be used. The form must be submitted prior to the transfer and/or immediately when conditions have changed.~~

~~((4)) (5) If a transfer is not preboomed due to conditions exceeding the safe and effective values, or if the boom is removed due to changing environmental conditions during the transfer, the Rate A deliverer must boom the transfer if it becomes safe and effective to do so. If environmental conditions continue to exceed safe and effective values, follow-up Ecology Boom Reporting Forms must be submitted every six hours for a transfer at a terminal.~~

~~(6) If multiple oil transfers are occurring simultaneously with a single vessel, and one product transferred is not appropriate to preboom, such as gasoline, aviation gasoline, ethanol, nonene, and other highly volatile products with similar characteristics, then that portion of the transfer where it is ((unsuitable)) not appropriate to preboom must ((use)) meet the alternative measures found in subsection ((7)) (9) of this section. The portion of the transfer that is appropriate to preboom must be preboomed if:~~

~~(a) It is safe and effective to do so;~~

~~(b) Pumping is complete for the product that is not appropriate to preboom; and~~

~~(c) There are at least three hours remaining in the transfer.~~

~~((5)) (7) For the purposes of this section, the deliverer must be able to quickly disconnect all boom in the event of an emergency.~~

~~((6)) (8) Rate A prebooming requirements.~~

~~(a) In order to preboom transfers, the deliverer must have, prior to the transfer, access to boom four times the length of the largest vessel involved in the transfer or ((two thousand)) 2,000 feet, whichever is less.~~

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

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

~~((ii)) (iii) The deliverer must periodically check the boom positioning and adjust as necessary throughout the duration of the~~

transfer and specifically during tidal changes and significant wind or wave events.

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

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

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

~~((ii))~~ (iii) Nonsparking hand scoops, shovels, and buckets (~~+~~ and

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

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

~~((7))~~ (9) Rate A alternative measures. Rate A deliverers must use these alternative measures when it is not safe and effective to meet the prebooming requirements (~~-~~):

(a) ~~((To meet the alternative measures requirements))~~ Prior to starting the oil transfer operation, the deliverer must have access to boom four times the length of the largest vessel involved in the transfer (~~7~~) or ~~((two thousand))~~ 2,000 feet, whichever is less.

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

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

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

~~((ii))~~ (iii) Nonsparking hand scoops, shovels, and buckets (~~+~~ and

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

(c) The deliverer must have the ability to safely track the spill in low visibility conditions. The tracking system must be on-scene and ready to be deployed within ~~((thirty))~~ 30 minutes of being made aware of a spill.

(d) ~~((For alternative measures:))~~ Within one hour of being made aware of a spill, the deliverer must be able to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation with boom, or ~~((the deliverer may preboom))~~ the portion of the vessel and transfer area ~~((which will))~~ that provides for maximum containment of any oil spilled ~~((into the water))~~.

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

(i) Additional boom four times the length of the largest vessel involved in the transfer (~~7~~) or ~~((two thousand))~~ 2,000 feet, whichever is less, available for containment, protection, or recovery; and

(ii) A skimming system must be on-site ~~((The skimming system must be)),~~ in stand-by status, and be capable of ~~((fifty))~~ 50 barrels recovery and ~~((one hundred))~~ 100 barrels of storage.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-221, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

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

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

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

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

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

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

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

((?)) (iii) Nonsparking hand scoops, shovels, and buckets((? and

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

(c) For prebooming: Within one hour of being made aware of a spill, the deliverer must be able to completely deploy an additional ((five hundred)) 500 feet of boom. This boom may be used for containment, recovery, or protection.

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

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

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

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

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

((?)) (iii) Nonsparking hand scoops, shovels, and buckets((? and

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

(c) ((For alternative measures:)) Within one hour of being made aware of a spill, the deliverer must be able to complete deployment of

an additional (~~(five hundred)~~) 500 feet of boom for containment, protection, or recovery.

(d) (~~(For alternative measures:)~~) Within two hours of being made aware of a spill, the deliverer must have an additional (~~(five hundred)~~) 500 feet of boom available on-scene for containment, protection, or recovery.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-222, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-224 Safe and effective threshold determination report. This section applies to delivering facilities conducting Rate A transfers. The owner or operator of a delivering facility conducting Rate A transfers must prepare a safe and effective threshold determination report that meets the requirements of this chapter. This report provides the threshold values that delivering facilities will use to determine when prebooming an oil transfer is safe for personnel and when the boom is likely to be effective at containing a spill.

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

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

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

(~~(e)~~) (2) Content requirements. The report must include the following, at a minimum:

(a) Summary of safe and effective threshold values (~~(-~~

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

(~~(i) The~~) that includes each location at which a Rate A transfer occurs;

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

~~(ii))~~);

(c) These values and the supporting data must address, at a minimum, the following (~~(site specific)~~) site-specific information:

(~~(A)~~) (i) Personnel safety;

(~~(B)~~) (ii) Sea state values in feet including typical wave periods;

(~~(C)~~) (iii) Water current velocity such as peak currents, sustained currents in hourly increments, and direction of flow, during typical oil transfer operations;

(~~(D)~~) (iv) Wind speed in knots, and prevailing directions;

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

~~(iii))~~); and

(vi) Types of oil transfer operations, including fueling, cargo, and others (e.g., lube oil transfers, hydraulic oil transfers), and the transfer rates involved.

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

~~((A))~~ (i) Methodology of the analysis;

~~((B))~~ (ii) Equipment used to ~~((measure))~~ collect data ~~((collected))~~; and

~~((C))~~ (iii) Supporting data, references, graphs, tables, pictures, and other relevant information. Supporting data must cover multiple years, including data recent enough to reflect existing conditions and collected no more than 10 years from the date of the safe and effective threshold determination report.

(e) Boom specifications for preboomed transfers:

(i) Type of boom (e.g., internal flotation, fence, inflatable), and total height; and

(ii) Accepted industry standards regarding the performance of boom and associated deployment equipment in various operating environments.

(f) Description of the deliverer's ability to safely deploy and retrieve boom at the transfer location in all conditions up to and including the upper limits of the approved safe and effective thresholds;

(g) Description of how the safe and effective determination will be made for each transfer based on the conditions at the transfer location, including:

The equipment or technology used to measure on-site environmental monitoring data before and during transfers, including weather and water current conditions. Include weather stations, buoys, and other instruments used.

(h) Description of how the safe and effective threshold determination will consider whether to preboom when it is safe to do so, even if the boom is less than fully effective;

(i) Description of how the safe and effective threshold determination will be reevaluated based on changes in environmental conditions; and

(j) Description of how alternative measures will be met in the event of a spill if conditions exceed safe and effective values, including transit to the transfer location and deployment.

~~((2))~~ (3) Submittal requirements. The owner or operator of a Rate A deliverer~~((s))~~ must submit a safe and effective threshold determination report to ecology ~~((for review and approval for each location at which a Rate A transfer occurs))~~ at least 120 calendar days prior to their planned date for conducting an oil transfer operation in Washington state.

One ~~((paper and one))~~ electronic copy of the ~~((safe and effective threshold determination))~~ report and appendices must be ~~((delivered to:~~

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

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Safe and Effective Threshold Determination Report
300 Desmond Drive
Lacey, WA 98503~~

(3)) submitted to ecology. Ecology will maintain electronic submittal instructions on the spill prevention, preparedness, and response program website.

(4) Review and approval process. The owner or operator of a Rate A deliverer must submit the report to ecology for reapproval at least 120 calendar days prior to the report's expiration date. The owner or operator may request ecology review the report currently on file at ecology.

(a) If the report is not submitted within the time frame required for reapproval before the expiration date, the lapse is considered noncompliance and may result in the loss of report approval.

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

~~(i) Personnel safety;~~

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

~~(iii) Accepted industry standards regarding the performance of boom and associated response equipment in various operating environments;~~

~~(iv) Types of oil transfer operations including bunkering, cargo operations, transfer rates, and other factors that influence oil transfers.))~~

(b) Upon receipt of the report, ecology will determine whether the report is complete. If ecology determines that the report is not complete, the owner or operator will be notified of any deficiencies.

Ecology may request additional information for the report such as site specific meteorological, weather current velocity, and other monitoring data to support the report.

(c) Once the report is determined complete, ecology will make the report available for a ~~((thirty))~~ 30 calendar day public review and comment period, which will occur within ecology's 120 calendar day review period. Ecology will accept comments on the report no later than 30 calendar days after the report has been made publicly available.

~~((e)) (d) Before the report's expiration date, ecology will respond ((to the facility within ninety calendar days of receipt of the report)) with a letter approving, conditionally approving, or disapproving the report.~~

~~((d) The) (e) If the report receives approval, the letter will describe the terms of approval, including expiration date. Report approval ((of this report will be valid for no more than)) expires five years from the date on the approval letter.~~

~~((e)) (f) If the report is conditionally approved, ecology may require the facility to operate with specific restrictions until acceptable components of the report are revised, resubmitted, and approved.~~

(i) In the conditional approval, ecology will describe:

(A) Each specific restriction and the duration for which they apply; and

(B) Each required item to bring the report into compliance.

(ii) Restrictions may include, but are not limited to:

(A) Reducing oil transfer rates;

(B) Increasing personnel levels;

(C) Restricting operations to daylight hours or favorable weather conditions; or

(D) Additional requirements to ensure availability of response equipment.

(iii) The owner or operator has 30 calendar days after notification of conditional approval to submit revisions and implement required changes. An extension may be issued at ecology's discretion. Conditional approval expires no later than 18 months from date of notification.

(iv) Owners or operators who fail to meet conditional requirements or provide required changes in the time allowed may lose conditional approval status. Ecology may revoke its conditional approval prior to the expiration date if the owner or operator fails to meet the terms of the conditional approval.

(g) If the report is disapproved, the owner or operator must receive an explanation of the factors for disapproval. The facility must not engage in Rate A transfers until the report has been approved or conditionally approved.

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

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

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

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

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-224, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

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

~~((1))~~ (2) The access must be secured both top and bottom to prevent movement of the access platform.

~~((2))~~ (3) The entire ladder and the portion of the facility and ~~((ship's))~~ vessel's deck where access is provided must be illuminated during low light or low visibility situations and without glare to the persons using the access.

~~((3))~~ (4) In the event weather conditions make the access unsafe, the persons in charge (PICs) may elect to use radio communication.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-225, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-230 Preloading or cargo transfer plan requirement.

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

- (1) Identification, location, and capacity of the vessel's tanks receiving or discharging oil;
- (2) Level and type of liquid in all bunker or cargo oil tanks prior to the oil transfer, including those not receiving or discharging oil;
- (3) Final ullage or innage, and percent of each tank to be filled;
- (4) Sequence in which the tanks are to be filled; and
- (5) The facility or vessel's procedures to regularly monitor (~~(all receiving)~~) tank levels and valve alignments during the transfer operation.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-230, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-235 Pretransfer conference. (1) Before the start of an oil transfer operation, the persons in charge (PICs) must hold a face-to-face pretransfer conference. If the PICs determine weather conditions prevent safe access, PICs may communicate via radio.

- (2) The PICs must discuss and agree upon:
 - (a) The preloading or cargo transfer plan;
 - (b) The contents of the declaration of inspection (DOI) required under 33 C.F.R. Part 156.150;
 - (c) Procedures for communicating soundings, changing over tanks, and beginning topping off;
 - (d) Shift change procedures;
 - (e) Emergency shutdown procedures and identify all means to shut down the oil transfer operation in an emergency; and
 - (f) Expected weather and/or sea conditions and threshold values for weather and sea conditions above which oil transfer operations must cease.
- (3) During a pretransfer conference that involves a covered vessel, the point-of-transfer watch and deck-rover watch must be identified to PICs.
- (4) An oil transfer operation will not begin unless a person proficient in both English and a language common to the vessel's officers and crew is present at the pretransfer conference.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-235, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-240 Communications. (1) The facility person in charge (PIC) must ensure continuous two-way voice communication is usable and available in all weather conditions (~~as well as~~) and all phases of the transfer operation between the PICs.

(2) The facility PIC must ensure at least the following are available for use during the oil transfer operation:

(a) Two portable communication devices that are intrinsically safe; and

(b) An air horn for emergency signals.

(3) The PICs must ensure personnel involved in the oil transfer operation know and use English phrases and hand signals to communicate the following instructions during the oil transfer: "Stop," "hold," "wait," "fast," "slow," and "finish."

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-240, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-245 Oil transfer procedures. (~~For all transfer operations involving Class 1, 2, or 3 facilities must comply with the transfer procedures in 33 C.F.R. 156 and 154 and the following:~~)

(1) All oil transfer operations for Class 1 and 2 facilities must be conducted in accordance with the facility's approved operations manual.

(2) All transfer operations involving Class 1, 2, or 3 facilities must comply with the transfer procedures in 33 C.F.R. Parts 154 and 156 and the following:

(a) Ensure that transfer connections (~~have been made according to the operations manual~~):

~~((a))~~ (i) Use appropriate material in joints and couplings to ensure a leak-free seal;

~~((b))~~ (ii) Use either:

~~((i))~~ (A) A bolted or full threaded connection; or

~~((ii))~~ (B) A quick-connected coupling with a means of securing the coupling to prevent accidental release.

~~((e))~~ (iii) Use a new compressible gasket appropriate for the product and transfer pressure;

~~((d))~~ (iv) Use a bolt in every available hole;

~~((e))~~ (v) Use bolts of the correct size in each bolted connection;

~~((f))~~ (vi) Ensure that each bolt is properly torqued to distribute the load to ensure a leak-free seal; and

~~((g))~~ (vii) Do not use any bolt that shows signs of strain or is elongated or deteriorated.

~~((3))~~ (b) Have the means to contain and recover any drips from connections within the oil transfer system.

~~((4))~~ (c) Deliverers providing oil to vessels without fixed containment must (~~use automatic back pressure shutoff nozzles and al-~~

se)) provide enough portable containment for each tank vent on the vessel.

((5)) (d) Conduct a pretransfer conference as defined in WAC 173-180-235.

((6)) (e) Ensure that the available capacity in the receiving tank(s) is ~~((are))~~ greater than the volume of oil to be transferred and all other valves, which could influence the routing of the transferred oil, are properly aligned.

((7)) (f) The persons in charge (PICs) must verify at the start of the transfer that the tanks designated in the preload or cargo transfer plan are receiving or discharging oil at the expected rate, and no other tanks are receiving or discharging oil.

((8)) (g) Each PIC must ensure that the means of operating the emergency shutdown system is immediately available while oil is transferred between the deliverer and receiver.

((9)) (h) A PIC must refuse to initiate or must cease transfer operations with any vessel which:

((a)) (i) Has not provided complete information as required by the declaration of inspection (DOI);

((b)) (ii) Has refused to correct deficiencies identified by the PIC during the pretransfer conference; or

((e)) (iii) Does not comply with the operations manual or does not respond to concerns identified by the PIC.

((10)) (i) When a PIC shift change occurs the departing PIC must:

((a)) (i) Discuss the preload or cargo transfer plan and transfer rate with the arriving PIC;

((b)) (ii) Notify the PIC at the other side of the transfer that a shift change is taking place; and

((e)) (iii) Ensure the relieving PIC reads and signs the DOI.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-245, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-250 Emergency shutdown. (1) Class 1, 2, or 3 facilities must have an emergency shutdown capable of stopping the flow of oil from the fixed or mobile facility to a vessel.

(2) The emergency shutdown must be located at the persons in charge (PICs) usual operating station and at the dock manifold if not the same location.

(3) For oil transfers, the emergency shutdown must stop the flow:

(a) Within ~~((sixty))~~ 60 seconds for any facility or portion of the facility that started transferring oil on or before November 1, 1980.

(b) Within ~~((thirty))~~ 30 seconds for any facility or portion of the facility that ~~((transfers))~~ started transferring oil after November 1, 1980.

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

(5) If a PIC orders an emergency shutdown, the shutdown must be activated immediately.

(6) To meet the requirements of subsection (3) of this section, the emergency shutdown must be either of the following:

- (a) An electrical, pneumatic, or mechanical linkage to the facility; or
- (b) An electronic voice communications system continuously operated by a person on the facility who can stop the flow of oil.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-250, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-300 Applicability of Part C. Part C applies to Class 1 facilities (~~only. Ecology has not adopted design standards for Class 2, 3, or 4 facilities~~).

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-300, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-310 Transmission pipeline transfer requirements.

- (1) For the purposes of this section:
 - (a) "Appropriate person" means a person designated by the facility as being competent and trained to implement a designated function.
 - (b) "Pipeline operator" means the operator of a transmission pipeline.
- (2) General requirements. Transfer operations must be supervised by an appropriate person and conducted in accordance with operations manuals approved under this chapter. No person may conduct an oil transfer operation to or from a transmission pipeline unless the appropriate person and the pipeline operator have conducted pretransfer communications which identify:
 - (a) Type of oil;
 - (b) Transfer volume;
 - (c) Flow rates; and
 - (d) Transfer startup or arrival time.
- (3) Class 1 facilities which receive oil from a transmission pipeline must:
 - (a) Confirm that the proper manifold and valves are open and ready to receive product;
 - (b) Notify the transmission pipeline operator when a storage tank has less than one foot of oil above the inlet nozzle;
 - (c) Coordinate arrival time of oil with the pipeline operator;
 - (d) Confirm the available storage capacity for transfers to a facility;
 - (e) Ensure that only the designated tank(s) is (~~are~~) receiving oil;

- (f) Ensure that proper transfer alignment of the pipeline, valves, manifolds, and storage tanks have been made;
- (g) Establish adequate communication in English between the facility and pipeline operator;
- (h) For the purpose of scheduling inspections, ecology may require a ~~((twenty-four-hour))~~ 24-hour notification to ecology in advance of any transfer of bulk oil by a facility operator. Ecology must request notification ~~((in writing))~~ when this procedure is required;
- (i) ~~((Transfer operations must be supervised by an appropriate person;~~
- ~~((j)))~~ Each facility operator must ensure that the means of operating or requesting emergency shutdown is immediately available while oil is being transferred between the facility and the pipeline; and
- ~~((k)))~~ (j) If startup, shutdown, and/or emergency shutdown are controlled by the pipeline operator directly using instrumentation and control devices, the accuracy of these devices must be checked at least annually ~~((; and~~
- ~~((l))~~ All transfer operations must be conducted in accordance with operations manuals approved under this chapter).

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-310, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

- WAC 173-180-320 Secondary containment requirements for ~~((above-ground))~~ storage tanks.** (1) ~~((Aboveground oil))~~ Storage tanks must be located within secondary containment areas. Secondary containment systems must be:
- (a) Designed, constructed, maintained, and operated to prevent discharged oil from entering waters of the state at any time during use of the tank system;
- (b) Capable of containing ~~((one hundred percent of the capacity of the largest storage tank within the secondary containment area))~~ oil throughout the entire containment system, including walls and floor;
- (c) Constructed to prevent any discharge from a primary containment system (e.g., tank) from escaping the secondary containment system before cleanup occurs;
- (d) Constructed with materials that are compatible with stored material to be placed in the tank system;
- ~~((d)))~~ (e) Soil may be used for the secondary containment system, provided that any spill onto the soil will be sufficiently contained, readily recoverable, and will be managed in accordance with ~~((the provisions under WAC 173-303-145 spills and discharges and any other applicable regulation))~~ chapter 173-303 WAC;
- ~~((e)))~~ (f) Constructed with sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the fluid stored in the storage tank, climatic conditions, and the stresses of daily operations (including stresses from nearby vehicular traffic);
- ~~((f)))~~ (g) Placed on a base or foundation capable of providing support to the secondary containment system, resistance to pressure

gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

~~((g))~~ (h) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked oil and accumulated precipitation must be removed from the secondary containment system in a manner which will provide the best achievable protection of public health and the environment; and

~~((h))~~ (i) Visually inspected monthly to confirm secondary containment integrity. Items requiring attention as determined by the visual inspection must be documented. ~~((Records must be kept on-site for a minimum of three years.))~~

(2) The secondary containment system must be maintained to prevent a breach of the dike by controlling burrowing animals and weeds.

(3) The secondary containment system must be maintained free of debris and other materials which may interfere with the effectiveness of the system, including excessive accumulated precipitation.

(4) The facility must maintain at least ~~((one hundred))~~ 100 percent of the working capacity of the largest storage tank within the secondary containment area at all times.

(5) All secondary containment pumps, siphons, and valves must be properly maintained and kept in good working order.

(6) Drainage of water accumulations from secondary containment areas that discharge directly to the land or waters of the state must be controlled by locally operated, positive shutoff valves or other positive means to prevent a discharge. Valves must be kept closed except when the discharge from the containment system is in compliance with chapter 90.48 RCW ~~((, Water pollution control))~~. Valves must be locked closed when the facility is unattended. Necessary measures must be taken to ensure secondary containment valves are protected from inadvertent opening or vandalism. There must be some means of readily determining valve status by facility personnel such as a rising stem valve or position indicator.

(7) The owner or operator must inspect or monitor accumulated water before discharging from secondary containment to ensure that no oil will be discharged to the waters of the state. All water discharges must comply with state water quality ~~((program))~~ regulations as described in chapter 90.48 RCW.

(8) Ecology may require oil containers less than ~~((ten thousand gallons (two hundred thirty eight barrels))~~) 10,000 gallons capacity to have secondary containment when the container is located less than ~~((six hundred))~~ 600 feet from navigable waters of the state or a stormwater or surface drains which may impact navigable waters of the state.

(9) A secondary containment system constructed after May 1994 must be constructed as follows:

(a) Secondary containment systems must be capable of containing 100 percent of the capacity of the largest storage tank within the secondary containment area including sufficient freeboard for stormwater;

(b) Secondary containment systems must be designed to withstand seismic forces;

(c) Drains and other penetrations through secondary containment areas must be minimized consistent with facility operational requirements; and

(d) Secondary containment systems must be designed and constructed in accordance with sound engineering practice and in conformance with the provisions of this section.

~~(10) A secondary containment system ((constructed after the adoption date of this rule)) must be installed ((as follows:~~

~~(a)) in accordance with:~~

~~(a) The 1993 version of the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30, section 2-3.4.3((+~~

~~(b) Secondary containment systems must be capable of containing one hundred percent of the capacity of the largest storage tank within the secondary containment area;~~

~~(c) Secondary containment systems must be designed to withstand seismic forces;~~

~~(d) Drains and other penetrations through secondary containment areas must be minimized consistent with facility operational requirements; and~~

~~(e) Secondary containment systems must be designed and constructed in accordance with sound engineering practice and in conformance with the provisions of this section), if constructed after May 1994 and before the effective date of this rule; or~~

(b) The 2021 version of the NFPA, Flammable and Combustible Code, No. 30, section 22.11.2, Impounding Around Tanks by Open Diking, if constructed after the effective date of this rule.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-320, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-330 Storage tank requirements. (1) Storage tanks constructed after ~~((the adoption date of this section))~~ May 1994 and before the effective date of this rule must meet or exceed the 1993 version of the National Fire Protection Association (NFPA No. 30) requirements and one of the following design and manufacturing standards:

(a) UL No. 142, Steel Aboveground Tanks for Flammable and Combustible Liquids ~~((dated April))~~ (1993);

(b) API Standard 650, Welded Steel Tanks for Oil Storage ~~((dated November))~~ (1988);

(c) API Standard 620, Design and Construction of Large Welded, Low-Pressure Tanks ~~((dated June))~~ (1990); or

(d) Another standard approved by ecology, as long as the requirements in such standard equal or exceed those required in this section.

(2) Storage tanks constructed before the effective date of this rule must include protective measures that are designed, installed, and maintained to reduce risk from seismic events and that include one or more of the following:

(a) Flexible mechanical device(s) between storage tank and piping or sufficient piping flexibility to protect the tank and pipe connection and prevent the release of product;

(b) Foundation driven pilings;

(c) Anchored storage tanks; or

(d) Another seismic protection measure proposed by the facility and approved by ecology, as long as such protection measure equals or exceeds those required in this section. This may include demonstrating

the storage tank meets API Standard 650 (2020) seismic design requirements, including Annex E and section E.7.3 Piping Flexibility.

(3) Storage tanks constructed after the effective date of this rule must meet the following requirements:

(a) Meet or exceed the 2021 version of the NFPA No. 30 requirements and one of the following design and manufacturing standards:

(i) UL No. 142, Steel Aboveground Tanks for Flammable and Combustible Liquids (2019);

(ii) API Standard 650, Welded Steel Tanks for Oil Storage (2020);

(iii) API Standard 620, Design and Construction of Large Welded, Low-Pressure Tanks (2018); or

(iv) Another standard approved by ecology, as long as the requirements in such standard equal or exceed those required in this section.

(b) Must be designed to meet the following seismic design requirements:

(i) API Standard 650 (2020) seismic design requirements, including Annex E and section E.7.3 Piping Flexibility;

(ii) American Society of Civil Engineers (ASCE) 7-22 Risk Category III or IV, including Site Class A, B, C, D, E, or F based on on-site soil properties, and meet seismic design requirements under chapter 16 of the 2021 International Building Code (IBC) and WAC 51-50-1613 and 51-50-1615; and

(iii) Resist tsunamis based on the facility's risk area using a tsunami hazard tool or a tsunami design zone map, and meet tsunami requirements under chapter 16 of the 2021 IBC and WAC 51-50-1613 and 51-50-1615.

(4) Storage tanks must be inspected under the seismic design requirements of API Standard 653 (2014 with Addendum 1 (2018) and 2 (2020)) and applicable requirements of 2021 IBC. The results of these inspections must be included in the facility's spill risk analysis as required under WAC 173-180-630.

~~((2))~~ (5) The owner or operator must ensure that the means of preventing storage tank overflow comply with the ((1993)) 2021 version of the ((National Fire Protection Association-)) NFPA((+)), Flammable and Combustible Code, No. 30, Chapter ((2)) 21, section ((2-10)) 21.7.1, Prevention of Overfilling of Storage Tanks.

~~((3))~~ (6) Storage tanks must be maintained, repaired, and inspected in accordance with the requirements of API Standard 653 ((dated January 1991)) (2014 with Addendum 1 (2018) and 2 (2020)), unless the operator proposes an equivalent inspection strategy which is approved by ecology.

~~((4) A record of all inspection results and corrective actions taken must be kept for the service life of the tank and must be available to ecology for inspection and copying upon request.)~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-330, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-340 Transfer pipeline requirements. (1) Pipelines replaced, relocated, or constructed after ~~((the adoption date of~~

this)) May 1994 and before the effective date of this rule, which are located in areas not controlled by the facility, must be installed in accordance with 49 C.F.R. Parts 195.246 through ((49 C.F.R.)) 195.254 ((as amended on October 8,)) (1991), where feasible. Facility control is established by fencing, barriers, or ((either)) another method ((accepted)) approved by ecology which protects the pipe right of way and limits access to personnel authorized by the facility.

(2) Pipelines constructed after May 1994 and before the effective date of this rule must be designed and constructed in accordance with the American Society of Mechanical Engineers (ASME) Standard for pressure piping ASME B31.3 or B31.4 (1993), or another standard approved by ecology, as long as the requirements in such standard equal or exceed those required in this section.

(3) All pipelines constructed before the effective date of this rule must include protective measures that are designed, installed, and maintained to reduce risk from seismic events and include one or more of the following, and are also installed under the provisions of chapter 57 of the 2021 International Fire Code (IFC), where applicable:

(a) Flexible mechanical device(s) between storage tank and piping or sufficient piping flexibility to protect the tank and pipe connection and prevent the release of product;

(b) Flexible mechanical device(s) or adequate pipeline flexibility between pipes;

(c) Pipeline supports that protect against seismic motion;

(d) Automatic emergency isolation shutoff valves that are triggered to close during seismic events; or

(e) Another seismic protection measure proposed by the facility and approved by ecology, as long as such protection measure equals or exceeds those required in this section.

(4) Pipelines replaced, relocated, or constructed after the effective date of this rule, which are located in areas not controlled by the facility, must be installed in accordance with 49 C.F.R. Parts 195.202 (1981), 195.204 (2015), 195.205 (2015), 195.206 (1981), 195.207 (2015), 195.208 (1998), 195.210 (1998), 195.212 (1998), 195.214 (2017), 195.216 (1981), 195.222 (2017), 195.224 (1981), 195.226 (1981), 195.228 (2015), 195.230 (1983), 195.234 (2015), 195.246 (2004), 195.248 (2017), 195.250 (1998), 195.252 (2003), 194.254 (1981), and 195.256 (1981), where feasible.

(5) Pipelines constructed after the effective date of this rule must also:

(a) Be designed and constructed in accordance with the ASME Standard for pressure piping ASME B31.3 or B31.4 (2021 or 2019, respectively), or another standard approved by ecology, as long as the requirements in such standard equal or exceed those required in this section;

(b) Be designed to API Standard 650 (2020), Annex E, section E.7.3 Piping Flexibility when connected to storage tanks;

(c) Be installed under the provisions of chapter 57 of the 2021 IFC, where applicable, and include one or more of the following:

(i) Flexible mechanical device(s) or adequate pipeline flexibility between pipes;

(ii) Pipeline supports that protect against seismic motion;

(iii) Automatic emergency isolation shutoff valves that are triggered to close during seismic events; or

(iv) Another seismic protection measure proposed by the facility and approved by ecology, as long as such protection measure equals or exceeds those required in this section.

(d) Resist tsunamis based on the facility's risk area using a tsunami hazard tool or a tsunami design zoning map.

(6) All pipelines must be protected from third party damage in a reasonable manner and be able to withstand external forces exerted upon them. This must be done by:

(a) Registering all underground pipelines located in public right of way areas in the local one call system if available;

(b) Maintaining accurate maps for all underground ~~((piping))~~ pipelines located outside the facility. The maps must identify ~~((pipe))~~ pipeline size and location. The approximate depths of pipelines must be identified for pipelines which do not comply with 49 C.F.R. ~~((195.248 as amended on October 8, 1991))~~ Parts 195.202 through 195.234, 195.248, and 195.256;

(c) Marking all piping located in areas not controlled by the facility in accordance with 49 C.F.R. Parts 195.202 through 195.234, 195.256, and 195.410 ((as amended on October 8, 1991));

(d) Providing easement inspections of areas identified ~~((by))~~ in (b) of this subsection on a weekly basis to determine if there is any uncommon activity occurring which may affect the integrity of the pipeline; and

(e) Ensuring that pipelines at each railroad, highway, or road crossing are designed and installed to adequately withstand the dynamic forces exerted by anticipated traffic loads.

~~((3) Pipelines constructed after the adoption date of this section must be designed and constructed in accordance with the American Society of Mechanical Engineers (ASME) Standard for pressure piping ASME B31.3 or B31.4 issued March 15, 1993, in effect during the time of construction or any other standard accepted by ecology.~~

~~(4))~~ (7) Pipelines must be inspected in accordance with API Standard 570((, 1993)), Piping Inspection Code (2016 with Addendum 1 (2017) and 2 (2018), and Errata (2018)) or another standard approved by ecology, as long as the requirements in such standard equal or exceed those required in this section. As an alternative to complying with API Standard 570, the facility must comply with the following requirement: Buried pipelines constructed after ~~((the adoption date of this rule))~~ May 1994 must be coated. Coatings must be designed and inspected to meet the following conditions consistent with the definition of best achievable protection:

(a) Coatings must effectively electrically isolate the external surfaces of the pipeline system from the environment.

(b) Coatings must have sufficient adhesion to effectively resist underfilm migration of moisture.

(c) Coatings must be sufficiently ductile to resist cracking.

(d) The coating must have sufficient impact and abrasion resistance or otherwise be protected to resist damage due to soil stress and normal handling (including concrete coating application, installation of river weights, and anode bracelet installation, where applicable).

(e) The coating must be compatible with cathodic protection.

(f) The coating must be compatible with the operating temperature of the pipeline.

(g) Coatings must be inspected immediately before, during, or after ~~((pipe))~~ pipeline installation to detect coating faults. Faults in the coating must be repaired and reinspected.

~~((5))~~ (8) All buried coated pipelines must have properly operated cathodic protection which is maintained during the operational life of the pipeline system. Cathodic protection must be maintained on pipeline systems which are out-of-service but not abandoned unless the operator can show that the pipeline integrity has been properly monitored and secured as approved by ecology prior to operation of the abandoned pipeline. Pipeline owners or operators may perform a corrosion study to demonstrate that cathodic protection is not required as an option to installing cathodic protection. Corrosion studies must follow the following guidelines ~~((as))~~ at a minimum:

(a) Corrosion studies must be completed by a professional engineer with experience in corrosion control of buried pipelines, a NACE certified corrosion specialist, or by a person knowledgeable and qualified to perform the required testing and inspection who is approved by ecology.

(b) Corrosion studies for pipelines must include at a minimum, the following:

- (i) Pipeline thickness and corrosion rate for existing pipelines;
- (ii) Presence of stray DC currents;
- (iii) Soil resistivity/conductivity;
- (iv) Soil moisture content;
- (v) Soil pH;
- (vi) Chloride ion concentration; and
- (vii) Sulfide ion concentration.

~~((6))~~ (9) All pipelines with cathodic protection are subject to the following requirements where applicable:

(a) Cathodic protection systems must be tested to determine system adequacy on an annual basis.

(b) Impressed current cathodic protection rectifiers must be inspected every two months.

(c) Where insulating devices are installed to provide electrical isolation of pipeline systems to facilitate the application of corrosion control, they must be properly rated for temperature, pressure and electrical properties, and must be resistant to the commodity carried in the pipeline system.

(d) Buried pipeline systems must be installed so that they are not in electrical contact with any metallic structures. This requirement must not preclude the use of electrical bonding to facilitate the application of cathodic protection.

(e) Tests must be carried out to determine the presence of stray currents. Where stray currents are present, measures must be taken to mitigate detrimental effects.

~~((7))~~ (10) Buried bare pipelines must be inspected in accordance with ~~((section 7 of API 570 dated June 1993))~~ API Standard 570, section 7 (2016 with Addendum 1 (2017) and 2 (2018), and Errata 1 (2018)). Pipeline thickness and corrosion rates must be determined at an interval of no more than half of the remaining life of the pipeline as determined from corrosion rates or every five years, whichever is more frequent. Pipeline thickness and corrosion rate must be initially established ~~((within thirty-six months after the adoption date of this section))~~ by May 1997. The pipeline must be operated and inspected in accordance with ~~((American Society of Mechanical Engineers))~~ ASME ~~((B31G-1991))~~ B31G-2012 (R2017) entitled Manual for Determining the Remaining Strength of Corroded Pipe for transmission pipelines ~~((issued June 27, 1991, API 570 dated June 1993 or a))~~ (1991), API Standard 570 (2016 with Addendum 1 (2017) and 2 (2018), and Errata 1 (2018)), or another standard approved by ecolog-

gy, as long as the requirements in such standard equal or exceed those required in this section.

~~((8))~~ (11) Whenever any buried ~~((pipe))~~ section of pipeline is exposed for any reason, the operator must provide a nondestructive examination of the pipe for evidence of external corrosion. If the operator finds that there is active corrosion, the extent of that corrosion must be determined and if necessary repaired.

~~((9))~~ (12) Each facility must maintain all pumps and valves that could affect waters of the state in the event of a failure. Transfer pipeline pumps and valves and storage tank valves must be inspected annually and maintained in accordance with the manufacturers' recommendations or an industrial standard approved by ecology to ensure that they are functioning properly. Valves must be locked when the facility is not attended. Necessary measures must be taken to ensure that valves are protected from inadvertent opening or vandalism if located outside the facility or at an unattended facility.

~~((10))~~ A written record must be kept of all inspections and tests covered by this section.

~~((11))~~ (13) Facilities must have the capability of detecting a transfer pipeline leak equal to eight percent of the maximum design flow rate within ~~((fifteen))~~ 15 minutes for transfer pipelines connected to tank vessels. Leak detection capability must be determined by the facility using best engineering judgment. Deficiencies with leak detection systems such as false alarms must be addressed and accounted for by the facility. Facilities may meet these requirements by:

(a) Visual inspection provided the entire pipeline is visible and inspected every ~~((fifteen))~~ 15 minutes; ~~((or))~~

(b) Instrumentation; ~~((or))~~

(c) Completely containing the entire circumference of the pipeline provided that a leak can be detected within ~~((fifteen))~~ 15 minutes; ~~((or))~~

(d) Conducting an acceptable hydrotest of the pipeline immediately before the oil transfer with visual surveillance of the exposed pipeline every ~~((fifteen))~~ 15 minutes; ~~((or))~~

(e) A combination of the above strategies; or

(f) A method approved by ecology which meets the standard identified in this section ~~((or))~~

~~((g))~~.

(14) Leak detection system operation and operator response must be described in the facility operations manual.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-340, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-400 Applicability of Part D. (1) Part D applies to ~~((both))~~ Class 1 and ~~((Class))~~ 2 facilities. ~~((Ecology has not adopted operation manual requirements for Class 3 or 4 facilities.~~

~~((a))~~ WAC 173-180-405 through 173-180-440 covers Class 1 facilities.

~~((b))~~ WAC 173-180-445 through 173-180-475 covers Class 2 facilities.

~~(2) Class 1 and 2 facilities must prepare, submit, and implement an operations manual pursuant to the requirements in this chapter.~~

~~(3)) (2) All oil transfer operations at Class 1 and 2 facilities must be conducted in accordance with the ((facilities)) facility's operations manual. The owner or operator and person in charge (PIC) for Class 1 and 2 facilities transferring oil with a nonrecreational vessel must ensure that the receiving vessel's personnel comply with the ((facility)) facility's operations manual.~~

~~((4)) (3) Class 1 and 2 facilities must maintain all equipment and perform operations in accordance with the operations manual.~~

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

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-400, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-180-406 Class 1 and 2 facilities—Operations manual preparation. (1) Each Class 1 and 2 facility must prepare, submit, and implement an operations manual, which at a minimum meets the requirements of this chapter.

(2) The operations manual must be thorough and contain enough information and documentation, and analyses and supporting data for Class 1 facilities, to demonstrate the manual holder's ability to meet the requirements of this chapter.

(3) The manual must describe equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ to achieve best achievable protection for public health and the environment, and to prevent oil spills.

[]

NEW SECTION

WAC 173-180-411 Class 1 and 2 facilities—Operations manual maintenance and use. (1) Each Class 1 and 2 facility must keep the operations manual in an immediately accessible location.

(2) Facilities must ensure that all employees involved in oil transfer operations, or storage operations for Class 1 facilities, are familiar with the manual provisions through regular and new employee training.

[]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-415 Class 1 (~~facility~~) and 2 facilities—Operations manual format requirements. Operations manuals must:

- (1) Have a detailed table of contents based on chapter, section, (~~and~~) appendix numbers and titles, (~~as well as~~) and tables and figures(~~);~~;
 - (2) Where applicable, topics identified in the table of contents may be cross referenced with other submissions required by chapter 90.56 RCW including contingency and prevention plans, or 33 C.F.R. (~~154~~) Part 154.300 provided that a copy of the (~~Coast Guard Operations Manual has been~~) documents are submitted to ecology;
 - (~~2~~) (3) Allow replacement of (~~chapter and appendix~~) pages with revisions, without requiring replacement of the entire (~~operations~~) manual; and
 - (~~3~~) (4) Include a log sheet to record amendments to the (~~operations~~) manual. The log sheet must(~~:~~
 - (~~a~~) be placed at the front of the (~~operations manual;~~
 - (~~b~~) Provide for a record of the) manual. The log sheet must identify each section amended, the date (~~the old section was replaced with the amended section~~) of the amendment, and the (~~initials~~) name of the authorized individual making the change(~~:~~
 - (~~c~~) Include). A description of the amendment(~~:~~) and (~~d~~) In-
- clude a description of the amendment's)) its purpose (~~or filed in the form of an amendment letter immediately following~~) must also be in-
cluded in the log sheet.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-415, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-420 Class 1 facility—Operations manual content requirements. (1) (~~The operations manual must describe equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ to achieve best achievable protection for public health and the environment, and to prevent oil spills.~~

(2) The) Each operations manual submitted to ecology must contain a (~~submittal~~) written statement binding the manual submitter to its use. In the binding agreement (~~which~~), the signatory will:

- (a) Include(~~s~~) the name, address, (~~and~~) phone number, and email address of the submitting party;
- (b) (~~Verifies~~) Verify acceptance of the (~~operations~~) manual by the owner or operator of the Class 1 facility by either signature of (~~the~~) an authorized owner, (~~or~~) operator, or (~~signature by a person~~) a designee with (~~the~~) authority to bind the (~~corporation which owns such~~) owners and operators of the facility;
- (c) (~~Commits execution of the operations manual by the owner or operator of the Class 1 facility, and verifies authority for the operations manual holder to make appropriate expenditures in order to exe-~~

~~ute operations manual provisions))~~ Commit to the implementation and use of the manual;

(d) Verify the person(s) signing the agreement is authorized to make expenditures to implement the requirements of the manual; and

~~((d))~~ (e) Include((s)) the name, location, and address of the facility, type of facility, and starting date of operations of the facility covered by the ((operations)) manual.

(2) The facility may submit their United States Coast Guard operations manual required under 33 C.F.R. Part 154.300 to satisfy manual requirements under this chapter if:

(a) Ecology deems that such federal requirements equal or exceed those required in this section; or

(b) The facility modifies or appends the manual to meet requirements as described in WAC 173-180-415(2).

~~((Operations))~~ Manuals must address at a minimum the following topics for oil transfer operations to or from Class 1 facilities:

(a) General facility information including:

(i) The geographic location of the facility shown on a topographic map;

(ii) A physical description of the facility including a plan of the facility showing mooring areas, transfer locations, control stations, oil flow patterns, and locations of safety equipment;

(iii) A statement identifying facility operation hours;

(iv) A brief summary of applicable federal, state, and local oil pollution laws and regulations;

(v) Recordkeeping procedures and sample forms which are associated with the requirements in this chapter;

(vi) Overfill prevention procedures must be described for transfers to storage tanks ~~((and tank vessels))~~ in accordance with the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. ~~((30-1993))~~ 30-2021, Chapter ~~((2))~~ 21, section ~~((2-10))~~

21.7.1 Prevention of Overfilling of Storage Tanks;

(vii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preventative maintenance, replacement criteria for transfer pipelines, pumps, and valves;

(viii) A description of all oil types transferred to or from the facility including:

(A) Generic and chemical name;

(B) A description of the appearance of the oil;

(C) The hazards involved in handling the oil; and

(D) Instructions for safe handling of oil ~~((+))~~.

(ix) The procedures to be followed if the oil spills or leaks, or if a person is exposed to the oil;

(x) A list of firefighting procedures and extinguishing agents effective with fires involving the oil;

(xi) A description of each communication system and instructions in the use of each ~~((communication system))~~;

(xii) Detailed procedures for:

(A) Operating each hose system and loading arm including the limitations of each loading arm;

(B) Transferring oil, including startup, topping off, and shut-down;

(C) Completion of pumping; and

(D) Quantity, types, locations, and instructions for use of all transfer monitoring devices;

(xiii) A discussion of the leak detection system and/or procedures implemented by the facility;

(xiv) The location and facilities of each personnel shelter, if any; and

(xv) Maximum relief valve settings (or maximum system pressures when relief valves are not provided) for each transfer system.

(b) Facility procedures for oil transfers to or from nonrecreational vessels including, at a minimum:

(i) Discussion of the sizes, types, and number of vessels that the facility can transfer oil to or from, including simultaneous transfers;

(ii) Discussion of equipment and procedures required for all vessels which transfer oil to or from the facility;

(iii) Procedures for verifying that vessels meet facility requirements and operations manual procedures;

(iv) Discussion of the minimum number of persons or equipment required to perform transfer operations and their duties (~~(, including transfer watchmen)~~);

(v) ~~((A))~~ Description and instructions for the use of drip and discharge collection and vessel slop reception facilities, if any;

(vi) If applicable, procedures for shielding portable lighting;

(vii) Description of the facility's requirements or actions taken regarding unexpected weather and sea conditions and the threshold values developed by the facility which may impact oil transfers to or from vessels. ~~((The))~~ Supporting data for oil transfer weather and sea restrictions must be ~~((made))~~ available to ecology ~~((if requested))~~ upon request and include at a minimum:

(A) Instrumentation or methodology for accurately measuring and recording this information in the facility's dock operations log book;

(B) Measuring current velocity, weather, and sea conditions before and during the oil transfer operation;

(C) Monitoring forecasted weather and sea;

(D) Procedures for communicating weather and sea conditions to the persons in charge (PICs) at regular intervals;

(E) Threshold values for weather and sea conditions above which transfer operations must cease; and

(F) Procedures for communicating with the vessel and shutting down the oil transfer should weather or seas exceed threshold values.

(c) Safe and effective threshold determination. ~~((The threshold values which personnel will use to determine when a facility will not preboom under Part B of this chapter, must be in the operations manual and easily found by the PIC. The analysis, data, and supporting documents are not required to be in the operations manual but must be submitted separately in a report to ecology. See))~~ If a facility conducts Rate A transfers, then the manual must include the safe and effective threshold values identified in the safe and effective threshold determination report under WAC 173-180-224.

(d) Facility emergency ~~((procedures))~~ information must include, at a minimum:

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

(ii) The names and telephone numbers of facility, federal, state, local, and other personnel who may be called by the employees of the facility in case of an emergency;

(iii) Emergency plans and procedures including a description of and the location of each emergency shutdown system;

(iv) Quantity, types, locations, instructions for use, and time limits for gaining access to containment equipment; and

(v) Quantity, types, locations, and instructions for use of fire extinguishing equipment.

(e) For facilities that transfer to or from transmission pipelines the operations manual must address, ~~((at a minimum))~~ in addition to the requirements in (a) of this subsection, the following topics:

~~(i) ((The geographic location of the facility shown on a topographic map;~~

~~(ii) A physical description of the facility including a plan of the facility showing transfer locations, control stations, oil flow patterns, and locations of safety equipment;~~

~~(iii) A statement identifying facility operation hours;~~

~~(iv) A description of all oil types transferred to or from the facility including:~~

~~(A) Generic and chemical name;~~

~~(B) The name of the oil;~~

~~(C) A description of the appearance of the oil;~~

~~(D) A description of the odor of the oil;~~

~~(E) The hazards involved in handling the oil; and~~

~~(F) Instructions for safe handling of oil;~~

~~(v) The procedures to be followed if the oil spills or leaks, or if a person is exposed to the oil;~~

~~(vi) A list of firefighting procedures and extinguishing agents effective with fires involving the oil;~~

~~(vii) A discussion of the minimum number of persons required to perform transfer operations and their duties;~~

~~(viii) The names and telephone numbers of facility, federal, state, local and other personnel who may be called by the employees of the facility in case of an emergency;~~

~~(ix)) The duties of the facility operator and/or PIC;~~

~~((x)) (ii) A description of each associated communication system;~~

~~((xi) The location and facilities of each personnel shelter, if any;~~

~~(xii)) (iii) Emergency plans and procedures including a description of and the location of each emergency shutdown system;~~

~~((xiii) Quantity, types, locations, and instructions for use of monitoring devices;~~

~~(xiv) Quantity, type, location, instructions for use, and time limits for gaining access to containment equipment;~~

~~(xv) Quantity, type, location, and instructions for use of fire extinguishing equipment;~~

~~(xvi) Maximum relief valve settings (or maximum system pressures when relief valves are not provided) for each transfer system;~~

~~(xvii) Detailed procedures for reporting and initial containment of oil discharges;~~

~~(xviii) A brief summary of applicable federal, state, and local oil pollution laws and regulations;~~

~~(xix)) (iv) A description of the training and qualification program for ((persons in charge)) the facility operator and/or PICs; and~~

~~((xx)) (v) A discussion of facility operation procedures for conducting oil transfers including transfer startups and shutdowns ((;~~

~~(xxi) Recordkeeping procedures and sample forms to be used;~~

~~(xxii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preven-~~

tative maintenance replacement criteria for transfer pipelines, pumps and valves; and

~~(xxiii) A section in accordance with the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30-1993, Chapter 2, Section 2-10 which requires that written procedures be developed to describe overfill prevention procedures. Overfill prevention procedures must be described for transfers to storage tanks and tank vessels).~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-420, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-180-421 Class 2 facility—Operations manual content requirements. (1) Each operations manual submitted to ecology must contain a written statement binding the manual submitter to its use. In the binding agreement, the signatory will:

- (a) Include the name, address, phone number, and email address of the submitting party;
- (b) Verify acceptance of the manual by the owner or operator of the Class 2 facility by either signature of an authorized owner, operator, or designee with authority to bind the owners and operators of the facility;
- (c) Commit to the implementation and use of the manual;
- (d) Verify the person(s) signing the agreement is authorized to make expenditures to implement the requirements of the manual; and
- (e) Include the name and location for the base of operations for the mobile fleet, and the starting date of operations.

(2) The facility may submit their United States Coast Guard operations manual required under 33 C.F.R. Part 154.300 to satisfy manual requirements under this chapter if:

- (a) Ecology deems that such federal requirements equal or exceed those required in this section; or
- (b) The facility modifies or appends the manual to meet requirements as described in WAC 173-180-415(2).

(3) Manuals must address at a minimum the following topics for oil transfer operations from Class 2 facilities:

- (a) General information including:
 - (i) A brief summary of applicable federal, state, and local oil or hazardous material pollution laws and regulations;
 - (ii) A physical description of the fleet of mobile vehicles or rolling stock including capabilities;
 - (iii) List all cities where the facility conducts oil transfers;
 - (iv) Instructions in the use of each communication system;
 - (v) A description and instructions for the use of drip and release containment for all hose connections;
 - (vi) The maximum allowable working pressure (MAWP) of each hose assembly required to be tested by 33 C.F.R. Part 156.170, including the maximum relief valve setting (or maximum system pressure when relief valves are not provided) for each transfer system, if any;
 - (vii) Recordkeeping procedures and sample oil transfer forms which are associated with the requirements in this chapter;

(viii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preventative maintenance, replacement criteria for hose assemblies, pumps, and valves;

(ix) A copy of the safety data sheets (SDS) for each type of oil transferred. The SDS must be in the driver's possession or available at the transfer; and

(x) Discussion of the minimum number of persons or equipment required to perform transfer operations and their duties.

(b) Facility procedures for oil transfers to or from nonrecreational vessels including:

(i) Detailed procedures for transferring oil which will include, at a minimum:

(A) Number of truck/trailer combinations needed;

(B) Transferring oil, including startup, topping off, and shutdown; and

(C) Shift-change procedures;

(ii) Discussion of equipment and procedures required for all vessels which receive oil from the Class 2 facility;

(iii) Overfill prevention procedures must be described for transfers to vessels;

(iv) Discussion regarding the times, hours, or location conditions that could limit deliveries;

(v) If applicable, procedures for shielding portable lighting;

(vi) Procedures for observing or detecting leaks from the vessel during oil transfer operations; and

(vii) Discussion of the facility's requirements regarding weather and sea conditions at the facility which may impact oil transfers to or from vessels including, at a minimum:

(A) Monitoring current weather and sea conditions;

(B) Monitoring forecasted weather and sea conditions;

(C) Procedures for communicating weather and sea conditions to the persons in charge (PICs) at regular intervals;

(D) Threshold values for weather and sea conditions above which transfer operations must cease; and

(E) Procedures for communicating with the vessel and shutting down the oil transfer should weather or seas exceed threshold values.

(c) Facility emergency information must include, at a minimum:

(i) Procedures for reporting and initial containment of oil discharges;

(ii) The name and telephone number of the driver's supervisor or dispatcher and telephone number of the United States Coast Guard, state, local, and other personnel who may be called by the employees of the facility in an emergency;

(iii) Emergency plans and procedures including a description of and location of each emergency shutdown system;

(iv) Quantity, types, locations, and instructions for use of fire extinguishing equipment; and

(v) Means of protecting nearby surface water from impact of discharge of oil, i.e., permanent or temporary drainage structures or devices to protect water at delivery site.

(d) If a facility conducts Rate A transfers, then the manual must include the safe and effective threshold values identified in the safe and effective threshold determination report under WAC 173-180-224.

These values must be for each location where a Rate A transfer occurs.

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AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-425 Class 1 ((facility)) and 2 facilities—Operations manual submittal requirements. (1) ~~The owner or operator of ((an existing facility must submit the operations manual to ecology within one hundred twenty calendar days from the effective date of this chapter.~~

~~(a) Existing Class 1 facilities that have an ecology approved operations manual, on the date this chapter becomes effective, may submit only the new changes to the operations manual instead of resubmitting the entire operations manual.~~

~~(b) For Class 1 facilities that begin operations after the effective date of this chapter, the owner or operator must submit an operations manual to ecology at least one hundred twenty calendar days prior to conducting an oil transfer operation))~~ a Class 1 or 2 facility must submit an operations manual to ecology at least 120 calendar days prior to their planned date for conducting an oil transfer operation in Washington state.

(2) ~~One ((paper and one)) electronic copy of the ((operations)) manual and appendices must be ((delivered to:~~

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Operations Manual
P.O. Box 47600
Olympia, WA 98504-7600
Or~~

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Operations Manual
300 Desmond Drive
Lacey, WA 98503))~~

submitted to ecology. Ecology will maintain electronic submittal instructions on the spill prevention, preparedness, and response program website.

(3) ~~The ((operations)) manual submitter may request that proprietary information be kept confidential under RCW 43.21A.160.~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-425, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-430 Class 1 ((facility)) and 2 facilities—Operations manual review and approval process. (1) The owner or operator of a Class 1 or 2 facility must submit the operations manual to ecology for reapproval at least 120 calendar days prior to the manual's expiration date. The facility may request ecology review the manual currently on file at ecology or submit amended page(s) of the manual to ecology.

If the manual is not submitted within the time frame required for reapproval before the expiration date, the lapse is considered noncompliance and may result in the loss of manual approval.

~~(2) Upon receipt of ((an operations)) the manual, ecology will determine whether the ((operations)) manual is complete. If ecology determines that ((an operations)) the manual is ((incomplete, ecology must notify)) not complete, the facility will be notified of ((the)) any deficiencies.~~

~~((2) When reviewing operations manuals ecology must consider the following:~~

~~(a) The ability of the operations manual to provide best achievable protection from damages caused by the discharge of oil into waters of the state;~~

~~(b) The volume and type of oil(s) addressed by the facility operations manual;~~

~~(c) The history and circumstances of prior spills by similar types of facilities, including spills reported to the state and federal government in Washington state;~~

~~(d) Inspection reports;~~

~~(e) The presence of operating hazards;~~

~~(f) The sensitivity and value of natural resources within the geographic area covered by the operations manual; and~~

~~(g) Any pertinent local, state, federal agency, public comments received on the operations manual.~~

~~(3) Ecology must endeavor to notify the facility owner or operator within five working days after completing the review whether ecology approves the operations manual.~~

~~(4) If the operations manual receives approval, ecology must send the Class 1 facility owner or operator an approval letter describing the terms of approval, including an expiration date.~~

~~(5) Conditional approval:~~

~~(a) Ecology may approve an operations manual conditionally by requiring a facility owner or operator to operate with specific precautionary measures until acceptable components of the operations manual are resubmitted and approved by ecology.~~

~~(b) Precautionary measures may include, but are not limited to:~~

~~(i) Reducing oil transfer rates;~~

~~(ii) Increasing personnel levels;~~

~~(iii) Restricting operations to daylight hours; or~~

~~(iv) Additional requirements to ensure availability to response equipment.~~

~~(6) After receiving notification of conditional status from ecology, a Class 1 facility must submit and implement required changes to ecology within thirty calendar days. Ecology may issue an extension at ecology's discretion. Operations manual holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.~~

~~(7) If the operations manual approval is denied, ecology must send an explanation of the factors for disapproval and a list of deficiencies to the Class 1 facility owner or operator.~~

~~(a) The owner or operator of the facility must resubmit the operations manual within ninety calendar days of notification of reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.~~

~~(b) The facility must not continue oil storage, transfer, production, or other operations until ecology approves an operations manual for that facility.~~

~~(8) Approval of a manual by ecology does not constitute an express assurance regarding the adequacy of the operations manual nor constitute a defense to liability imposed under state law.~~

~~(9) A facility may conduct operations if the facility properly submitted an operations manual to ecology and ecology has not provided the facility with a formal response.) Ecology may request additional information for the manual.~~

~~(3) Before the manual's expiration date, ecology will respond with a letter approving, conditionally approving, or disapproving the manual.~~

~~(a) The facility may continue to conduct operations if the facility properly submitted the manual to ecology and ecology has not provided the facility with a formal response.~~

~~(b) When reviewing manuals for approval, ecology must consider the following:~~

~~(i) The ability of the manual to provide best achievable protection from damages caused by the discharge of oil into waters of the state;~~

~~(ii) The volume and type(s) of oil addressed by the manual;~~

~~(iii) The history and circumstances of prior spills by similar types of facilities, including spills reported to the state and federal government in Washington state;~~

~~(iv) Inspection reports;~~

~~(v) The presence of operating hazards; and~~

~~(vi) The sensitivity and value of natural resources within the geographic area covered by the manual.~~

~~(4) If the manual receives approval, the letter will describe the terms of approval, including expiration date. Manual approval expires five years from the date on the approval letter.~~

~~(5) If the manual is conditionally approved, ecology may require the facility to operate with specific restrictions until unacceptable components of the manual are revised, resubmitted, and approved.~~

~~(a) In the conditional approval, ecology will describe:~~

~~(i) Each specific restriction and the duration for which they apply; and~~

~~(ii) Each required item to bring the manual into compliance.~~

~~(b) Restrictions may include, but are not limited to:~~

~~(i) Reducing oil transfer rates;~~

~~(ii) Increasing personnel levels;~~

~~(iii) Restricting operations to daylight hours or favorable weather conditions; or~~

~~(iv) Additional requirements to ensure availability of response equipment.~~

~~(c) The owner or operator has 30 calendar days after notification of conditional approval to submit revisions and implement required changes. An extension may be issued at ecology's discretion. Conditional approval expires no later than 18 months from date of notification.~~

~~(d) Facilities which fail to meet conditional requirements or provide required changes in the time allowed may lose conditional approval status. Ecology may revoke its conditional approval prior to the expiration date if the facility fails to meet the terms of the conditional approval.~~

~~(6) If the manual is disapproved, the facility must receive an explanation of the factors for disapproval. The owner or operator has 90 calendar days after notification of disapproval to submit revisions and implement required changes.~~

~~(a) Class 1 facilities must not continue oil storage, transport, transfer, production, or other operations until the manual has been approved or conditionally approved.~~

(b) Class 2 facilities must not continue oil transfer or other operations until the manual has been approved or conditionally approved.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-430, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-435 Class 1 ((facility)) and 2 facilities—Operations manual updates. (1) At any point during the five-year approval period, if there is a significant change as defined in subsection (4) of this section, the owner or operator must ((notify)):

(a) Submit an electronic notification to ecology ((in writing)) prior to any significant ((changes to the operations manual that could affect implementation of the operations manual.

~~(2)) change;~~

(b) Within 30 calendar days of the significant change, amend the manual to incorporate the significant change and submit the amended page(s) to ecology; and

(c) If a significant change will reduce the facility's ability to implement the manual, provide a schedule for the return of the manual to full implementation capability.

(2) Failure to notify ecology of significant changes in the manual is considered noncompliance and could result in the loss of manual approval.

(3) If ecology finds, as a result of the significant change, the manual no longer meets approval criteria, then ecology will notify the facility owner or operator of the change in approval status. Ecology may place conditions on approval or disapprove the manual.

(4) A significant change includes ((, but is not limited to)):

(a) ((A change in the owner or operator of the facility;

~~(b)) A change in the type(s) of oil handled at the facility;~~

~~((c) A substantial)) (b) A five percent or greater change in the Class 1 facility's ((oil-handling)) oil handling capacity;~~

~~((d) Noncompliance with the federal Oil Pollution Act of 1990;~~

~~(e) A substantial)) (c) A change in oil spill prevention technology installed at the Class 1 facility or equipment in use by the Class 2 facility, or other ((substantial)) changes to facility technology, operations, or personnel procedures ((based on requirements of amended or new rules adopted by ecology; and~~

~~(f) Any other changes that would require modification of the operations manual.~~

~~(3) If a significant change will reduce the facility's ability to implement the operations manual, the operations manual holder must also provide a schedule for the return of the operations manual to full implementation capability.~~

~~(4) The facility may submit a facsimile to provide written notice for the purposes of this section.~~

~~(5) If ecology finds, because of the significant change, the operations manual no longer meets approval criteria, ecology may, at its discretion, place conditions on approval, or revoke approval. Ecology~~

may also require the operations manual holder to amend its operations manual to incorporate the change.

~~(6) Within thirty calendar days of making a significant change to the operations manual, the facility owner or operator must distribute the amended page(s) of the operations manual to ecology and other operations manual holders).~~

~~((7))~~ (5) A significant change does not include minor variations (less than five percent for Class 1 facilities) in oil handling capacity, maintenance schedules, and operating procedures, provided that none of these changes will increase the risk of a spill.

(6) Ecology may review ((an operations manual)) and require changes to the manual following any spill, inspection, or drill ((for which the operations manual holder is responsible)).

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-435, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-500 Applicability of Part E. (1) Part E applies to Class 1 and 2 facilities. ~~((All Class 1 and Class 2 facilities must have training and certification programs that are developed, approved, and implemented, pursuant to requirements in this chapter.~~

~~Class 1 and 2 facilities training and certification program will be valid for no more than five years from the date on the approval letter. Ecology will review Class 1 and 2 facilities training and certification program to ensure compliance with this chapter.))~~

(2) Class 3 facilities must meet the person in charge (PIC) training requirements in 33 C.F.R. ~~((154))~~ Part 154.710.

(3) Class 4 facilities must meet the training requirements in WAC 173-180-210(2).

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-500, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-510 Class 1 facility—Training requirements. (1) Each Class 1 facility must develop ~~((and)),~~ implement, and maintain oil transfer training and written materials, such as training manuals or checklists, for ~~((key))~~ supervisory, operations, maintenance, management, and indirect operations personnel identified ~~((pursuant to))~~ in subsection ((3)) ~~((4))~~ of this section.

~~((a))~~ If the facility has an approved equivalent compliance plan, all personnel must be trained on this plan.

(2) The ((Class 1)) facility must design a training program, which will to the maximum extent practicable, ((to)) promote job com-

petency for oil transfer operations and environmental awareness for the purpose of preventing oil spills.

~~((b))~~ (3) Non-English speaking personnel subject to the facility's training requirements must be trained in a manner that allows comprehension by such personnel.

~~((2) Oil transfer training programs must be approved by ecology under WAC 173-180-525.~~

~~(3))~~ (4) The ~~((Class 1))~~ facility must identify, in writing, the specific position titles which the facility has identified to be subject to its oil transfer training requirements. In making this determination, the facility must evaluate the functions of facility personnel positions using the following definitions:

(a) ~~((("Key" means a position with direct responsibility for performing or overseeing the transfer, storage, handling, or monitoring of oil at a facility, or a job function where typical human factors present the probability of a spill occurring.~~

~~(b))~~ "Operations" means direct involvement in the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state. This functional group includes, but is not limited to, the ~~((person in charge))~~ person in charge (PIC), storage tank operators, pipeline operators, and oil transfer monitors.

~~((e))~~ (b) "Supervisory" means direct involvement in ~~((directly))~~ supervising personnel engaged in the transfer, storage, handling, or monitoring of oil at a facility by implementing operations policies and procedures that involve the risk of an oil spill to waters of the state.

~~((d))~~ (c) "Maintenance" means direct involvement in maintaining and repairing the equipment used for the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state.

(d) "Management" means a general manager or other individual who exercises operational or managerial control over day-to-day operations of a facility's oil handling, transfer, storage, and monitoring/leak detection operations and oil spill prevention.

(e) "Indirect operations" means involvement in on-site activities, such as new construction, in a capacity that indirectly involves the risk of an oil spill to waters of the state due to potential impacts to nearby ~~((oil handling))~~ oil handling operations (e.g., operating digging equipment next to an active transfer pipeline). For cases where certain job titles associated with indirect operations ~~((can not))~~ cannot be identified in advance, the facility must identify the types of job orders or work sites which may involve the need for indirect operations oil transfer training.

~~((4))~~ (5) The facility must identify, in writing, the specific initial classroom and/or on-the-job oil transfer training requirements for each position, including minimum hours that are appropriate for each position given the facility's training needs and human factor risks.

For the purposes of this section, "human factors" means human conditions, such as inadequate knowledge or fatigue, which can lead to incompetency or poor judgment, and "human factor risks" means risks of causing an oil spill due to the effects of human factors on competency and judgment.

~~((5))~~ (6) Operations and supervisory personnel training: Requirements for training of operations and supervisory personnel must focus on building personnel competency in operating procedures and

spill prevention systems specific to the facility. Oil transfer training requirements must incorporate the following training topics at a minimum:

- (a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at the facility;
 - (b) Operating procedures and checklists specific to the trainee's job function;
 - (c) Problem assessment, including recognition of human factor risks and how they can be minimized;
 - (d) Awareness of preventative maintenance procedures;
 - (e) Awareness of local environmental sensitivity and oil spill impacts;
 - (f) Major components of the facility's oil spill prevention plan;
 - (g) Major components of the facility's operations manual;
 - (h) Major components of the facility's oil spill contingency plan;
 - (i) Safe use and handling of response equipment including, but not limited to, containment, personal protection, and recovery equipment;
 - (j) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;
 - (k) Routine and emergency communication((s)) procedures;
 - (l) Overview of applicable oil spill prevention and response laws and regulations; and
 - (m) Drug and alcohol use awareness, pursuant to WAC 173-180-630.
- ((+6)) (7) Management personnel training: Requirements for initial oil transfer training of management personnel must incorporate the following training topics at a minimum:
- (a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at the facility;
 - (b) Management role in operations and oil spill prevention;
 - (c) Recognition of human factor risks and how they can be minimized;
 - (d) Awareness of local environmental sensitivity and oil spill impacts;
 - (e) Major components of the facility's oil spill prevention plan;
 - (f) Major components of the facility's operations manual;
 - (g) Major components of the facility's oil spill contingency plan;
 - (h) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;
 - (i) Overview of applicable oil spill prevention and response laws and regulations; and
 - (j) Drug and alcohol use awareness, pursuant to WAC 173-180-630.
- ((+7)) (8) Maintenance personnel training: Requirements for initial oil transfer training of maintenance personnel must incorporate the following training topics at a minimum:
- (a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at applicable maintenance work sites within the facility;
 - (b) Equipment problem assessment and preventative maintenance procedures;
 - (c) Awareness of local environmental sensitivity and oil spill impacts;
 - (d) Major components of the facility's oil spill prevention plan;

- (e) Major components of the facility's operations manual;
- (f) Major components of the facility's oil spill contingency

plan;

- (g) Emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;
 - (h) Overview of applicable oil spill prevention and response laws and regulations; and
 - (i) Drug and alcohol use awareness, pursuant to WAC 173-180-630.
- ~~((8))~~ (9) Indirect operations personnel training: Requirements for initial oil transfer training of indirect operations personnel must incorporate the following training topics at a minimum:
- (a) Overview of oil handling, transfer, storage, and monitoring/leak detection operations at specific indirect operations work sites within the facility;
 - (b) Awareness of local environmental sensitivity and oil spill impacts;
 - (c) Notification procedures for emergency spill prevention actions; and
 - (d) For facility employees, drug and alcohol use awareness, pursuant to WAC 173-180-630.

~~((9))~~ (10) Training topics identified in subsections ~~((5))~~ (6) through ~~((8))~~ (9) of this section, do not prescribe fixed subject titles for class outlines or training organization. Facilities may combine or integrate these topics as appropriate, but must ensure that information on each topic is presented in the applicable personnel training program.

~~((10))~~ (11) The facility must identify, in writing, the specific oil spill prevention continuing education and hazardous material training requirements for each affected position, including minimum hours, which are appropriate given the facility's training needs and human factor risks. Ongoing training must occur at least annually, and at a minimum address:

- (a) Any changes in the core topics identified in subsections ~~((5))~~ (6) through ~~((8))~~ (9) of this section, unless affected personnel have already been informed about the change after its occurrence;
- (b) Refresher awareness training on environmental sensitivity and oil spill impacts;
- (c) Review and analysis of oil spills ~~((which have))~~ that occurred during the past year for causal factors and lessons learned;
- (d) Refresher training on emergency spill prevention procedures; and
- (e) For ~~((key))~~ supervisory, operations, and management personnel, a practice exercise of the facility's procedures for preventing a spill during a particular abnormal operations event.

~~((11))~~ (12) Facilities are encouraged to apply or modify existing training programs required under federal Process Safety Management requirements ~~((+))~~ in 29 C.F.R. Part 1910~~((+))~~, United States Coast Guard ~~((person-in-charge))~~ person in charge (PIC) requirements ~~((+))~~ in 33 C.F.R. Part 154.710~~((+))~~, and other federal/state training requirements in order to meet the above oil transfer training requirements.

~~((12))~~ Existing personnel that have entered their current position prior to adoption of this chapter can be regarded as having met the facility's initial oil transfer training requirements if:

- ~~(a) The facility has documented that those personnel have received the required training in the past; or~~

~~(b) The facility attests in writing and in detail, how those personnel have had on-the-job training or other experience equivalent to the facility's initial training requirements including type and frequency of past training when known.)~~

~~(13) Facilities must ((develop follow-up remedial)) provide follow-up training for personnel ((clearly)) responsible for causing an oil spill while functioning in their position, unless such personnel no longer occupy a position identified under subsection ((+3)) (4) of this section. The training must address the causes of the spill and measures to prevent a reoccurrence and must be incorporated into the continuing education training program.~~

~~(14) Contractors hired by the facility to perform ((key)) supervisory, operations, maintenance, management, or indirect operations functions, as identified by the facility under subsection ((+3)) (4) of this section, are considered "personnel" for the purposes of this chapter, and must be subject to the same oil transfer training requirements as facility employees. The facility ((is responsible to validate that such)) must confirm contractors have met the facility's oil transfer training requirements before they perform a ((key)) supervisory, operations, maintenance, management, or indirect operations function.~~

~~(15) Facilities must develop minimum training and/or experience qualifications for trainers who will demonstrate facility-specific procedures, equipment use, supervise practice sessions, and provide other on-the-job training to new operations personnel.~~

~~((16) Facilities must develop and maintain written oil transfer training materials, such as training manuals or checklists.~~

~~(17) Oil transfer training must be documented, and records must be kept at the facility in a central and accessible location for at least five years from the date of training completion.)~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-510, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-180-511 Class 2 facility—Training requirements. (1)

Each Class 2 facility must develop, implement, and maintain oil transfer training and written materials, such as training manuals or checklists, for supervisory and operations personnel identified in subsection (4) of this section.

If the facility has an approved equivalent compliance plan, all personnel must be trained on this plan.

(2) The facility must design a training program, which will to the maximum extent practicable, promote job competency for oil transfer operations.

(3) Non-English speaking personnel subject to the facility's training requirements must be trained in a manner that allows comprehension by such personnel.

(4) The facility must identify, in writing, the specific position titles which the facility has identified to be subject to its oil transfer training requirements. In making this determination, the fa-

cility must evaluate the functions of facility personnel positions using the following definitions:

(a) "Operations" means direct involvement in the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state. This functional group includes, but is not limited to, the person in charge (PIC), truck drivers and operators, and oil transfer monitors.

(b) "Supervisory" means direct involvement in supervising personnel engaged in the transfer, storage, handling, or monitoring of oil at a facility by implementing operations policies and procedures that involve the risk of an oil spill to waters of the state.

(5) The facility must identify, in writing, the specific initial classroom and/or on-the-job oil transfer training requirements for each position, including minimum hours that are appropriate for each position given the facility's training needs and human factor risks as defined in WAC 173-180-510 (5) (a).

(6) Operations and supervisory personnel training: Requirements for training of operations and supervisory personnel must focus on building personnel competency in operating procedures specific to the facility. Oil transfer training requirements must incorporate the following training topics at a minimum:

(a) Overview of all oil handling, transfer, and monitoring operations at the facility;

(b) Operating procedures and checklists specific to the trainee's job function;

(c) Awareness of preventative maintenance procedures;

(d) Awareness of oil spill impacts;

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

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

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

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

(i) Routine and emergency communication procedures;

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

(k) Drug and alcohol use awareness.

(7) Training topics identified in subsection (6) of this section, do not prescribe fixed subject titles for class outlines or training organization. Facilities may combine or integrate these topics as appropriate, but must ensure that information on each topic is presented in the oil transfer training program.

(8) The facility must identify, in writing, the specific oil spill prevention continuing education and hazardous material training requirements for supervisory and operations personnel, which are appropriate given the facility's training needs and human factor risks. Ongoing training must occur at least annually, and at a minimum:

(a) Review and analyze oil spills that occurred during the past year for causal factors and lessons learned;

(b) Refresher training on emergency spill prevention procedures; and

(c) Refresher training on spill cleanup and recovery operations.

(9) Facilities must provide follow-up training after any spill to all supervisory and operations personnel. The training must address

the causes of the spill and measures to prevent a reoccurrence must be incorporated into the continuing education training program.

(10) Contractors hired by the facility to perform supervisory and operations functions, as identified by the facility under subsection (4) of this section, are considered "personnel" for the purposes of this chapter, and must be subject to the same oil transfer training requirements as facility employees. The facility must confirm contractors have met the facility's oil transfer training requirements before they perform a supervisory or operations function.

(11) Facilities must develop minimum training and/or experience qualifications for trainers who will demonstrate facility-specific procedures, equipment use, supervise practice sessions, and provide other on-the-job training to new operations personnel.

[]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-515 Class 1 ((facility)) and 2 facilities—Certification program. (1) Each Class 1 and 2 facility must develop and implement a program to certify ~~((that key))~~ supervisory and operations personnel identified ~~((pursuant to))~~ in WAC 173-180-510 and 173-180-511, as applicable, have met the facility's oil transfer training program requirements, and are competent to perform the operations or supervisory functions associated with their position. The facility is not required to certify personnel other than ~~((key))~~ supervisory and operations personnel.

(2) The certification program must be designed, to the maximum extent practicable, to ensure job competency for oil transfer operations, and environmental awareness for the purpose of preventing oil spills.

~~((2))~~ (3) Certification programs must meet minimum criteria ~~((pursuant to))~~ in WAC 173-180-520.

~~((3) Certification programs must be approved by ecology pursuant to WAC 173-180-525.)~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-515, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-520 Class 1 ((facility)) and 2 facilities—Minimum criteria for certification programs. (1) The Class 1 and 2 facility ~~((oil spill prevention))~~ certification programs must address all ~~((key))~~ supervisory and operations personnel identified ~~((pursuant to))~~ in WAC 173-180-510 and 173-180-511, as applicable.

(2) The ~~((Class 1))~~ facility must develop and maintain written certification procedures, including:

(a) Minimum competency requirements to achieve certification;

- (b) The process to develop and test competency (~~((in-key))~~) for supervisory and operations personnel (~~(-~~
- ~~(c) The process to issue and track certificates; and~~
- ~~(d) Policies regarding loss or lack of certified status.~~
- ~~(3) The Class 1), including:~~
- ~~(i) Documented written or oral examinations, which test general knowledge about training topics identified under WAC 173-180-510 and 173-180-511, as applicable, with an appropriate passing score established by the facility;~~
- ~~(ii) A practical evaluation of understanding and performance of routine and emergency operations specific to a position's job function, including:~~
- ~~(A) Observation of performance of each oil handling, transfer, storage, and monitoring duty assigned to a position prior to unsupervised performance of that duty; and~~
- ~~(B) Practice exercises involving procedures to prevent a spill during abnormal operations events;~~
- ~~(c) The facility must maintain ((a)) written ((certificate or other)) records for supervisory and operations personnel, which have met the facility's certification requirements. ((This)) These records must document:~~
- ~~((a)) (i) The certified individual's name and position;~~
- ~~((b)) (ii) Types and hours of training completed;~~
- ~~((c)) (iii) Name of ((trainer)) the training course and signature of the trainer upon completion of the course;~~
- ~~((d)) (iv) Results of performance tests and evaluations; and~~
- ~~((e) Signatures of the trainee and trainer.~~
- ~~(4) The Class 1 facility must keep copies of certification records at the facility in a central and accessible location for at least five years from the date of certification.~~
- ~~(5) The Class 1 facility certification program must incorporate methods to evaluate and confirm job competency, including:~~
- ~~(a) A written examination, or oral examination documented in writing, which tests general knowledge about training topics identified under WAC 173-180-510, with an appropriate passing score established by the facility;~~
- ~~(b) A practical evaluation of understanding and performance of routine and emergency operations specific to a position's job function, including:~~
- ~~(i) Observation of performance of each oil handling, transfer, storage, and monitoring duty assigned to a position prior to unsupervised performance of that duty; and~~
- ~~(ii) Practice exercises involving procedures to prevent a spill during abnormal operations events.~~
- ~~(6) The Class 1 facility's program must only provide for certification of an individual who has:~~
- ~~(a) Met the facility's oil spill prevention initial training requirements tied to the individual's position, as developed pursuant to WAC 173-180-510; and~~
- ~~(b) Passed a competency evaluation developed under subsection (5) of this section.~~
- ~~(7)) (v) A copy of the certificate demonstrating the individual is certified.~~
- ~~(d) The process to issue and track certificates; and~~
- ~~(e) Policies regarding how the facility will manage supervisory or operations personnel who lose or lack certification.~~

(3) Recertification of personnel must occur at least once every three years, based on:

(a) Successful completion of continuing education requirements; and

(b) Satisfactory performance in a reevaluation of competency as developed under subsection ~~((+5))~~ (2) of this section.

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

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-520, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-525 Class 1 ~~((facility))~~ and 2 facilities—Training and certification program approval process. (1) ~~((Existing Class 1 facilities:~~

~~(a) Must modify their training and certification program to meet requirements in this chapter and must implement the program within ninety calendar days from the approved date of the operations manual.~~

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

~~(2)) Class 1 and 2 facilities ~~((that begin operations after the effective date of this chapter:~~~~

~~(a)) must develop ~~((or modify their)), implement, and coordinate with ecology for training and certification program ~~((to meet the requirements of this chapter and must implement the program within one hundred twenty)) approval at least 120~~ calendar days prior to oil transfer operations.~~~~

~~((b) Must train and certify all personnel under the facility's training and certification program before any oil transfer operation occurs at the facility.~~

~~(3) All new facility employees with oil transfer duties must be trained and certified within ninety calendar days from the date of hire.)) (2) The facility must train and certify, if required, all personnel under this program before they conduct an oil transfer operation.~~

~~(3) The facility must coordinate with ecology for program reapproval at least 120 calendar days prior to the program's expiration date.~~

~~If the facility does not coordinate with ecology within the time frame required for reapproval before the expiration date, the lapse is considered noncompliance and may result in loss of program approval.~~

~~(4) To receive approval, ecology ~~((must review the Class 1 facility's training and certification program after the date that facilities must meet rule criteria pursuant to subsection (1) or (2) of this section. This review must be accomplished by a general)) will conduct an on-site ~~((inspection by ecology through)) evaluation of the ~~((Class 1)) facility's training materials, testing ~~((records)) and certification records, and ~~((consultation)) will consult with personnel.~~~~~~~~~~~~

~~((5) Ecology will notify Class 1 facilities regarding approval status within thirty calendar days from completing inspections performed under subsection (4) of this section.~~

~~(6) Class 1 facilities that do not receive approval will have ninety calendar days to address deficiencies in their training and certification program, with options for a time extension based on ecology's discretion. For those personnel that were trained or certified after the deadlines established in subsection (1) of this section but prior to program approval, retraining or recertification of such personnel due to changes required by ecology's approval process can be postponed until the next retraining or recertification cycle as established by the facility pursuant to this chapter.~~

~~(7) Training and certification program approval is valid for five years. Significant changes to the Class 1 facility's program must be documented through an update of the facility's prevention plan pursuant to chapter 173-180 WAC Part F requirements. Minor upgrades in training and certification programs, such as expansion of training hours or updates to testing materials, are not required to be submitted to ecology through a prevention plan update.~~

~~(8) Ecology may perform announced and unannounced inspections at facilities to verify compliance.~~

~~(9) A training and certification program must be approved if, in addition to meeting criteria in this section and WAC 173-180-520, the Class 1 facility demonstrates that when implemented, the facility can, to the maximum extent practicable:~~

~~(a) Provide protection from human factor oil spill risks identified in the risk analysis required by WAC 173-180-630;~~

~~(b) Minimize the likelihood that facility oil spills will occur and minimize the size and impacts of those facility oil spills which do occur;~~

~~(c) Provide effective oil transfer training to key supervisory, operations, maintenance, management, and indirect operations personnel;~~

~~(d) Ensure proper evaluation of job competency; and~~

~~(e) Provide an effective system to clearly document and track personnel training and certification.~~

~~(10) When reviewing programs, ecology must, in addition to the above criteria, consider the following at a minimum:~~

~~(a) The volume and type of oil(s) handled by the facility, and frequency of oil handling operations;~~

~~(b) Number of facility personnel;~~

~~(c) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators;~~

~~(d) Inspection reports;~~

~~(e) The presence of hazards unique to the facility, such as seismic activity or production processes; and~~

~~(f) The sensitivity and value of natural resources that could be affected by a spill from the facility.~~

~~(11) Ecology may approve a program with an expedited review as set out in this section if that program has been approved by a federal agency or other state which ecology has deemed to apply approval criteria which equal or exceed those of ecology.~~

~~(12)) Ecology may request additional information for the program.~~

(5) Before the program's expiration date, ecology will respond with a letter approving, conditionally approving, or disapproving the program.

(a) The training and certification program must be approved if, in addition to meeting criteria in this section and WAC 173-180-520, the facility demonstrates that when implemented, the facility can, to the maximum extent practicable:

(i) Provide protection from human factor oil spill risks identified in the risk analysis required by WAC 173-180-630 for Class 1 facilities;

(ii) Minimize the likelihood that facility oil spills will occur and minimize the size and impacts of those spills which do occur;

(iii) Provide effective oil transfer training to personnel described in WAC 173-180-510 and 173-180-511, as applicable;

(iv) Ensure proper evaluation of job competency; and

(v) Provide an effective system to clearly document and track personnel training and certification.

(b) If the program receives approval, the ~~((facility owner or operator must receive a certificate of approval describing))~~ letter will describe the terms of approval, including expiration ~~((dates pursuant to subsection (6) of this section.~~

~~(a) Ecology may conditionally approve a program by requiring a facility owner or operator)~~ date. Program approval expires five years from the date on the approval letter.

(c) If the program is conditionally approved, ecology may require the facility to operate with specific ~~((precautionary measures))~~ restrictions until unacceptable components of the program are ~~((resubmitted))~~ revised, reevaluated, and approved.

~~((b) Precautionary measures))~~ (i) In the conditional approval, ecology will describe:

(A) Each specific restriction and the duration for which they apply; and

(B) Each required item to bring the program into compliance.

(ii) Restrictions may include, but are not limited to:

~~((i))~~ (A) Reducing oil transfer rates;

~~((ii))~~ (B) Increasing personnel levels;

~~((iii))~~ (C) Restricting operations to daylight hours or favorable weather conditions; or

~~((iv))~~ (D) Additional requirements to ensure availability of response equipment.

~~((e) A facility must have thirty))~~ (iii) The facility has 30 calendar days after ~~((ecology gives))~~ notification of conditional ~~((status to make the))~~ approval to implement required changes ~~((, with the option for an))~~. An extension may be issued at ecology's discretion. Conditional approval expires no later than 18 months from date of notification.

(iv) Facilities which fail to meet conditional requirements or ~~((make))~~ provide required changes in the time allowed ~~((must))~~ may lose conditional approval status. Ecology may revoke its conditional approval prior to the expiration date if the facility fails to meet the terms of the conditional approval.

~~((i) If approval is denied or revoked, the facility))~~ (d) If the program is disapproved, the owner or operator must receive an explanation of the factors for disapproval ~~((and a list of deficiencies. The facility may be subject to penalties identified in chapter 90.56 RCW.~~

~~(ii) Ecology's decisions under this chapter are reviewable in superior court.~~

~~(iii) Approval of a training and certification program by ecology does not constitute an express assurance regarding the adequacy of the program nor constitute a defense to liability imposed under state law).~~

~~((13))~~ (6) Significant changes to the Class 1 facility, as defined in WAC 173-180-670, may require updates to the training and certification program. These updates must be documented in amendments to the facility's prevention plan.

(7) The Class 2 facility must highlight the changes to the program and provide that documentation during ecology's on-site evaluation.

(8) Ecology may review ((a)) and require changes to the program following any spill, inspection, or drill ((at the facility)).

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-525, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-600 Applicability of Part F. Part F ((only)) applies to Class 1 facilities. ~~((Ecology has not adopted prevention plan requirements for Class 2, 3, or 4 facilities.))~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-600, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-610 Class 1 facility—Prevention plan preparation.

(1) Each ~~((onshore and offshore))~~ Class 1 facility must prepare, submit, and implement a plan for prevention of oil spills from the facility into the waters of the state, and for the protection of fisheries and wildlife, other natural, cultural, and economic resources, and public or private property from oil spills.

(2) Plans must be thorough and contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of this chapter.

(3) ~~((Spill prevention countermeasure and control plans, operation manuals, and other prevention documents which meet federal requirements under 33 C.F.R. 154, 33 C.F.R. 156, 40 C.F.R. 109, 40 C.F.R. 112, or the Federal Oil Pollution Act of 1990 may be submitted to satisfy plan requirements under this chapter if ecology deems that such federal requirements equal or exceed those of ecology, or if the plans are modified or appended to satisfy plan requirements under this chapter.~~

~~(4) Plans which meet requirements of other states may be submitted to satisfy plan requirements under this chapter if ecology deems that such state requirements equal or exceed those of ecology, or if~~

~~the plans are modified or appended to satisfy plan requirements under this chapter.~~

~~(5) Prevention plans may be combined with contingency plans required by chapter 173-182 WAC.~~

~~(6)) Plans, when implemented, must be designed to be capable of providing the best achievable protection from damages caused by the discharge of oil into the waters of the state. At a minimum, plans must meet the criteria specified in this chapter.~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-610, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-180-615 Class 1 facility—Prevention plan maintenance and use. (1) Each Class 1 facility must keep the prevention plan in an immediately accessible location.

(2) Facilities must ensure that all employees involved in oil transfer, production, or storage operations are familiar with the plan provisions through regular training. Orientation materials for new employees involved in oil transfer, production, or storage operations must contain a copy of the plan.

[]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-620 Class 1 facility—Prevention plan format requirements. Each prevention plan must:

(1) ((Plans must)) Include a detailed table of contents based on chapter, section, appendix numbers and titles, and tables and figures;

(2) Include a cross reference table reflecting the locations in the plan for each component required by WAC 173-180-630;

(3) Be organized in a format which provides easy access to ((prevention)) information. Plans must be divided into ((a system of)) easily identified chapters ((and)) sections ((. Chapters and sections must be numbered and identified with a system of index tabs.

(2) Plans must be formatted to), and appendices;

(4) Allow replacement of ((chapter and appendix)) pages with revisions, without requiring replacement of the entire plan((-

(3) If combined with a contingency plan, the prevention plan must be clearly separated from contingency plan elements.

(4) Prevention plan content requirements specified in WAC 173-180-630 are presented in suggested but not requisite order.

(5) Computerized plans, in addition to a hard copy, may be submitted to ecology)); and

(5) Include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must identify each section amended, the date of the amendment, verification that ecology was notified of the amendment pursuant to WAC

173-180-670, and name of the authorized individual making the change. A description of the amendment and its purpose must also be included in the log sheet.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-620, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-630 Class 1 facility—Prevention plan content requirements. (1) Each prevention plan submitted to ecology must contain a ((submittal)) written statement binding the plan submitter to its use. In the binding agreement ((which)), the signatory will:

(a) Include((s)) the name, address, ((and)) phone number, and email address of the submitting party;

(b) ((Verifies)) Verify acceptance of the plan by the owner or operator of the Class 1 facility by either signature of ((the)) an authorized owner ((or)), operator, or ((signature by a person)) designee with authority to bind the ((corporation which owns or operates)) owners and operators of the facility;

(c) Commit((s)) to the ((owner or operator of the facility to execution)) implementation and use of the plan((, and verifies that the plan holder));

(d) Verify the person(s) signing the agreement is authorized to make ((appropriate)) expenditures ((in order to execute)) to implement the requirements of the plan ((provisions)); and

((d)) (e) Include((s)) the name, location, and address of the facility, type of facility, starting date of operations, type(s) of oil((+s)) handled, and oil volume capacity.

(2) ((Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that ecology was notified of the amendment pursuant to WAC 173-180-670, and the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

(3) Each plan must include a detailed table of contents based on chapter, section, and appendix numbers and titles, as well as tables and figures.

(4)) Information required under facility oil spill contingency plan standards in chapter 173-182 WAC; spill prevention, control, and countermeasure plan standards in 40 C.F.R. Part 112; facility operations manual standards in 33 C.F.R. Part 154.310; facility equipment and operations standards in 33 C.F.R. Part 154 Subparts C and D; oil transfer operations standards under 33 C.F.R. Part 156; or any other federal or state requirements may be used to satisfy requirements under this chapter if:

(a) Ecology deems that such requirements equal or exceed those required in this section; or

(b) The facility modifies or appends the plan to meet requirements under this chapter.

If the plan is modified, a copy of the documents referenced from this subsection must be available to ecology upon request.

(3) Each plan must describe its purpose and scope, including, but not limited to:

(a) ~~The ((onshore facility or offshore)) facility operations covered by the plan;~~

(b) ~~The relationship of the ((prevention)) plan to other oil spill plans and operations manuals held by the facility; and~~

(c) ~~The relationship of the plan to all applicable local, state, regional, tribal, and federal government prevention plans ((, including the Washington statewide master oil and hazardous substance spill contingency plan; and~~

~~(d) Information required under facility oil spill contingency plan standards in chapter 173-182 WAC; spill prevention, countermeasure, and control plan standards in 40 C.F.R. 112.4(a); or facility operations manual standards in 33 C.F.R. 154.310 (1-4) may be used to address (a) of this subsection)).~~

~~((5))~~ (4) Each plan must describe the procedures and time periods for updating the plan and distributing the plan and updates to appropriate parties.

(5) Each plan must include the name and contact information of the facility's supervisory, management, and operations personnel.

~~(6) ((Each plan must establish that the facility is in compliance with the Federal Oil Pollution Act of 1990. Within thirty calendar days after federal deadlines for facility requirements under that act, the plan must be updated to include any applicable evidence of compliance.~~

~~(7))~~ Within ((thirty)) 30 calendar days after receipt of evidence of a certificate of financial responsibility ((is required by rules adopted by ecology pursuant to chapter 88.46 RCW)) from ecology, the plan must be updated to ((include any applicable)) demonstrate evidence of compliance.

~~((8))~~ (7) Each plan must briefly describe the ((types and frequency of spill prevention training provided to personnel.

~~(9) Each plan must provide evidence that the facility has an approved oil spill contingency plan or has submitted a contingency plan to ecology in accordance with standards and deadlines established by chapter 173-182 WAC.~~

~~(10))~~ facility's training and certification program, approval, and implementation status.

(8) Each plan must address the facility's alcohol and drug use awareness and treatment program for all facility personnel.

(a) The plan must include at a minimum:

(i) Documentation of an alcohol and drug awareness program. The awareness program must provide training and information ((materials)) to all employees on recognition of alcohol and drug abuse; treatment opportunities ((, including opportunities under the Alcohol and Drug Addiction Treatment and Support Act pursuant to chapter 388-800 WAC)); and applicable company policies;

(ii) A description of the facility's existing drug and alcohol treatment programs; and

(iii) A description of existing provisions for the screening of ((supervisory and key)) any employees subject to the requirements in WAC 173-180-510 through 173-180-520 for alcohol and drug abuse and related work impairment.

(b) (~~Evidence of conformance with~~) Applicable federal "drug-free workplace" guidelines or other federal or state requirements may be used to address (a) of this subsection.

~~((11))~~ (9) Each plan must describe the facility's existing maintenance and inspection program.

(a) The description must summarize:

(i) Frequency and type of all regularly scheduled inspection and preventive maintenance procedures for tanks; transfer pipelines; other key storage, transfer, or production equipment, including associated pumps, valves, and flanges; and overpressure safety devices and other spill prevention equipment;

(ii) Integrity testing of storage tanks and pipelines, including but not limited to frequency; pressures used (including ratio of test pressure to maximum operating pressure, and duration of pressurization); means of identifying that a leak has occurred; and measures to reduce spill risk if test material is product;

(iii) External and internal corrosion detection and repair;

(iv) Damage criteria for equipment repair or replacement; and

(v) Any other aspect of the maintenance and inspection program.

(b) The plan must include a current index of maintenance and inspection records of the storage and transfer facilities and related equipment.

~~((c) Documentation required under 40 C.F.R. 112.7(e) or 33 C.F.R. 154 Subparts C and D may be used to address elements of this subsection.~~

~~(d) Existing copies of the facility's maintenance and inspection records for the five-year period prior to plan submittal must be maintained and must be available for inspection if requested by ecology. The plan must document the use of a system to maintain such records over a five-year period for subsequent activity.~~

~~(12))~~ (10) Each plan must describe spill prevention technology currently installed and in use, including:

(a) Tank and transfer pipeline materials and design;

(b) Storage tank overflow (~~alarms,~~) and low level alarms; tank overflow cut-off switches; automatic transfer shutdown systems; methods to alert operators; system accuracy; and tank fill margin remaining at time of alarm activation in terms of vertical distance, quantity of liquid, and time before overflow would occur at maximum pumping rate; (~~documentation required under 40 C.F.R. 112.7 (e) (2) (viii) or 33 C.F.R. 154.310 (a) (12-13) may be used to address some or all of these elements;~~)

(c) Leak detection systems for both active and nonactive transfer pipeline conditions, including detection thresholds in terms of duration and percentage of pipeline flow; limitations on system performance due to normal pipeline events; and procedures for operator response to leak alarms;

~~(d) ((Documentation required under 40 C.F.R. 112.7 (e) (3) may be used to address some or all of these elements;~~

~~(e))~~ Rapid pump and valve shutdown procedures, including means of ensuring that surge and over-pressure conditions do not occur; rates of valve closure; sequence and time duration (average and maximum) for entire procedure; automatic and remote control capabilities; and displays of system status for operator use;

~~((f) Documentation required under 40 C.F.R. 112.7 (e) (3) may be used to address some or all of these elements;~~

~~(g))~~ (e) Methods to minimize post-shutdown unintentional residual drain-out from pipes and hoses, including criteria for locating

valves; identification of all valves (including types and means of operation) that may be open during a transfer process; and any other techniques for reducing drain-out;

~~((h))~~ (f) Means of relieving pressure due to thermal expansion of liquid in pipes during quiescent periods;

~~((i))~~ (g) Secondary containment, including capacity, permeability, and material design;

~~(j)~~ Documentation required under 40 C.F.R. 112.7 (e)(1) and (2) ~~(iii-iv)~~ may be used to address some or all of these elements;

~~(k))~~ (1) (e). Permeability must meet requirements in WAC 173-180-320 (1)(e). When reviewing these requirements for approval, ecology will evaluate the requirements in this subsection (10)(g)(i) through (vi) and the facility's ability to respond to an oil discharge from primary containment. The description of permeability for each secondary containment system must include the following:

(i) Type of oil stored;

(ii) A calculation of a discharge of the worst case spill volume for each system;

(iii) Type of soil media or material used;

(iv) Depth to tank footing;

(v) Depth and distance to waters of the state; and

(vi) A calculation of the time in which the oil reaches the tank footing or waters of the state.

Any remedial actions near the tank footing following a spill must not undermine the integrity of existing structures.

(h) Internal and external corrosion control coatings and monitoring;

~~((l))~~ (i) Stormwater and other drainage retention, treatment, and discharge systems, including maximum storage capacities and identification of any applicable discharge permits; and

~~((m)~~ Documentation required under 40 C.F.R. 112.7 (e)(1) and (2) ~~(iii and ix)~~ may be used to address some or all of these elements; and

~~(n))~~ (j) Criteria for suspension of operations while leak detection or other spill control systems are inoperative.

~~((13))~~ (11) Each plan must describe measures taken to ensure facility site security, including:

(a) Procedures to control and monitor facility access;

(b) Facility lighting ~~((documentation required under 33 C.F.R. 154.570 may be used to address some or all of this element))~~;

(c) Signage; and

(d) Right of way identification or other measures to prevent third-party damage ~~((documentation required under 40 C.F.R. 112.7 (e)(3)(v) and (9) may be used to address some or all of this element))~~).

~~((14))~~ (12) Each plan must list any discharges of oil in excess of ~~((twenty-five))~~ 25 barrels ~~((one thousand fifty gallons))~~ to the land or waters of the state which occurred during the five-year period prior to the plan submittal date. For each discharge, the plan must describe:

(a) Quantity;

(b) Type of oil;

(c) Geographic location;

(d) Analysis of cause, including source(s) of discharged oil and contributing factors (e.g., third party human error, adverse weather, etc.); and

(e) Measures taken to remedy the cause and prevent a recurrence.

~~((The period between July 1, 1987, and January 1, 1993, the facility must provide existing information regarding (a) through (e) of this subsection for such discharges, and must document the use of a system to record complete information for subsequent discharges.~~

~~(15))~~ (13) Each plan must include a detailed and comprehensive risk analysis of ((facility spill risks)) the facility's risk of spills to waters of the state. As part of the risk analysis, a formal process must be used to evaluate the facility based on the information required in subsections ((11)) (9) through ((14)) (12) of this section, the requirements in WAC 173-180-330(4), and other relevant information.

~~(a) The ((risk analysis)) formal process must:~~

~~(i) Define the system being assessed, which includes storage tanks, transfer pipelines, and oil transfer equipment, and other possible areas of concern;~~

~~(ii) Identify abnormal conditions that could lead to an oil discharge;~~

~~(iii) Examine the consequences and causes;~~

~~(iv) Calculate the unmitigated and residual risks; and~~

~~(v) Identify safeguards and recommendations.~~

~~(b) The risk analysis must also:~~

~~(i) Evaluate the construction, age, corrosion, inspection and maintenance, operation, and oil spill risk of the transfer, production, and storage systems in the facility, including piping, tanks, pumps, valves, and associated equipment;~~

~~(ii) Evaluate spill minimization and containment systems within the facility for a discharge of one percent and 100 percent of the worst case spill volume for the facility;~~

~~(iii) Describe how the facility will adopt measures to provide the best achievable protection against identified risks;~~

~~(iv) Document any safeguards and recommendations identified in (a) (v) of this subsection that have been implemented to reduce risks; and~~

~~(v) Be prepared under the supervision of (and bear the seal of) a licensed professional engineer or another individual which ecology has deemed to have an acceptable level of expertise.~~

~~((b) Documentation required under 40 C.F.R. 112.7 (b) and (e) may be used to address some or all of the elements of this subsection.~~

~~(16) Each plan must describe how the facility will incorporate those measures that will provide best achievable protection to address the spill risks identified in the risk analysis required in subsection (15) of this section.~~

~~Information documented pursuant to 40 C.F.R. 112.7(e) and 33 C.F.R. 154.310 (a) (1-4) may be used to address some or all of these elements of this subsection.~~

~~(17) If the prevention plan is combined with a contingency plan, the prevention plan may incorporate information required in this section by reference if that information is provided in the contingency plan.)~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-630, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-640 Class 1 facility—Prevention plan submittal requirements. (1) ~~((Any onshore or offshore))~~ The owner or operator of a Class 1 facility ((that first begins operating after the deadlines stated in this subsection)) must submit a prevention plan to ecology at least ~~((sixty-five))~~ 120 calendar days prior to ~~((the))~~ their planned date for beginning ((of)) operations in Washington state.

(2) ~~((Three copies))~~ One electronic copy of the plan and appendices must be ~~((delivered to:~~

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Prevention Plan Review
P.O. Box 47600
Olympia, WA 98504-7600~~

~~Or~~

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
300 Desmond Drive
Lacey, WA 98503~~

~~(3) Onshore and offshore facility plans may be submitted by:~~

~~(a) The facility owner or operator; or~~

~~(b) A primary response contractor approved by ecology pursuant to chapter 173-182 WAC in conformance with signature requirements under WAC 173-180-630(1).~~

~~(4) A single plan may be submitted for more than one facility, provided that the plan meets the requirements in this chapter for each facility listed.~~

~~(5))~~ submitted to ecology. Ecology will maintain electronic submittal instructions on the spill prevention, preparedness, and response program website.

(3) A plan may be combined with a contingency plan required by chapter 173-182 WAC. If combined with a contingency plan, the prevention plan must meet the requirements of this chapter and be clearly separated from contingency plan elements.

(4) The plan submitter may request that proprietary information be kept confidential under RCW 43.21A.160.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-640, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-650 Class 1 facility—Prevention plan review and approval process. (1) ~~((Ecology must endeavor to review each plan in sixty-five calendar days. If the plan is submitted in conjunction with a contingency plan required under chapter 173-182 WAC, ecology may extend the prevention plan review period an additional sixty-five calendar days.))~~ The owner or operator of a Class 1 facility must submit the prevention plan to ecology for reapproval at least 120 calendar

days prior to the plan's expiration date. The facility may request ecology review the plan currently on file at ecology.

If the plan is not submitted within the time frame required for reapproval before the expiration date, the lapse is considered noncompliance and may result in the loss of plan approval.

(2) Upon receipt of ((a)) the plan, ecology ((must evaluate promptly)) will determine whether the plan is ((incomplete)) complete. If ecology determines that ((a)) the plan is ((incomplete)) not complete, the ((submitter must)) facility will be notified of any deficiencies. ((The review period will not begin until ecology receives a complete plan.

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

(2) Ecology must regularly notify interested parties of any prevention plans, which are under review by ecology, and make plans available for review by all ecology programs, other state, local, tribal, and federal agencies, and the public. Ecology must accept comments on the plan from any interested party during the first thirty calendar days of review by ecology.

(3) A plan must be approved if, in addition to meeting criteria in WAC 173-180-530, it demonstrates that when implemented, it can:

(a) Provide best achievable protection from damages caused by the discharge of oil into the waters of the state;

(b) Minimize the likelihood that facility oil spills will occur;

(c) Minimize the size and impacts of those facility oil spills which do occur; and

(d) After the adoption of facility operation standards by rule by ecology pursuant to RCW 90.56.220:

(i) Provide for compliance with prevention standards and deadlines established by facility operations standards adopted by rule by ecology pursuant to RCW 90.56.220; and

(ii) Provide, to the maximum extent practicable, protection from oil spill risk factors identified in the risk analysis required by WAC 173-180-630, for those risk factors not addressed by facility operations standards adopted by rule by ecology pursuant to RCW 90.56.220.

(4) When reviewing plans, ecology must, in addition to the above criteria, consider the following at a minimum:

(a) The volume and type of oil(s) addressed by the plan;

(b) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators;

(c) Inspection reports;

(d) The presence of hazards unique to the facility, such as seismic activity or production processes;

(e) The sensitivity and value of natural resources within the geographic area covered by the plan; and

(f) Any pertinent local, state, tribal, federal agency, or public comments received on the plan.

(5) Ecology may approve a plan based upon an expedited review pursuant to criteria set out in this chapter, if that plan has been approved by a federal agency or other state which ecology has deemed to apply approval criteria which equal or exceed those of ecology.

(6) Ecology must endeavor to notify the facility owner or operator within five working days after the review is completed whether the plan has been approved.

~~(a) If the plan receives approval, the facility owner or operator must receive a certificate of approval describing the terms of approval, including an expiration date.~~

~~(b) Ecology may conditionally approve a plan by requiring a facility owner or operator to operate with specific precautionary measures until unacceptable components of the plan are resubmitted and approved.~~

~~(i) Precautionary measures may include, but are not limited to, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours or favorable weather conditions. Precautionary measures may also include additional requirements to ensure availability of response equipment.~~

~~(ii) A plan holder must have thirty calendar days after ecology gives notification of conditional status to submit to ecology and implement required changes, with the option for an extension at ecology's discretion. Plan holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.~~

~~(c) If plan approval is denied or revoked, the facility owner or operator must receive an explanation of the factors for disapproval and a list of deficiencies. The facility must not continue oil storage, transfer, production, or other operations until a plan for that facility has been approved.~~

~~(d) Ecology's decisions under this chapter are reviewable in superior court.~~

~~(e) If a plan holder demonstrates an inability to comply with an approved prevention plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:~~

~~(i) Place conditions on approval pursuant to (b) of this subsection; or~~

~~(ii) Revoke its approval pursuant to (c) of this subsection.~~

~~(f) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.~~

~~(7) Ecology must prepare a manual to aid ecology staff responsible for plan review. This manual must be made available to plan preparers. While the manual will be used as a tool to conduct review of a plan, ecology will not be bound by the contents of the manual.~~

~~(8) Ecology must work with the office of marine safety to ensure that no duplication of regulatory responsibilities occurs in the review of prevention plans from marine facilities.))~~

Ecology may request additional information for the plan.

(3) Once the plan is determined complete, ecology will make the plan available for a 30 calendar day public review and comment period, which will occur within ecology's 120 calendar day review period. Ecology will accept comments on the plan no later than 30 calendar days after the plan has been made publicly available.

(4) Before the plan's expiration date, ecology will respond with a letter approving, conditionally approving, or disapproving the plan.

(a) The facility may continue to conduct operations if the facility properly submitted the plan to ecology and ecology has not provided the facility with a formal response.

(b) The plan must be approved if, in addition to meeting criteria in WAC 173-180-630, it demonstrates that when implemented, it can:

(i) Provide best achievable protection from damages caused by the discharge of oil into the waters of the state;

(ii) Minimize the likelihood that facility oil spills will occur;

(iii) Minimize the size and impacts of those facility oil spills which do occur; and

(iv) Provide, to the maximum extent practicable, protection from oil spill risk factors identified in the risk analysis required by WAC 173-180-630(13).

(c) When reviewing plans, ecology must, in addition to the above criteria, consider the following, at a minimum:

(i) The volume and type(s) of oil addressed by the plan;

(ii) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators;

(iii) Inspection reports;

(iv) The presence of hazards unique to the facility, such as seismic activity or production processes;

(v) The sensitivity and value of natural resources within the geographic area covered by the plan; and

(vi) Any pertinent local, state, tribal, federal agency, or public comments received on the plan.

(5) If the plan receives approval, the letter will describe the terms of approval, including expiration date. Plan approval expires five years from the date on the approval letter.

(6) If the plan is conditionally approved, ecology may require the facility to operate with specific restrictions until unacceptable components of the plan are revised, resubmitted, and approved.

(a) In the conditional approval, ecology will describe:

(i) Each specific restriction and the duration in which they apply; and

(ii) Each required item to bring the plan into compliance.

(b) Restrictions may include, but are not limited to:

(i) Reducing oil transfer rates;

(ii) Increasing personnel levels;

(iii) Restricting operations to daylight hours or favorable weather conditions; or

(iv) Additional requirements to ensure availability of response equipment.

(c) The owner or operator has 30 calendar days after notification of conditional approval to submit revisions and implement required changes. An extension may be issued at ecology's discretion. Conditional approval expires no later than 18 months from date of notification.

(d) Facilities which fail to meet conditional requirements or provide required changes in the time allowed may lose conditional approval status. Ecology may revoke its conditional approval prior to the expiration date if the facility fails to meet the terms of the conditional approval.

(7) If the plan is disapproved, the facility must receive an explanation of the factors for disapproval. The facility must not continue oil storage, transport, transfer, production, or other operations until the plan has been approved or conditionally approved.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-650, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-670 Class 1 facility—Prevention plan updates

~~((timeline)).~~ (1) ~~((Ecology must be notified in writing as soon as possible and))~~ At any point during the five-year approval period, if there is a significant change as defined in subsection (4) of this section, the owner or operator must:

~~(a) Submit an electronic notification to ecology prior to ((completion of)) any significant change ((which could affect the plan. If the)):~~

~~(b) Within 30 calendar days of the significant change, amend the plan to incorporate the significant change and submit the amended page(s) to ecology; and~~

~~(c) If a significant change will reduce the facility's ability to implement the plan, ((the plan holder must also)) provide a schedule for the return of the plan to full implementation capability.~~

~~((a))~~ (2) Failure to notify ecology of significant changes in the plan is considered noncompliance and could result in the loss of plan approval.

(3) If ecology finds, as a result of the significant change, the plan no longer meets approval criteria, then ecology will notify the facility owner or operator of the change in approval status. Ecology may place conditions on approval or disapprove the plan.

~~(4) A significant change includes ((, but is not limited to)):~~

~~((i) A change in the owner or operator of the facility;~~

~~((ii))~~ (a) A change in the type(s) of oil handled at the facility;

~~((iii))~~ (b) A five percent or greater change in the facility's oil handling capacity;

~~((iv) Noncompliance with the Federal Oil Pollution Act of 1990;~~

~~(v) Noncompliance with state financial responsibility requirements developed under chapter 88.40 RCW; and~~

~~(vi) A substantial)~~ (c) A change in oil spill prevention technology installed at the facility, or other ((substantial)) changes to facility equipment, operations, personnel procedures, training and certification program, or any other change, ((including compliance with amended or new rules adopted by ecology,)) which ((substantial-ly)) affects the level of risk ((described)) pursuant to WAC 173-180-630; and

(d) Disapproval of a facility's training and certification program by ecology.

~~((b) Changes which are not considered))~~ (5) A significant change does not include ((, but are not limited to,)) minor variations (less than five percent) in oil handling capacity, maintenance schedules, and operating procedures, provided that none of these changes will increase the risk of a spill.

~~((c) The facility must update the plan's list of discharges, as required by WAC 173-180-630, within thirty calendar days after an oil discharge by the facility in excess of twenty-five barrels (one thousand fifty gallons).~~

~~(d) A facsimile will be considered written notice for the purposes of this subsection.~~

~~(e) Failure to notify ecology of significant changes must be considered noncompliance with this chapter and subject to enforcement provisions of chapter 90.56 RCW.~~

~~(2) If ecology finds that, as a result of the change, the plan no longer meets approval criteria pursuant to WAC 173-180-650, ecology may, at its discretion, place conditions on approval or revoke approval in accordance with WAC 173-180-650. Ecology may also require the plan holder to amend its plan to incorporate the change.~~

~~(3) Within thirty calendar days of making a change to the prevention plan, the facility owner or operator must distribute the amended page(s) of the plan to ecology and other plan holders.~~

~~(4) Plans must be reviewed by ecology at least every five years pursuant to WAC 173-180-650. Plans must be submitted for reapproval unless the plan holder submits a letter requesting that ecology review the plan already in ecology's possession. The plan holder must submit the plan or such a letter at least sixty-five calendar days in advance of the plan expiration date.~~

~~(5)) (6) Ecology may review and require ((a new review and approval process for a prevention)) changes to the plan following any spill ((at the facility)), inspection, or drill.~~

The facility must update the plan's list of discharges, as required by WAC 173-180-630, within 30 calendar days after an oil discharge by the facility in excess of 25 barrels.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-670, filed 9/25/06, effective 10/26/06.]

PART G: OIL TRANSFER RESPONSE PLANS FOR CLASS 2 FACILITIES

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-700 Applicability of Part G. Part G applies to Class ~~((1 and))~~ 2 facilities. ~~((Ecology has not adopted oil transfer response plan requirements for Class 3 and 4 facilities.))~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-700, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-180-711 Class 2 facility—Oil transfer response plan preparation. The owner or operator of a Class 2 facility that transfers oil to a nonrecreational vessel must prepare an oil transfer response plan that meets the requirements of this chapter.

[]

NEW SECTION

WAC 173-180-721 Class 2 facility—Oil transfer response plan maintenance and use. Oil transfer response plans must be kept at each transfer location for easy access and use during spills, and at the primary place of business.

[]

NEW SECTION

WAC 173-180-725 Class 2 facility—Oil transfer response plan format requirements. Each oil transfer response plan must:

(1) Include a cross reference table reflecting the locations in the plan for each component required by WAC 173-180-730;

(2) Be organized in a format which provides easy access and use during a spill. Plans must be divided into easily identified sections and appendices;

(3) Allow replacement of pages with revisions, without requiring replacement of the entire plan; and

(4) Include a log sheet to record amendments to the plan. The log sheet must identify each section amended, the date of the amendment, verification of notification to ecology, and name of the authorized individual making the change. A description of the amendment and its purpose must also be included in the log sheet.

[]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-730 Class 2 facility—~~((Contents of the))~~ Oil transfer response plan ~~((-response plan))~~ content requirements. ~~((1))~~ All Class 2 facilities that transfer oil to a nonrecreational vessel must prepare and submit to ecology an oil transfer response plan (response plan) that meets the requirements of 33 C.F.R. Part 154, Subpart F.

~~(2)~~ In addition to the requirements in subsection (1) of this section, all Class 2 facilities response plans must include all of the following:

~~(a)~~ A description of how the Class 2 facility meets the requirements in WAC 173-180-220;

~~(b)~~ The spill response contractor the facility lists in the response plan must also be a state approved primary response contractor under WAC 173-182-800;

~~(e))~~ (1) Each oil transfer response plan submitted to ecology must contain a written statement binding the plan submitter to its use. In the binding agreement, the signatory will:

(a) Include the name, address, phone number, and email address of the submitting party;

(b) Verify acceptance of the plan by the owner or operator of the Class 2 facility by either signature of an authorized owner, operator,

or designee with authority to bind the owners and operators of the facility;

(c) Commit to the implementation and use of the plan;

(d) Verify the person(s) signing the agreement is authorized to make expenditures to implement the requirements of the plan; and

(e) Include the name and location for the base of operations for the mobile fleet, and the name and location of the maintenance yard for rolling stock, and the starting date of operations.

(2) Plans which meet federal or other state requirements may be submitted to satisfy plan requirements under this chapter if:

(a) Ecology deems that such requirements equal or exceed those required in this section; or

(b) The facility modifies or appends the plan to meet requirements under this chapter.

(3) The qualified individuals identified in the plan must meet the federal requirements in 33 C.F.R. Part 154.1026.

(4) Response equipment resources required in WAC 173-180-217 and 173-180-220 through 173-180-222, as applicable, must be available through a written agreement with a state approved primary response contractor (PRC); letter of intent, mutual aid agreement, contract, or other approvable means; or facility owned equipment.

If contract information is not included in the plan, it must be available to ecology upon request.

(5) Each plan must include the following:

(a) A street address of the facility's office. Include mailing address if different from street address.

(b) The name, address, and process for contacting the facility's owner or operator 24 hours/day.

(c) The federal and state requirements intended to be met by the plan.

(d) Description of the oil transfer operations covered by the plan that include the following:

(i) The volume and type(s) of oil for the facility's worst case spill.

(ii) Describe the number of tanks and tank capacities on the largest truck or container.

(iii) List all locations where the facility conducts oil transfers as a street address or GPS coordinates.

For transfer locations not listed in the approved plan, the facility must notify ecology 24 hours prior to the transfer and update their plan within 30 calendar days. The notification and plan update must include the new transfer location(s) and describe how response requirements are met in WAC 173-180-217 and 173-180-220 through 173-180-222, as applicable, for each transfer location.

(iv) The transfer rates used by the facility at each location as described in WAC 173-180-220.

(v) For each location, describe how response requirements are met in WAC 173-180-217 and 173-180-220 through 173-180-222, as applicable.

(e) List facility owned response equipment and describe equipment preventative maintenance procedures.

(f) Describe emergency response actions that include the following:

(i) Notification procedures to immediately notify appropriate parties that a spill occurred.

(ii) Identification of a central reporting office, company personnel, or qualified individual(s) responsible for implementing the notification procedures.

(iii) A prioritized list of the name(s) and phone number(s) of required notifications to the Washington emergency management division, the national response center, other government agencies, response contractors, company response personnel, and qualified individuals.

(iv) A form to document all initial and follow-up spill notifications.

(v) The name of a state approved PRC to call if the magnitude of a spill exceeds the initial response equipment identified in WAC 173-180-217 and 173-180-220 through 173-180-222, as applicable.

(vi) Describe the equipment and responsibilities of facility personnel to mitigate a spill for each transfer location, using the required initial containment and recovery equipment described in WAC 173-180-217 and 173-180-220 through 173-180-222, as applicable. This includes:

(A) A description or list of procedures to follow in the event of a spill.

(B) A list of the individuals authorized to activate and engage with spill response contractors, act as a liaison with the state-on-scene coordinator, and establish a unified command as needed.

(g) Describe procedures to ensure recovered oil and oil contaminated debris is disposed of according to federal, state, or local requirements. A reference to the Northwest Area Contingency Plan (NWACP) may be included.

(h) Describe the safety and health plan to implement for any response location(s). A reference to the NWACP may be included.

(i) Describe the facility's drill program, including how requirements in WAC 173-180-810 and 173-180-815 will be met.

(j) Include a statement that the facility will participate in unannounced drills as described in ((Part H of this chapter;

(d) A description of how the facility will meet the training exercise program in 33 C.F.R. 154.1050 and 154.1055 as well as the drill requirements in WAC 173-180-810; and

(e) A form the Class 2 facility must use to provide initial and follow-up spill notification as required in 33 C.F.R. 154.1035 and includes notification information for state agencies as required in RCW 90.56.280)) WAC 173-180-810.

(k) Include a statement that drill records will be kept for three years and made available to ecology upon request.

(l) Include references to the regional and area oil and hazardous material contingency plans that are applicable to each transfer location.

(m) Describe and reference the geographic response plan for each transfer location, if applicable.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-730, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-740 Class 2 facility—Oil transfer response plan submittal requirements. (1) ((For)) The owner or operator of a Class

~~2 facility ((that begins operations after the effective date of this chapter, the Class 2 facility)) must submit ((a)) the oil transfer response plan to ecology at least ((ninety)) 90 calendar days prior to their planned date for conducting ((the first)) an oil transfer operation ((to a nonrecreational vessel for that facility)) in Washington state.~~

~~(2) ((For a Class 2 facility operating on the effective date of this chapter, must submit the response plan at least ninety calendar days of the effective date of this chapter.~~

~~(3) The Class 2 facility owner or operator must deliver two paper copies and one electronic copy of the response plan to:~~

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Response Plan Review
P.O. Box 47600
Olympia, WA 98504-7600~~

~~Or~~

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Response Plan Review
300 Desmond Drive
Lacey, WA 98503)~~

~~One electronic copy of the plan must be submitted to ecology. Ecology will maintain electronic submittal instructions on the spill prevention, preparedness, and response program website.~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-740, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-750 Class 2 facility—Oil transfer response plan review and approval process. ~~(1) The owner or operator of a Class 2 facility must submit the oil transfer response plan to ecology for reapproval at least 90 calendar days prior to the plan's expiration date. The facility may request ecology review the plan currently on file at ecology.~~

~~If the plan is not submitted within the time frame required for reapproval before the expiration date, the lapse is considered noncompliance and may result in the loss of plan approval.~~

~~(2) Upon receipt of the ((complete response plan ecology must review the response plan and then ecology will notify the Class 2 facility if ecology:~~

~~(a) Approved the response plan.~~

~~(b) Found deficiencies in the response plan.~~

~~(2) If ecology approves a response plan, ecology will send a letter indicating approval and will include an expiration date for the response plan.~~

~~(3) If ecology finds deficiencies in the response plan, ecology may grant conditional approval of a response plan by requiring the facility to operate with specific precautionary measures until the fa-~~

~~ility submits acceptable provisions of the response plan and ecology approves the response plan.~~

~~(4) If ecology grants conditional approval, ecology will:~~

~~(a) Send notice to the facility describing the deficiencies;~~

~~(b) Provide the facility with a due date by which the facility must address the deficiencies; and~~

~~(c) Provide precautionary measures the facility must implement until ecology grants full approval of the response plan.~~

~~(5) If a facility receives conditional approval, the Class 2 facility must submit and implement required changes to ecology within the due date, with the option for an extension at ecology's discretion. Plan holders who)) plan, ecology will determine whether the plan is complete. If ecology determines that the plan is not complete, the facility will be notified of any deficiencies.~~

~~Ecology may request additional information for the plan.~~

~~(3) Before the plan's expiration date, ecology will respond with a letter approving, conditionally approving, or disapproving the plan.~~

~~(4) If the plan receives approval, the letter will describe the terms of approval, including an expiration date for the plan. Plan approval expires five years from the date on the approval letter.~~

~~(5) If the plan is conditionally approved, ecology may require the facility to operate with specific restrictions until unacceptable components of the plan are revised, resubmitted, and approved.~~

~~(a) In the conditional approval, ecology will describe:~~

~~(i) Each specific restriction and the duration for which they apply; and~~

~~(ii) Each required item to bring the plan into compliance.~~

~~(b) Restrictions may include, but are not limited to:~~

~~(i) Reducing oil transfer rates;~~

~~(ii) Increasing personnel levels;~~

~~(iii) Restricting operations to daylight hours or favorable weather conditions; or~~

~~(iv) Additional requirements to ensure availability of response equipment.~~

~~(c) The owner or operator has 30 calendar days after notification of conditional approval to submit revisions and implement required changes. An extension may be issued at ecology's discretion. Conditional approval expires no later than 18 months from date of notification.~~

~~(d) Facilities which fail to meet conditional requirements or provide required changes in the time allowed ((~~must~~)) may lose conditional approval status. Ecology may revoke its conditional approval prior to the expiration date if the facility fails to meet the terms of the conditional approval.~~

~~(6) ((Upon receiving the information required by conditional approval, ecology will complete the review.)) If the plan is disapproved, the facility must receive an explanation of the factors for disapproval. The facility must not engage in oil transfers or other operations until the plan has been approved or conditionally approved.~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-750, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-760 Class 2 facility—Oil transfer response plan updates ~~((and timeline))~~. (1) ~~At least once annually, the Class 2 facility is required to ((keep the))~~ review the entire oil transfer response plan ((up-to-date with accurate information)) for accuracy.

~~((2)) Whenever changes are made to the ((response)) plan, ((two paper copies and one electronic of the changed sections must be submitted))~~ update and submit amended page(s) to ecology ((to be placed in the facility's plan on file at ecology.

~~(3) Ecology must review the facility's oil transfer response plan every five years.~~

~~(a) The facility must submit two paper copies or one electronic copy of the response plan for reapproval; or~~

~~(b) The facility may submit a letter to ask ecology to review the response plan that is currently on file at the agency.~~

~~(4) The facility must submit the response plan or letter at least ninety calendar days in advance of the expiration date of the response plan).~~

~~((5))~~ (2) Ecology may review and ~~((request))~~ require changes to ~~((your response))~~ the plan following any ~~((oil))~~ spill, inspection, or drill.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-760, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-800 Applicability of Part H. ~~((1))~~ Part H applies to Class 2 facilities ~~((only))~~.

~~((2) Drill requirements for Class 1 facilities are in chapter 173-182 WAC.)~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-800, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-180-810 Type of drills. ~~((In addition to))~~ (1) The oil transfer response plan must describe the drill program over a triennial cycle.

(a) If the program differs from the National Preparedness for Response Exercise Program((, ecology may conduct the following unannounced drills at Class 2 facilities:)) (PREP) Guidelines, the plan must include information regarding each type of drill as described in the table below.

(b) If the PREP Guidelines are followed, the table below may be inserted into the plan.

(2) Credit for a spill may be used to replace the requirement to conduct a drill.

<u>((Type of Drill</u>	<u>Drill Expectations and Duration</u>
<u>Deployment drills</u>	<u>These drills may involve testing whether or not the facility can deploy personnel, boom, recovery, and storage equipment as described in WAC 173-180-222.</u>
<u>Notification and emergency shutdown procedure drills</u>	<u>These drills may involve testing the facility's ability to follow the notification in the response plan and emergency shutdown procedures described in the operations manual.))</u>

<u>Type of Drill</u>	<u>Frequency Within the Triennial Cycle</u>	<u>Scope and Scale</u>
<u>Qualified individual (QI) notification</u>	<u>12 - Quarterly each year of the cycle</u>	<u>Notify QI and alternate QI(s).</u>
<u>Tabletop drills</u>	<u>3 - One in each year of the cycle</u>	<u>This is a tabletop drill. One of the three must involve a worst case scenario.</u>
<u>Deployment drills</u>	<u>6 - Done two per year</u>	<u>Over the triennial cycle, this drill may include deployment of PRC and facility owned equipment. Drill credit may be given for prebooming an oil transfer.</u>
<u>Ecology initiated unannounced drills</u>	<u>As necessary</u>	<u>This drill may include notifications described in the oil transfer response plan or deployment of equipment.</u>

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-180-810, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-180-815 Drill scheduling, design, evaluation, and records. (1) Tabletop and deployment drills must meet the following requirements:

- (a) Be designed with ecology;
- (b) Be scheduled in advance using the Northwest area committee exercise schedule:
 - (i) Thirty calendar days in advance for deployment drills;
 - (ii) Sixty calendar days in advance for tabletop drills; and
 - (iii) Ninety calendar days in advance for worst case spill drills.

(2) Over the triennial cycle, deployment drills are intended to include state approved PRC owned equipment through a written agreement; facility owned equipment; and equipment as certified available for the facility through letters of intent, mutual aid agreements, contracts, or other approvable means.

(3) Ecology may attend and evaluate tabletop and deployment drills.

(4) Facilities may request drill credit for a spill response by submitting documentation of the response to ecology within 30 calendar days of completion of the cleanup operations.

[]

PART I: OUT OF SERVICE REQUIREMENTS FOR CLASS 1 FACILITIES AND EQUIPMENT

NEW SECTION

WAC 173-180-900 Applicability of Part I. Part I applies to Class 1 facilities.

[]

NEW SECTION

WAC 173-180-910 Class 1 facility—Out of service requirements.

(1) The owner or operator of a Class 1 facility with an out of service storage tank or transfer pipeline must continue to monitor, inspect, and maintain the storage tank or transfer pipeline as if it were in service, as described in (a) of this subsection, or they must decommission the storage tank or transfer pipeline, as described in (b) of this subsection.

(a) Owners or operators continuing to monitor, inspect, maintain, and repair a storage tank or transfer pipeline as if it were in service must:

(i) Meet the requirements of the facility's operations manual and prevention plan;

(ii) Conduct inspections, including required API Standard inspections in WAC 173-180-330 and 173-180-340;

(iii) Conduct testing as required by WAC 173-180-205;

(iv) Maintain corrosion protection systems; and

(v) Operate cathodic protection systems.

(b) Owners or operators decommissioning a storage tank or transfer pipeline must meet the following requirements:

(i) All oil transfer pipelines must be completely oil-free, certified as gas-free, and blanked at both ends;

(ii) All marine transfer hoses must be completely oil-free, certified as gas-free, and physically removed from the dock;

(iii) Storage tanks must be completely oil-free, certified as gas-free, and disconnected from all associated piping as well as in-

strumentation and control lines. Piping and instrumentation and control line connections must be blanked;

(iv) All oil piping connected to the storage tank must be air-gapped from the storage tank; and

(v) All electrical devices connected to the transfer pipeline or storage tank (e.g., pumps, mixers, heaters) must be de-energized.

(c) Storage tanks and transfer pipelines that have been placed in caretaker status as defined in 33 C.F.R. Part 154 or that have been permanently closed as defined in 40 C.F.R. Part 112, will be considered decommissioned. The owner or operator of a Class 1 facility in caretaker status or that permanently closes a storage tank must notify ecology as described in subsection (3) of this section.

(2) All storage tanks and transfer pipelines returning to service must meet the requirements of this chapter.

(3) The owner or operator must submit an electronic notification to ecology 30 calendar days prior to decommissioning and returning to service. The notification must include the actions taken to decommission and return equipment to service.

(4) Any change that results from decommissioning or returning equipment to service that meets the definition of a significant change, in WAC 173-180-435 or 173-180-670, must be documented in the facility's operations manual and/or prevention plan, as applicable.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-180-070	Equivalent compliance plan.
WAC 173-180-223	Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers.
WAC 173-180-405	Class 1 facility—Operations manual.
WAC 173-180-410	Class 1 facility—Operations manual preparation.
WAC 173-180-440	Class 1 facility—Submitting the operations manual for reapproval.
WAC 173-180-445	Class 2 facility—Operations manual.
WAC 173-180-450	Class 2 facility—Operations manual preparation.
WAC 173-180-455	Class 2 facility—Operations manual format requirements.
WAC 173-180-460	Class 2 facility—Operations manual content requirements.
WAC 173-180-465	Class 2 facility—Operations manual submittal.
WAC 173-180-470	Class 2 facility—Operations manual review and approval.

WAC 173-180-475	Class 2 facility—Operations manual updates.
WAC 173-180-530	Class 2 facility—Oil transfer training requirements.
WAC 173-180-535	Class 2 facility—Certification program.
WAC 173-180-540	Class 2 facility—Certification of personnel.
WAC 173-180-545	Class 2 facility—Program approval.
WAC 173-180-550	Class 2 facility—Minimum requirements for a certification program.
WAC 173-180-660	Plan maintenance and use.
WAC 173-180-710	Class 1 facility—Contingency plans.
WAC 173-180-720	Class 2 facility—Oil transfer response plans.
WAC 173-180-770	Class 2 facility—Response plan maintenance and use.
WAC 173-180-820	Unannounced drills for Class 2 facilities.

OTS-4169.3

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

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

- (a) Tank vessels;
- (b) Cargo vessels;
- (c) Passenger vessels;
- (d) Any other nonrecreational vessels; or
- (e) Class 1, 2, and 3 facilities.

(2) This chapter does not apply to:

- (a) An oil spill recovery vessel that is engaged in spill response activities;
- (b) Emergency lightering of vessels to mitigate further damage;
- (c) A vessel's internal oil transfers;
- (d) Vacuum trucks when used to remove waste oil, bilge slops, contaminated ballast or fuel, or excess fuels (~~intended~~) for shore-side disposal;
- (e) Public vessels; and
- (f) Fuel transfers from tug to barge for operation of installed machinery.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-010, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

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

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

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

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

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

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-015, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

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

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

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-020, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 07-22-119, filed 11/7/07, effective 12/8/07)

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

~~(1) "Boatyard" means a class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.)~~ (1) "American Petroleum Institute (API) gravity" is a measure of how heavy or light a petroleum liquid is compared to water.

(2) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection, or recovery of oil that is discharged onto the surface of the water. Boom will be classified using criteria found in the ASTM International F 1523-94 (2018) and ASTM International ASTM F625/F625M-94 (2017), and the Re-

source Typing Guidelines found in the Worldwide Response Resource List (WRRL) user manual.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

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

~~(5))~~ "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, (~~(three hundred))~~ 300 or more gross tons (~~(7))~~ including, but not limited to, commercial fish processing vessels and freighters.

(~~(6))~~ (5) "Class 1 facility" means a facility as defined in RCW 90.56.010 as:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.

(c) Except as provided in (b) of this subsection, a facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter (~~(90.76))~~ 70A.355 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than (~~(three thousand))~~ 3,000 gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(~~(7))~~ (6) "Class 2 facility" means a railroad car, motor vehicle, portable device or other rolling stock, while not transporting oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(~~(8))~~ (7) "Class 3 facility" means a structure that:

(a) Transfers oil to a nonrecreational vessel with a capacity of (~~(ten thousand five hundred))~~ 10,500 or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter (~~(90.76))~~ 70A.355 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(~~(9))~~ (8) "Class 4 facility" means a structure that:

(a) Is a marina, boatyard, marine fueling outlet, and other fueling installation (~~(s))~~ that transfers to a nonrecreational vessel with a capacity to hold less than (~~(ten thousand five hundred))~~ 10,500 gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter ~~((90.76))~~ 70A.355 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

~~((10))~~ (9) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

~~((11))~~ (10) "Crude oil" means any naturally occurring hydrocarbons coming from the earth that are liquid at 25 degrees Celsius and one atmosphere of pressure including, but not limited to, crude oil, bitumen and diluted bitumen, synthetic crude oil, and natural gas well condensate.

(11) "Demise charter" means the owner gives possession of the vessel to the charterer and the charterer hires its own captain and crew.

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

~~((12))~~ (13) "Ecology" means the state of Washington department of ecology.

~~((13))~~ (14) "Gross tons" means a vessel's approximate volume as defined ~~((in Title 46, United States Code of Federal Regulations))~~ under 46 C.F.R. ((~~7~~)) Part 69.

~~((14))~~ (15) "Lightering" means the process of transferring oil as cargo from one tank vessel to another tank vessel.

(16) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

~~((15))~~ (17) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

~~((16))~~ (18) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature and))~~ 25 degrees Celsius and one atmosphere of pressure and any fractionation thereof((~~7~~)) including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, ((biological oils and blends,)) and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ~~((101(4))~~ 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

~~((17))~~ (19) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

(c) In the case of an abandoned vessel ~~((~~7~~))~~ or onshore ~~((~~7~~))~~ or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

~~((18))~~ (20) "Passenger vessel" means a ship of ~~((three hun-
dred))~~ 300 or more gross tons with a fuel capacity of at least ~~((six
thousand))~~ 6,000 gallons carrying passengers for compensation.

~~((19))~~ (21) "Person" means any political subdivision, govern-
ment agency, municipality, industry, public or private corporation,
~~((co-partnership))~~ copartnership, association, firm, individual,
~~((ship,))~~ or any other entity whatsoever.

~~((20))~~ (22) "Person in charge (PIC)" ~~((or "PIC"))~~ means a per-
son qualified and designated as required under 33 C.F.R. Part 155~~((,))~~
for vessels, 33 C.F.R. Part 154 for Class 1, 2, or 3 facilities, or if
not designated, the person with overall responsibility for oil trans-
fer operations.

~~((21))~~ (23) "Personnel" means individuals employed by, or under
contract with a facility or vessel.

~~((22))~~ (24) "Public vessel" means a vessel that is owned, or
demise chartered, and is operated by the United States government, or
a government of a foreign country, and is not engaged in commercial
service.

~~((23))~~ (25) "Recreational vessel" means a vessel owned and op-
erated only for pleasure with no monetary gain involved, and if
leased, rented, or chartered to another for recreational use, is not
used for monetary gain. This definition applies to vessels such as
house boats, ski boats, and other small craft on a rental or lease
agreement.

~~((24))~~ (26) "Ship" means any boat, ship, vessel, barge, or oth-
er floating craft of any kind.

~~((25))~~ (27) "Spill" means an unauthorized discharge of oil into
the waters of the state.

~~((26))~~ (28) "State" means the state of Washington.

~~((27))~~ (29) "Tank vessel" means a ship that is constructed or
adapted to carry, or that carries, oil in bulk as cargo or cargo resi-
due, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction
of this state.

~~((28))~~ (30) "Transfer" means any movement of oil in bulk to or
from a nonrecreational vessel or transmission pipeline.

~~((29))~~ (31) "Waters of the state" includes lakes, rivers,
ponds, streams, inland waters, underground water, salt waters, estua-
ries, tidal flats, beaches and lands adjoining the seacoast of the
state, sewers, and all other surface waters and watercourses within
the jurisdiction of the state of Washington.

[Statutory Authority: Chapters 90.56, 88.46, 90.48 RCW. WSR 07-22-119
(Order 07-14), § 173-184-025, filed 11/7/07, effective 12/8/07. Statu-
tory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR
06-20-034 (Order 06-02), § 173-184-025, filed 9/25/06, effective
10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective
10/26/06)

WAC 173-184-030 Inspections. (1) Ecology may verify compliance
with this chapter by announced and unannounced inspections in accord-
ance with chapters 90.56 and 88.46 RCW.

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

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

(3) Ecology will notify the vessel owner or operator of any deficiencies identified during the inspection.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-030, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-184-033 Recordkeeping. (1) Records required by this chapter must be maintained and available to ecology for a minimum of three years.

(2) All records required in this chapter must be available to ecology upon request.

(3) A copy of each ASTM Standard referenced in this rule is available for inspection at 300 Desmond Drive S.E., Lacey, Washington 98503.

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AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-184-040 Noncompliance. (1) Any violation of this chapter may be subject to enforcement and ~~((penalty sanctions of))~~ penalties under chapter 88.46 RCW.

(2) If an owner or operator of a delivering vessel fails to comply with the requirements in approved plans or reports, as applicable, or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

(a) Place conditions on approval; or

(b) Revoke its approval.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-040, filed 9/25/06, effective 10/26/06.]

NEW SECTION

WAC 173-184-055 Compliance schedule. (1) Owners and operators of delivering vessels in operation at the time this rule is effective must meet the requirements in this rule on the effective date of this rule, except where specified below.

(a) Within 30 calendar days from rule effective date, all delivering vessels must meet advance notice requirements in WAC 173-184-100.

(b) Within 60 calendar days from rule effective date, any delivering vessel conducting Rate A transfers must meet prebooming requirements in WAC 173-184-115.

(c) By the current safe and effective threshold determination report's expiration date, any delivering vessel conducting Rate A transfers must meet report requirements in WAC 173-184-130.

(2) Owners and operators of new delivering vessels must meet requirements in this chapter prior to beginning operations in the state, including submittal deadlines outlined in this chapter.

(3) When there is a change in the owner or operator of a delivering vessel, the new owner or operator of the vessel must meet the requirements in this chapter prior to beginning operations in the state, including submittal deadlines outlined in this chapter.

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PART B: OIL TRANSFER REQUIREMENTS ((FOR ALL DELIVERING VESSELS))

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-184-100 Advance notice of transfer for delivering vessels. (1) The delivering vessel (or designee) involved in an oil transfer of more than ~~((one hundred))~~ 100 gallons must ~~((provide prior notice of the oil transfer to ecology. The notice must be provided in))~~ notify ecology at least 24 hours prior to an oil transfer operation or the time frame set forth by the applicable United States Coast Guard captain of the port, whichever is greater. If the deliverer cannot meet the notification requirements in this section, notice must be provided as soon as possible prior to the oil transfer.

Advance notice information must be updated if the start time of the oil transfer operation in subsection (2)(b) of this section changes from the original reported time by more than six hours.

(2) The notice of transfer must be submitted ~~((to ecology on the Advanced))~~ on ecology's "Advance Notice of Oil Transfer" ((form provided by ecology, a facsimile, or an equivalent form that)) website or by email. Form number ECY 070-175 must be used. The notice must contain((s)) the following information:

(a) Company name, address, contact person, and telephone number of organization delivering the oil;

(b) Date of transfer operation, estimated starting time, and duration of the oil transfer operation;

(c) Documented name of delivering vessel and receiving vessel or ((class 1, 2, or 3)) facility ((involved in the oil transfer, including Lloyd's Register/International Maritime Organization number or)). If a vessel's documented name is not available, include the official number ((if available));

(d) City name and either the address or location/anchorage where the oil transfer operation will occur;

- (e) Transfer type;
- (f) Oil product type ((and)), and if crude oil, include:
- (i) Region of origin as stated on the bill of lading;
- (ii) Gravity, as measured by standards developed by the American Petroleum Institute, or specific gravity;
- (iii) Sulfur content of the oil, percent by weight; and
- (iv) Viscosity.
- (g) Quantity in gallons or barrels; and
- ~~((f))~~ (h) Whether or not prebooming will take place? (yes or no).

~~((3) Notification may be made by the delivering vessel's agent or other contracted representative.~~

~~(4) The notification form may be submitted via internet website established by ecology, by email, or by facsimile. The notification form and contact information are found on ecology's website: <http://www.ecy.wa.gov/programs/spills/spills.html>.~~

~~(5) Compliance schedule: All delivering vessels must begin submitting advance notice within thirty calendar days of the effective date of this chapter.)~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-100, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

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

(a) Rate A ~~((see WAC 173-184-110))~~ deliverers may only submit ~~((an equivalent compliance plan proposal))~~ a plan for alternative measures ~~((found))~~ in WAC 173-184-115~~((7))~~ (9).

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

(2) Format requirements. The ~~((proposal must contain))~~ plan must include the following ~~((and in the order presented))~~:

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

(b) Table of contents including supporting documents and appendices ~~((7(e)))~~.

(3) Content requirements. The plan must include the following:

(a) Executive summary of the ~~((equivalent proposal))~~ plan;

~~((d))~~ (b) A detailed description of ~~((the equivalent proposal that includes, when appropriate,))~~ the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed; and

~~((e))~~ (c) A detailed analysis of how the ~~((proposal))~~ plan offers equivalent or greater level of protection as compared to the requirements in this chapter. This includes:

- (i) Methodology of the analysis;
- (ii) Detailed results with supporting data, references, graphs, tables, pictures, and other relevant information; and
- (iii) Technical feasibility of ~~((proposal))~~ the plan versus current requirements.

~~((3))~~ ~~Submission timeline of proposed equivalent compliance plan.)~~ (4) Submittal requirements. The owner or operator must submit the ~~((equivalent compliance proposal))~~ plan to ecology at least ~~((one hundred twenty))~~ 120 calendar days ~~((before))~~ prior to their planned date for beginning operations under ~~((this section))~~ that plan in Washington state.

~~((a))~~ One electronic copy of the plan must be submitted to ecology. Ecology will maintain electronic submittal instructions on the spill prevention, preparedness, and response program website.

(5) Review and approval process. The owner or operator must submit the plan to ecology for reapproval at least 120 calendar days prior to the plan's expiration date. The owner or operator may request ecology review the plan currently on file at ecology.

(a) If the plan is not submitted within the time frame required for reapproval before the expiration date, the lapse is considered noncompliance and may result in the loss of plan approval.

(b) Upon receipt of the plan, ecology will determine whether the plan is complete. If ecology determines that the plan is not complete, the owner or operator will be notified of any deficiencies.

Ecology may request additional information for the plan such as site specific meteorological, water current velocity, and other monitoring data to support the plan.

(c) Once the plan is determined complete, ecology will make the ~~((proposal))~~ plan available for a ~~((thirty calendar day))~~ 30 calendar day public review and comment period.

~~(b) Ecology may request additional information regarding any aspect of the proposal such as site-specific meteorological, water current velocity, and other monitoring data to support the proposal;~~

~~(e))~~, which will occur within ecology's 120 calendar day review period. Ecology will accept comments on the plan no later than 30 calendar days after the plan has been made publicly available.

(d) Before the plan's expiration date, ecology will respond ~~((to the owner or operator within ninety calendar days of receipt of the proposal))~~ with a letter approving, conditionally approving, or disapproving the ~~((proposal; and~~

~~(d) The))~~ plan.

Ecology may approve the plan if, based upon the documents submitted and other information available to ecology, it finds that:

(i) The plan is complete and accurate; and

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

(e) If the plan receives approval, the letter will describe the terms of approval, including expiration date. Plan approval ~~((will be valid for no more than))~~ expires five years from the date on the approval letter.

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

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

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

~~(5-)) (f) If the plan is conditionally approved, ecology may require the delivering vessel to operate with specific restrictions until acceptable components of the plan are revised, resubmitted, and approved.~~

~~(i) In the conditional approval, ecology will describe:~~

~~(A) Each specific restriction and the duration for which they apply; and~~

~~(B) Each required item to bring the plan into compliance.~~

~~(ii) Restrictions may include, but are not limited to:~~

~~Meeting some or all of the alternative measure requirements in WAC 173-184-115 or 173-184-120, as applicable.~~

~~(iii) The owner or operator has 30 calendar days after notification of conditional approval to submit revisions and implement required changes. An extension may be issued at ecology's discretion. Conditional approval expires no later than 18 months from date of notification.~~

~~(iv) Owners or operators who fail to meet conditional requirements or provide required changes in the time allowed may lose conditional approval status. Ecology may revoke its conditional approval prior to the expiration date if the owner or operator fails to meet the terms of the conditional approval.~~

~~(g) If the plan is disapproved, the owner or operator must receive an explanation of the factors for disapproval and must preboom or meet the applicable alternative measures requirements.~~

~~(6) Plan updates. Ecology may ((reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company.~~

~~(6) The owner or operator must submit one paper copy and one electronic copy of the proposal to ecology:~~

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Equivalent Compliance Review
P.O. Box 47600
Olympia, WA 98504-7600
Or~~

~~The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Equivalent Compliance Review
300 Desmond Drive
Lacey, WA 98503)~~

~~)) review and require changes to the plan following any spill, inspection, or drill.~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-105, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-184-110 Transfer containment and recovery requirements.

(1) These ((standards)) requirements apply to all oil transfers ((that

~~involve any jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. These standards do not apply to vessels delivering))~~ regulated by this chapter with the exception of transfers of gasoline, aviation gasoline, ethanol, nonene, and other highly volatile products with similar characteristics.

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

(a) Rate A ~~((+))~~ means oil transfer operations at a rate over ~~((five hundred))~~ 500 gallons per minute. Rate A requirements are found in WAC 173-184-115.

(b) Rate B ~~((+))~~ means oil transfer operations at a rate of ~~((five hundred))~~ 500 gallons per minute or less. Rate B requirements are found in WAC 173-184-120.

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

(4) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design for safe and effective deployment in the expected environmental conditions encountered in the transfer area(s) ~~((based on the manufacturer's specifications.))~~ as described in the approved safe and effective threshold determination report including, but not limited to:

(a) Wave height;

(b) Water currents;

(c) Wind; and

(d) Other conditions that may affect booming operations.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-110, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-184-115 Rate A prebooming and ~~((Rate A))~~ alternative measures requirements. (1) The Rate A deliverer must preboom oil transfers when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measures requirements found in subsection ~~((+7))~~ (9) of this section and submit the Ecology Boom Reporting Form pursuant to subsection (4) of this section.

(2) The determination of safe and effective must be made prior to starting a transfer ~~((, or))~~ and reevaluated if conditions change ~~((,))~~ before or during a transfer. ~~((This safe and effective))~~ To make this determination, the deliverer must use the following safe and effective threshold values and be based on the conditions at the transfer location in accordance with WAC 173-184-130 (2)(g):

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

(b) Transfers that do not occur at Class 1 facilities must use the values found in the delivering vessel's approved safe and effective threshold determination report submitted in accordance with WAC

173-184-130 (~~(, the safe and effective threshold determination report)~~).

~~((3))~~ (c) For a transfer at a location not covered by an approved safe and effective threshold determination report, the deliverer must use the following safe and effective threshold values:

- (i) Wind speed: Sustained 20 knots or gusts of 30 knots;
- (ii) Waves: Greater than three feet;
- (iii) Water current velocity: 1.5 knots or greater; and
- (iv) Any combination of the above that make deploying and retrieving boom and equipment at the transfer location unsafe.

(v) The use of these values is intended for infrequent transfers at locations not anticipated when the safe and effective threshold determination report was approved by ecology. If ecology determines that a deliverer has frequent transfers at a location not covered by an approved safe and effective threshold determination report, ecology may require a new report review and approval process as described in WAC 173-184-130(4).

(d) The delivering vessel in a lightering transfer must preboom the transfer if it is safe and effective to do so. Safe and effective threshold values must be:

(i) Provided by the receiving vessel, if the receiving vessel has approved safe and effective threshold values for the transfer location; or

(ii) The values specified in (c) of this subsection.

(3) When water currents are 1 knot or less, delivering vessels must consider prebooming if it is safe to do so, even if the boom may be less than fully effective. When water currents are greater than 1 knot, delivering vessels may consider prebooming based on the expected performance of the boom.

(4) When it is not safe and effective to preboom or when conditions develop during a preboomed transfer (~~(which)~~) that require ~~((s))~~ removal of the boom, the Rate A deliverer must report this finding to ecology ~~((and meet the alternative measures found in subsection (7) of this section))~~ through the *Ecology Boom Reporting Form*. The ~~((Ecology Boom Reporting))~~ form must ~~((be used for this purpose, and))~~ include all observed and forecasted conditions that exceed the weather and safety values in the safe and effective threshold determination report. The form must be submitted on ecology's website or by email ~~((or facsimile))~~. Form number ECY 070-215 must be used. The form must be submitted prior to the transfer and/or immediately when conditions have changed.

~~((4))~~ (5) If a transfer is not preboomed due to conditions exceeding the safe and effective values, or if the boom is removed due to changing environmental conditions during the transfer, the Rate A deliverer must boom the transfer if it becomes safe and effective to do so. If environmental conditions continue to exceed safe and effective values, follow-up *Ecology Boom Reporting Forms* must be submitted every:

(a) Four hours for a transfer at anchor; or

(b) Six hours for a transfer at a terminal.

(6) If multiple oil transfers are occurring simultaneously with a single vessel, and one product transferred is not appropriate to preboom, such as gasoline, aviation gasoline, ethanol, nonene, and other highly volatile products with similar characteristics, then that portion of the transfer where it is ~~((unsuitable))~~ not appropriate to preboom must meet the alternative measures found in subsection ~~((7))~~ (9) of this section.

~~((5))~~ The portion of the transfer that is appropriate to preboom must be preboomed if:

(a) It is safe and effective to do so;

(b) Pumping is complete for the product that is not appropriate to preboom; and

(c) There are at least three hours remaining in the transfer.

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

~~((6))~~ (8) Rate A prebooming requirements.

(a) In order to preboom transfers, the deliverer must have, prior to the transfer, access to boom four times the length of the largest vessel involved in the transfer or (~~two thousand~~) 2,000 feet, whichever is less.

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

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

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

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

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

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

~~((ii))~~ (iii) Nonsparking hand scoops, shovels, and buckets(~~+~~ and

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

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

~~((7))~~ (9) Rate A alternative measures. Rate A deliverers must use these alternative measures when it is not safe and effective to meet the prebooming requirements:

(a) (~~To meet the alternative measures requirements~~) Prior to starting the oil transfer operation, the deliverer must have access to boom four times the length of the largest vessel involved in the transfer or (~~two thousand~~) 2,000 feet, whichever is less.

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

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

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

~~((ii))~~ (iii) Nonsparking hand scoops, shovels, and buckets(~~+~~ and

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

(c) The deliverer must have the ability to safely track an oil spill in low visibility conditions. The tracking system must be on-scene and ready to be deployed within ~~((thirty))~~ 30 minutes of being made aware of the spill.

(d) ~~((For alternative measures:))~~ Within one hour of being made aware of a spill, the deliverer must be able to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation with boom, or the portion of the vessel and transfer area that provides for maximum containment of any oil spilled.

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

(i) Additional boom four times the length of the largest vessel involved in the transfer or ~~((two thousand))~~ 2,000 feet, whichever is less, available for containment, protection, or recovery; and

(ii) A skimming system must be on-site ~~((The skimming system must be))~~, in stand-by status, and be capable of ~~((fifty))~~ 50 barrels recovery and ~~((one hundred))~~ 100 barrels of storage.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-115, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

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

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

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

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

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

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

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

~~((iii))~~ (iii) Nonsparking hand scoops, shovels, and buckets ~~((and~~

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

(c) For prebooming: Within one hour of being made aware of a spill, the deliverer must be able to completely deploy an additional ~~((five hundred))~~ 500 feet of boom. This boom may be used for containment, recovery, or protection.

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

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

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

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

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

~~((iii))~~ (iii) Nonsparking hand scoops, shovels, and buckets ~~((and~~

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

(c) ~~((For alternative measures:))~~ Within one hour of being made aware of a spill, the deliverer must be able to complete deployment of an additional ~~((five hundred))~~ 500 feet of boom for containment, protection, or recovery.

(d) ~~((For alternative measures:))~~ Within two hours of being made aware of a spill, the deliverer must have an additional ~~((five hundred))~~ 500 feet of boom available on-scene for containment, protection, or recovery.

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-120, filed 9/25/06, effective 10/26/06.]

AMENDATORY SECTION (Amending WSR 06-20-034, filed 9/25/06, effective 10/26/06)

WAC 173-184-130 Safe and effective threshold determination report. This section applies to delivering vessels conducting Rate A transfers at locations other than Class 1 facilities. The owner or operator of a delivering vessel conducting Rate A transfers must prepare a safe and effective threshold determination report that meets the requirements of this chapter. This report provides the threshold values that delivering vessels will use to determine when prebooming an oil transfer is safe for personnel and when the boom is likely to be effective at containing a spill.

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

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

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

~~(e))~~.

(2) Content requirements. The report must include the following, at a minimum:

- ~~(a)~~ Summary of safe and effective threshold values ~~(; and~~
~~(d)~~ ~~The body of the report must include the following:~~
~~(i))~~ that includes each location at which a Rate A transfer occurs;
- ~~(b)~~ Information used to support these values must be based ~~(upon)~~ on on-site environmental monitoring data recorded at specific times, dates, and locations; ~~(and~~
~~(ii))~~ (c) These values and the supporting data must address, at a minimum, the following site-specific information:
- ~~(A))~~ (i) Personnel safety;
~~(B))~~ (ii) Sea state values in feet including typical wave periods;
~~(C))~~ (iii) Water current velocity such as peak currents, sustained currents in hourly increments, and direction of flow, during typical oil transfer operations;
~~(D))~~ (iv) Wind speed in knots, and prevailing directions;
~~(and~~
~~(E))~~ (v) Other conditions such as vessel traffic, fishing activities, and other factors that influence the oil transfer operation(~~(~~
~~(iii))~~); and
(vi) Types of oil transfer operations including fueling, cargo, lightering, and others (e.g., lube oil transfers, hydraulic oil transfers); and the transfer rates involved.
- (d) The owner or operators must provide a detailed analysis of the proposed threshold values for the transfer location including:
- ~~(A))~~ (i) Methodology of the analysis;
~~(B))~~ (ii) Equipment used to (~~measure~~) collect data (~~collec-~~
~~(ted))~~; and
~~(C))~~ (iii) Supporting data, references, graphs, tables, pictures, and other relevant information. Supporting data must cover multiple years, including data recent enough to reflect existing conditions and collected no more than 10 years from the date of the safe and effective threshold determination report.
- (e) Boom specifications for preboomed transfers:
- (i) Type of boom (e.g., internal flotation, fence, inflatable) and total height; and
(ii) Accepted industry standards regarding the performance of boom and associated deployment equipment in various operating environments.
- (f) Description of the deliverer's ability to safely deploy and retrieve boom at all transfer locations in all conditions up to and including the upper limits of the approved safe and effective thresholds;
- (g) Description of how the safe and effective determination will be made for each transfer based on the conditions at the transfer location, including:
- The equipment or technology used to measure on-site environmental monitoring data before and during transfers, including weather and water current conditions. Include weather stations, buoys, and other instruments used.
- (h) Description of how the safe and effective threshold determination will consider whether to preboom when it is safe to do so, even if the boom is less than fully effective;

(i) Description of how the safe and effective threshold determination will be reevaluated based on changes in environmental conditions; and

(j) Description of how alternative measures will be met in the event of a spill if conditions exceed safe and effective values, including transit to the transfer location and deployment.

~~((2))~~ (3) Submittal requirements. ((Owners or operators of delivering vessels that conduct Rate A transfers)) The owner or operator of a Rate A deliverer must submit a safe and effective threshold determination report to ecology ((for review and approval for each location at which a Rate A transfer occurs)) at least 120 calendar days prior to their planned date for conducting an oil transfer operation in Washington state.

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

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

~~(3))~~ submitted to ecology. Ecology will maintain electronic submittal instructions on the spill prevention, preparedness, and response program website.

(4) Review and approval process.

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

~~(i) Personnel safety;~~

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

~~(iii) Accepted industry standards regarding the performance of boom and associated response equipment in various operating environments;~~

~~(iv) Types of oil transfer operations including bunkering, cargo operations, transfer rates, and other factors that influence oil transfers.~~

~~(b))~~ The owner or operator of a Rate A deliverer must submit the report to ecology for reapproval at least 120 calendar days prior to the report's expiration date. The owner or operator may request ecology review the report currently on file at ecology.

(a) If the report is not submitted within the time frame required for reapproval before the expiration date, the lapse is considered noncompliance and may result in the loss of report approval.

(b) Upon receipt of the report, ecology will determine whether the report is complete. If ecology determines that the report is not complete, the owner or operator will be notified of any deficiencies.

Ecology may request additional information for the report such as site specific meteorological, weather current velocity, and other monitoring data to support the report.

(c) Once the report is determined complete, ecology will make the report available for a ~~((thirty-calendar-day))~~ 30 calendar day public review and comment period, which will occur within ecology's 120 calendar day review period. Ecology will accept comments on the report no later than 30 calendar days after the report has been made publicly available.

~~((e))~~ (d) Before the report's expiration date, ecology will respond ((to the owner or operator within ninety calendar days of receipt of the threshold determination report)) with a letter approving, conditionally approving, or disapproving the report.

~~((d) The approval of this report will be valid for no more than))~~ (e) If the report receives approval, the letter will describe the terms of approval, including expiration date. Report approval expires five years from the date on the approval letter.

~~((e))~~ (f) If the report is conditionally approved, ecology may require the delivering vessel to operate with specific restrictions until acceptable components of the report are revised, resubmitted, and approved.

(i) In the conditional approval, ecology will describe:

(A) Each specific restriction and the duration for which they apply; and

(B) Each required item to bring the report into compliance.

(ii) Restrictions may include, but are not limited to:

(A) Reducing oil transfer rates;

(B) Increasing personnel levels;

(C) Restricting operations to daylight hours or favorable weather conditions; or

(D) Additional requirements to ensure availability of response equipment.

(iii) The owner or operator has 30 calendar days after notification of conditional approval to submit revisions and implement required changes. An extension may be issued at ecology's discretion. Conditional approval expires no later than 18 months from date of notification.

(iv) Owners or operators who fail to meet conditional requirements or provide required changes in the time allowed may lose conditional approval status. Ecology may revoke its conditional approval prior to the expiration date if the owner or operator fails to meet the terms of the conditional approval.

(g) If the report is disapproved, the owner or operator must receive an explanation of the factors for disapproval. The delivering vessel must not engage in Rate A transfers until the report has been approved or conditionally approved.

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

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

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

~~(b) Rate A deliverers that begin operating in Washington waters after the effective date of this chapter must submit the report at least one hundred twenty calendar days prior to the first oil transfer operation)) changes to the report following any spill, inspection, or drill, or if ecology determines that the deliverer has frequent transfers at a location not covered by their approved report.~~

[Statutory Authority: RCW 88.46.160, 88.46.165, and chapter 90.56 RCW. WSR 06-20-034 (Order 06-02), § 173-184-130, filed 9/25/06, effective 10/26/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|--|
| WAC 173-184-035 | Drill credit. |
| WAC 173-184-125 | Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers. |

WSR 23-02-066

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed January 4, 2023, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-097.

Title of Rule and Other Identifying Information: Chapter 504-24 WAC, Policies and regulations for all student living groups.

Hearing Location(s): On February 8, 2023, at 4:00 p.m., Zoom meeting. Join from PC, Mac, Linux, iOS, or Android <https://wsu.zoom.us/j/98810002881?pwd=VEl0MnVlOTZhMVFoVHBCcHpXVzArZz09>, Meeting ID 988 1000 2881, Passcode 831242; or join by telephone (long distance) +1 253 215 8782, +12532158782,98810002881# US (one-tap mobile call). Enter the meeting ID and passcode when prompted. No in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: March 10, 2023.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by February 8, 2023.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by February 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the policies and regulations for all student living groups, specifically WAC 504-24-030 Undergraduate housing requirement.

Reasons Supporting Proposal: Washington State University is modifying, clarifying, and updating the university's undergraduate housing requirement.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Danielle Hess, Executive Director, Policy and Governance, French Administration 422, Pullman, WA 99164-1045, 509-335-5524; Implementation and Enforcement: Ellen Taylor, Vice President, Student Affairs, Lighty Services 360, Pullman, WA 99164-1050, 509-335-4531.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider these rules to be significant legislative rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025.

Explanation of exemptions: This amendment to the university's undergraduate housing requirements will apply to only a small percentage of its first year undergraduate students on its Pullman campus and, thus, is not expected to affect small businesses.

January 4, 2023

Deborah L. Bartlett, Director
Procedures, Records, and Forms

OTS-4227.3

AMENDATORY SECTION (Amending WSR 20-23-059, filed 11/16/20, effective 12/17/20)

WAC 504-24-030 Undergraduate housing requirement. ~~((1) University-recognized housing includes residence halls, and university-approved fraternities, sororities, and co-op houses.~~

~~(2))~~ Housing requirements for single undergraduate students on residential campuses. To the extent that room is presently available, as determined by the university, ~~((in an official university-recognized living group,))~~ all single undergraduate ~~((freshmen))~~ first-year students under ~~((twenty))~~ 20 years of age are required to live in ~~((organized living groups which are officially recognized by the university-))~~ a residence ~~((halls, fraternities and sororities))~~ hall for one academic year.

~~((a))~~ (1) Exemptions. Exemptions ~~((will be))~~ are considered when a student demonstrates to the Pullman campus vice ~~((president))~~ chancellor for student affairs or designee that either:

~~((i))~~ (a) The student has attended an institution of higher education as a regularly enrolled student for at least two regular semesters or three regular quarters (excluding summer sessions);

~~((ii))~~ (b) The student is living with immediate family in a family situation (mother and/or father; legal guardian; aunt or uncle; or grandparent(s));

~~((iii))~~ (c) The student has secured a statement from a physician or psychologist stating that residence in ~~((recognized student housing))~~ a residence hall would detrimentally affect the student's physical or mental health ~~((or emotional well-being))~~; or

~~((iv))~~ (d) The student demonstrates that living in ~~((recognized University housing))~~ a residence hall would cause undue financial hardship or other extraordinary hardship.

~~((b))~~ (2) Process. Applications for permission to reside off campus are available from Washington State University. Applications are reviewed and a determination is made whether an exemption ~~((will))~~ is to be granted. Persons applying for such exemption ~~((will be))~~ are informed of the decision in writing. Requests for reconsideration of the decision may be submitted to the Pullman campus vice ~~((president))~~ chancellor for student affairs or designee. The vice ~~((president))~~ chancellor or designee ~~((will))~~ evaluates the appeal and approves or ~~((deny))~~ denies the appeal.

[Statutory Authority: RCW 28B.30.150. WSR 20-23-059, § 504-24-030, filed 11/16/20, effective 12/17/20. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. WSR 95-07-044, § 504-24-030, filed 3/8/95, effective 4/8/95. Statutory Authority: RCW 28B.30.095, 28B.30.125, 28B.30.150 and chapter 28B.19 RCW. WSR 87-12-013 (Order 87-1), § 504-24-030, filed 5/26/87. Statutory Authority: RCW 28B.30.125 and 28B.30.150. WSR 80-07-015 (Order 80-2, Resolution No. 6/80-15), § 504-24-030, filed 6/11/80; Order 77-2, § 504-24-030, filed 8/3/77; Order 73-7, § 504-24-030, filed 10/5/73; Order 73-6, §

504-24-030, filed 8/1/73; Order 4, § 504-24-030, filed 10/20/71; Order 3, § 504-24-030, filed 8/5/71.]

WSR 23-02-070
PROPOSED RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE
[Filed January 4, 2023, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-089.

Title of Rule and Other Identifying Information: Chapter 461-08 WAC, Review of the granting, denying or rescinding of substantial development permits—Hearings, environmental and land use hearings office (ELUHO) (shorelines hearings board) practice and procedure.

Hearing Location(s): On February 8, 2023, at 11:00 a.m., Zoom <https://us02web.zoom.us/j/2407504750>; or 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501. The public hearing will be conducted online via Zoom; however, participants who wish to comment may phone in using the Zoom call-in information or they may participate in person.

Date of Intended Adoption: March 31, 2023.

Submit Written Comments to: Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, email Jamie.Merly@eluhwa.gov, by February 17, 2023.

Assistance for Persons with Disabilities: Contact Jamie Merly, phone 360-485-1282, email Jamie.Merly@eluhwa.gov, by February 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule changes have several purposes and anticipated effects: (1) Several minor changes to gain language consistency with the pollution control hearings board rules for ease of comprehension by litigants; (2) clarify electronic filing procedures and remove paper filing (the rule changes will provide procedures for electronic filing via a case management system portal); (3) require the filing of dispositive motions no later than 90 days before the hearing date, allowing more time for the board to consider dispositive issues prior to hearing; (4) remove the holding of settlement conferences from the presiding officer powers and duties; (5) clarify that proof of service must be filed with the board to perfect the appeal, reducing confusion about proof-of-service requirements; (5)[(6)] allow parties who have settled an appeal to submit a request for dismissal rather than a written order of dismissal; and (6)[(7)] remove the requirement that parties apply to the board to request a certificate of appealability for direct review of board decisions by the court of appeals. This will align with RCW 34.05.518. Without the requirement, parties may file directly with the court of appeals without receiving certification by the board.

Reasons Supporting Proposal: The rule changes provide procedures to assist shorelines hearings board litigants in filing petitions and other case documents electronically, eliminating the requirement to file in paper. Parties who lack the technological capacity to file electronically may file by other means. The rule changes assist litigants by clarifying other board procedures and aligning rules with statutes.

Statutory Authority for Adoption: RCW 43.21B.170, 90.58.175.

Statute Being Implemented: Chapter 90.58 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule

change effective date is intended to align with the launch of the agency's new case management system. The new case management system is being built in response to RCW 43.21B.005(6) to provide greater transparency for growth management hearings board, pollution control hearings board, and shorelines hearings board decisions. The new system will allow electronic filing of case documents.

Name of Proponent: ELUHO, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, 360-485-1282.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. ELUHO is not specifically listed in RCW 34.05.328 (5)(b)(i) and does not intend to make this section voluntarily applicable to this rule update per subsection (5)(b)(ii). One of the primary purposes of the rule change is to clarify procedures for implementing existing statutes, consistent with RCW 34.05.328 (5)(b)(v). Therefore, unless subsection [(5)(b)](ii) is invoked by the joint administrative rules committee after filing [a] CR-102, no cost-benefit analysis is required.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

January 4, 2023

Jamie Merly

Director of Legal and Administrative Services

OTS-4278.2

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in RCW 34.05.010. The terms "appeal," "adjudicative proceeding," and "case" are used interchangeably in this chapter.

(2) "Agency" means any state governmental entity.

~~((2) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in chapter 34.05 RCW. The terms "appeal," "adjudicative proceeding" and "case" are used interchangeably in this chapter.))~~

(3) "Board" means the shorelines hearings board, a quasi-judicial body created pursuant to chapter 90.58 RCW and described in WAC 461-08-315.

(4) "Business days" means Monday through Friday exclusive of any state or federal holidays.

(5) "CMS" means the environmental and land use hearings office case management system or any successor system designated by the board.

(6) "Date of filing" as used in this chapter and RCW 90.58.140(6) has different meanings depending upon the type of local government decision that is being appealed.

(a) "Date of filing" of a local government's approval or denial of a substantial development permit, or local government's denial of a variance or conditional use permit, is the date of actual receipt by the department of the local government's decision.

(b) "Date of filing" of a local government's approval of a conditional use permit or variance is the date that the department transmits its final decision or order to local government.

(c) For substantial development permits filed simultaneously with approvals of conditional use permits or variances, the "date of filing" is the date that the department transmits its final decision or order on the variance or conditional use permit to local government.

~~((5))~~ (7) "Department" refers to and means the department of ecology.

~~((6))~~ (8) "Filing" of a document means actual receipt by the board between the hours of 8:00 a.m. and 5:00 p.m. on days other than Saturdays, Sundays, or legal holidays. The board's record of the date ((stamp placed on the)) and time of receipt of a document shall be evidence of the filing date. Filings received after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be considered filed on the next business day. If the last day for filing a document as required by these rules falls on a day when the board is closed under WAC 461-08-320(3), then the time for such filing shall be extended until the end of the next business day upon which the board is open for business.

(a) ~~((Electronic))~~ The filing of documents ((, and fax filing of documents ten pages or less, are permitted, so long as the original document and any required copies are mailed or submitted to a commercial delivery service on the same day. The date and time of receipt will be the date of transmission as indicated by the board's computer or fax machine, unless the transmission is completed after 5:00 p.m. or on a Saturday, Sunday, or legal holiday, in which case filing will be the next business day)) with the board shall be electronically through the CMS. Information about accessing the CMS is available at the ELUHO website at www.eluho.wa.gov. If a party does not have the technological capacity to file electronically through the CMS, a party may file documents by personal delivery, commercial delivery, fax, electronic mail, or first-class, registered, or certified mail.

(b) Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties.

~~((7))~~ (c) Filing of a document in the method authorized in (a) of this subsection shall substitute for filing through the CMS in the event the CMS is unavailable or in emergency situations in which the governor declares a statewide emergency.

(9) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or water subject to chapter 90.58 RCW.

~~((8))~~ (10) "Party" means:

(a) A person to whom any local government or agency decision is specifically directed; or

(b) A person named as a party to the appeal, or allowed to intervene or joined as a party by the board.

~~((9))~~ (11) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

~~((10))~~ (12) "Petition for review" is a document that when properly filed with the board initiates an adjudicative proceeding before the board.

~~((11))~~ (13) "Presiding officer" means any member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or the vice chairperson.

~~((12))~~ (14) "Service" of a document for administrative review means delivery of the document to the ~~((other))~~ parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered, or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Fax transmission with mailing or submission to a commercial delivery service of copies on the same day. Service by fax is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to a delivery service of the copies.

(d) Commercial delivery service. Service by commercial delivery service is regarded as complete upon delivery to the delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents ~~((, other than the appeal document itself,))~~ by email or electronic filing is authorized if ((the parties agree to electronic service or if authorized by the presiding officer)) agreed to by the receiving party. Service by electronic filing is regarded as complete when the document is uploaded successfully to the receiving party's designated electronic filing system.

(15) "Signature" means a written signature, or an electronic signature executed or adopted by a person with the intent to sign a document either in the form of s/_____ (name typed out), a graphic representation of an electronic signature, or a digital graphic representation of the signature as signed by the person. An electronic signature shall be considered the same as an original signature for all purposes.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-305, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-305, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-305, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-305, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-305, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-310 Computation of time. (1) The time within which any act shall be done, as provided by these rules, is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, or a day when the board is closed for business under WAC 461-08-320(3), and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday, or a day when the board is closed for business under WAC 461-08-320(3) is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays are excluded in the computation.

(2) This section also pertains to the period for filing with the board any petition for review, petition for rule making, petition for declaratory ruling or any other adjudication authorized by this chapter.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-310, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175 and SHB 1314. WSR 97-19-063, § 461-08-310, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 90.58.175 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). WSR 96-17-017, § 461-08-310, filed 8/12/96, effective 9/12/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-320 Board office hours and contact information. (1) The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. To the extent necessary for rule making (~~(, the board holds regular meetings at 10:00 a.m. on the second Tuesday of each month)~~) or other matters, the board will hold meetings at the address set forth below.

(2) The information included in this section is current at the time of rule adoption, but may change. Current information is available on the board's internet site at www.eluho.wa.gov.

(a) The board is organized within the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

(b) The mailing address is:

Shorelines Hearings Board
P.O. Box 40903
Olympia, WA 98504-0903

~~((b))~~ (c) The telephone number of the board is 360-664-9160. The fax number is 360-586-2253. The board's email address is eluho@eluho.wa.gov.

(3) The office hours of the board and the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays or when the office is closed due to weather,

technological failure, or other hazardous or emergency conditions or events.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-320, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-320, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 90.58.175. WSR 02-06-008, § 461-08-320, filed 2/22/02, effective 3/25/02; WSR 96-15-002, § 461-08-320, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-325 Public information about practice before the board and public records. (1) Questions about practicing before the board (~~(procedures)~~) may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone, by fax, or email (~~(at eluho@eluho.wa.gov)~~).

(2) The environmental and land use hearings office maintains a website with information about and access to the CMS for electronic filing, and information on the shorelines hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a brief description of the appeal process with helpful information for practice before the board, a set of frequently asked questions, sample forms, and links to the board's rules of procedure and other pertinent statutes and rules. This website may be accessed via the internet at www.eluho.wa.gov.

(3) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available on the website (www.eluho.wa.gov) or available for public inspection and copying during regular office hours at the environmental and land use hearings office. The procedures for obtaining public records from the board are set forth in chapter 198-14 WAC.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-325, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-325, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-325, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-325, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

WAC 461-08-340 (~~(Where to file a)~~) Filing a timely petition for review (~~(and number of copies)~~) with the board. (1) An adjudicative proceeding before the board is initiated by filing a petition for review with the board (~~(at the environmental and land use hearings office)~~). A petition shall be filed with the board electronically

through the CMS. If a party does not have the technological capacity to file electronically through the CMS, a party may file by personal delivery, commercial delivery, fax, electronic mail, or first-class, registered, or certified mail. A petition is filed with the board on the date the board actually receives the petition. Upon receiving the petition, the board ((shall)) will acknowledge ((filing of the petition for review by a stamp and)) receipt. The board's ((stamp on)) record of the date and time of receipt of the petition is prima facie evidence of the date of filing. ((The board may thereafter require that additional copies be filed.)) Filings transmitted after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be considered filed the on next business day. If the last day for filing a document as required by these rules falls on a day when the board is closed under WAC 461-08-320(3), then the time for such filing shall be extended until the end of the next business day upon which the board is open for business.

(2) **Deadlines for filing a petition for review.** Different deadlines for filing a petition for review apply depending upon the type of shoreline decision or government action taken, and whether local government or the department makes the final decision.

(a) Any person aggrieved by a local government's decision granting, denying or rescinding a shoreline substantial development, or its denial of a shoreline conditional use or variance must file a petition for review with the board within ((~~twenty-one~~)) 21 days of the "date of filing" as defined in WAC 461-08-305 (4)(a).

(b) If local government approves a shoreline conditional use or variance permit, that action will be reviewed by the department, which will make the final decision on the conditional use or variance permit. Any person aggrieved by the department's decision to approve, approve with conditions or deny a conditional use or variance permit must file a petition for review with the board within ((~~twenty-one~~)) 21 days of the "date of filing" as defined in WAC 461-08-305 (4)(b).

(c) When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of a shoreline conditional use permit and/or variance, a petition for review of the shoreline substantial development decision must be filed no later than ((~~twenty-one~~)) 21 days from the "date of filing" as defined in WAC 461-08-305 (4)(c).

(d) A petition for review by a person who has incurred a penalty assessment must be filed with the board within ((~~thirty~~)) 30 days of the date of receipt of the penalty.

(e) A petition for review by any person aggrieved by the department's final decision to approve, or reject a proposed master program, or master program amendment, by a local government that is not planning under the Growth Management Act, RCW 36.70A.040, must be filed with the board within ((~~thirty~~)) 30 days of the date that the department publishes notice of its final decision under RCW 90.58.090(8).

(f) A petition for review of any rules, regulations, or guidelines adopted or approved by the department pursuant to chapter 90.58 RCW must be filed with the board within ((~~thirty~~)) 30 days of the date of adoption or approval.

[Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-340, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-340, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170,

90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-340, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-340, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-350 Contents of the petition for review. Petitions for review to the board pursuant to RCW 90.58.180 (1) and (2) shall contain:

(1) The name, mailing address, telephone number, fax number (if available), and email address (~~((if available))~~) of the appealing party, and of the representative, if any;

(2) Identification of the parties, by listing in the caption or otherwise. In every case, the agency and/or the local government whose decision is being appealed and the person to whom the decision is directed shall be named as parties;

(3) A copy of the decision or permit appealed from;

(4) A short and plain statement showing the grounds upon which the appealing party considers such decision or permit to be unjust or unlawful;

(5) A clear and concise statement upon which the appealing party relies to sustain his or her grounds for appeal;

(6) The relief sought, including the specific nature and extent;

(7) The signature of the appealing party or its representative. The signature of the representative or the appealing party shall constitute a certificate by the signatory that the signatory has read the petition and that it is consistent with civil rule 11;

(8) All pleadings shall be so construed as to do substantial justice;

(9) Proof of service must be filed with the board to perfect the appeal.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-350, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-350, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-390 Appearance by representative. (1) An attorney or authorized representative as defined in WAC 461-08-385 may appear for a party by either of the following actions:

(a) Filing a written notice of appearance, a petition for review or another pleading containing the name of the party to be represented, and the name, address (~~and~~), telephone number, and email address of the representative; or

(b) Entering an appearance at the time and place of a conference or hearing on the appeal, and notifying the presiding officer conducting the same of the party to be represented and the name, address (~~and~~), telephone number, and email address of the representative.

(2) Copies of every written notice of appearance or pleading that identifies the representative shall be served by the representative on all other parties or their representatives of record at the time the original is filed with the board.

(3) Where a petition for review has been filed with the board by the department or attorney general, the attorney general shall, unless the department or attorney general notifies the board otherwise, be deemed to have entered an appearance for the department, and the attorney general shall be exempt from the requirement of filing and serving a written notice of appearance.

(4) After a representative appears on behalf of a party, the board shall serve all future notices, orders and correspondence upon such representative. Service upon the representative shall constitute service upon the party.

(5) After a representative appears on behalf of a party, and gives notice to all other parties to the appeal, all future pleadings and correspondence shall be served upon that representative. Service upon the representative shall constitute service upon the party.

[Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-390, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-410 Presiding officer (~~(duties and)~~)—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings in cases assigned in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of these rules:

(1) To administer oaths and affirmations.

(2) To issue subpoenas and protective orders as provided in the Administrative Procedure Act.

(3) To rule on all procedural matters, objections and motions.

(4) To rule on all offers of proof and receive relevant evidence.

(5) To question witnesses called by the parties in an impartial manner to develop any facts deemed necessary for a fair and adequate decision.

(6) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as deemed necessary to decide the matter fairly and equitably.

(7) To take appropriate disciplinary action with respect to representatives of parties appearing before the board.

(8) To issue orders joining other parties, on motion of any party, or in the judgment of the presiding officer, when it appears that such other parties may have an interest in, or may be affected by, the proceedings.

(9) To consolidate matters for hearing when such consolidation will expedite disposition of the matters and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby.

(10) To hold prehearing (~~(and settlement)~~) conferences.

(11) To permit and regulate the taking of discovery.

(12) To regulate the course of the hearing.

(13) To dismiss a petition for review or take other appropriate disciplinary actions, where a party or representative fails to appear at a prehearing conference, hearing or at any other stage of the appeal proceeding.

(14) To take any other action necessary and authorized by these rules and the law.

[Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-410, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-425 Dismissal of petitions for review on jurisdictional grounds. (1) Timely filing of the petition for review with the board, and other petitions within the board's jurisdiction under chapter 90.58 RCW, and timely service on the appropriate agencies are required for the board to acquire jurisdiction.

(2) Any party may challenge the jurisdiction of the board to hear a petition for review or other petition under chapter 90.58 RCW on jurisdictional grounds, and the board may independently raise the jurisdictional issue. The board (~~may~~) shall, when satisfied that it does not have jurisdiction, dismiss the petition for review.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-425, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-425, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-450 ((Prehearing)) Scheduling letter((s)). (1) Upon receipt of a petition for review which complies with the requirements of these regulations, the board shall promptly (~~mail to each party~~) issue a scheduling letter which sets the time and location of the hearing.

(2) In cases where the presiding officer does not order a prehearing conference, the letter setting the hearing date and time will be (~~mailed~~) issued at least seven days before the hearing date. The letter may also set the schedule for filing motions and prehearing briefs, and will notify the parties that an interpreter can be made available, upon reasonable notice to the board, for a witness or party who does not speak English or is hearing-impaired. The scheduling letter will control the subsequent proceedings, unless modified for good cause by the presiding officer.

(3) In cases where the presiding officer decides to hold a prehearing conference, the scheduling letter will also notify the parties of the time and location of the prehearing conference. The scheduling letter will be (~~mailed~~) issued at least seven days before the prehearing conference.

[Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-450, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-465 Settlement and mediation agreements. (1) Where the parties settle an appeal before hearing, the parties shall prepare ~~((a written))~~ and submit to the board a request for an order of dismissal to which the settlement agreement is attached, submit that ~~((order))~~ request to the board, and the board shall enter an order and dismiss the case.

(2) This section also pertains to settlement agreements reached after mediation.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-465, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-465, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-475 Motions. (1) An application to the board for an order must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the agreement of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request, or the board may independently set, an oral argument on the motion. The presiding officer will decide whether or not an oral argument will be held and notify the parties accordingly. At oral argument, the board will consider the arguments of the parties but will not take evidence or testimony from witnesses.

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than ~~((sixty))~~ 90 days before the hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion must be filed and served ~~((fourteen))~~ 14 days from the receipt of the motion by the non-moving party. The moving party then has ~~((ten))~~ 10 days from receipt of the response to file and serve a reply.

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party.

The moving party then has three days from receipt of the response to file and serve a reply.

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-475, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-475, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-475, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-490 Hearing briefs. Hearing briefs, if filed, must be submitted to the board at least seven days before the time of hearing or such other time as directed by the presiding officer. The (~~original~~) brief must be filed with the board and (~~a copy~~) served on the other parties or their attorneys. (~~Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order.~~) The board may permit or require the filing of additional briefs.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-490, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-490, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-490, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-555 Final decisions and orders. (1) **Full-board cases.** When the hearing on the petition for review has been heard by a majority of the board in a full-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law material to the disposition of the matter: Provided, That in the event that the full board considers the record and that four of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(2) **Short-board cases.** When the hearing on the petition for review has been heard by two or more board members in a short-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred

in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the three board members consider the record and a majority of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(3) The ~~((board))~~ board's final decision and order shall ~~((mail copies of the final decision and order to))~~ be served on each party to the petition for review or to the attorney or representative of record, if any. The board's final decision and order may be served electronically when a party agrees to electronic service. Service upon the representative constitutes service upon the party.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-555, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-555, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 99-23-038, § 461-08-555, filed 11/12/99, effective 12/13/99; WSR 96-15-002, § 461-08-555, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-565 Petitions for reconsideration. (1)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed and served on all parties within ~~((ten))~~ 10 days of ~~((mailing of))~~ the board serving the final decision under WAC 461-08-320(3). The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. Any answer to a petition for reconsideration must be filed and served on all parties within five days of the date of receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(c) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within ~~((twenty))~~ 20 days from the date the petition is filed, the board does not act on the petition or specify a date by which it will act on the petition.

(2) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(3) The board shall ~~((mail copies of))~~ serve the final decision and order and of the board's disposition of any petition for reconsideration ~~((to))~~ on each party to the appeal or ~~((to))~~ on the attorney or representative of record. The board's final decision and order may be served electronically when a party agrees to electronic service. Service on the representative constitutes service on the party.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-565, filed 1/17/07, ef-

fective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-565, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 461-08-570 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within ((thirty)) 30 days of the date that the board serves its final order or decision as provided in RCW 34.05.542. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-570, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 90.58.175 and SHB 1314. WSR 97-19-063, § 461-08-570, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-570, filed 7/3/96 effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-580 Certification of record. (1) Within ((thirty)) 30 days of receipt of a copy of the petition for judicial review to the superior court or notice of acceptance of the certificate of appealability by the court of appeals, the board shall certify and transmit to the reviewing court the record made before the board. Additional time for certification and transmission of the record may be allowed by the reviewing court.

(2) Normally the record will not include a transcript of the testimony. Unless the board has caused a transcript to be printed, arrangements for and costs of the written transcript shall be the obligation of the party seeking judicial review.

[Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-580, filed 7/3/96, effective 8/3/96.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 461-08-575	Direct review to the court of appeals based upon an accepted certificate of appealability by the board.
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WSR 23-02-071
PROPOSED RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE
[Filed January 4, 2023, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-091.

Title of Rule and Other Identifying Information: Chapter 242-03 WAC, Growth management hearings board (GMHB), rules of practice and procedure.

Hearing Location(s): On February 8, 2023, at 1:00 p.m., Zoom <https://us02web.zoom.us/j/2407504750>; or 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501. The public hearing will be conducted online via Zoom; however, participants who wish to comment may phone in using the Zoom call-in information or they may participate in person.

Date of Intended Adoption: March 31, 2023.

Submit Written Comments to: Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, email Jamie.Merly@eluhwa.gov, by February 17, 2023.

Assistance for Persons with Disabilities: Contact Jamie Merly, phone 360-485-1282, email Jamie.Merly@eluhwa.gov, by February 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule changes will clarify electronic filing procedures and remove fax and paper filing. The rule changes will provide procedures for electronic filing via a case management system portal. The rule changes clarify the presiding officer powers and duties, as well as the purpose of the prehearing conference. Lastly, the rule changes remove the requirement that the board dismiss actions upon stipulation for dismissal by the parties. This rule change is needed to align with RCW 36.70A.290 which requires the board to set a hearing except in limited situations.

Reasons Supporting Proposal: The rule changes provide procedures to assist GMHB petitioners and respondents in filing petitions and other case documents electronically, eliminating the requirement to file in paper. Parties who lack the technological capacity to file electronically may file by other means. The rule changes align board procedure with existing statute.

Statutory Authority for Adoption: RCW 36.70A.270.

Statute Being Implemented: Chapter 36.70A RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule change effective date is intended to align with the launch of the agency's new case management system. The new case management system is being built in response to RCW 43.21B.005(6) to provide greater transparency for GMHB, pollution control hearings board, and shorelines hearings board decisions. The new system will allow electronic filing of case documents.

Name of Proponent: Washington state environmental and land use hearings office (ELUHO), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, 360-485-1282.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. ELU-HO is not specifically listed in RCW 34.05.328 (5)(b)(i) and does not intend to make this section voluntarily applicable to this rule update per subsection (5)(b)(ii). One of the primary purposes of the rule change is to clarify procedures for implementing existing statutes, consistent with RCW 34.05.328 (5)(b)(v). Therefore, unless subsection [(5)(b)](ii) is invoked by the joint administrative rules committee after filing [a] CR-102, no cost-benefit analysis is required.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

January 4, 2023

Jamie Merly

Director of Legal and Administrative Services

OTS-4269.1

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

WAC 242-03-030 Definitions. As used in this title, the following terms shall have the following meaning:

(1) "Act" means the Growth Management Act, chapter 36.70A RCW, and subsequent amendments.

(2) "Board" means the growth management hearings board or a panel of the board hearing a matter as established in RCW 36.70A.260.

(3) "Chair" means the board member annually elected by the board pursuant to RCW 36.70A.270(11). The duties and responsibilities of the chair include, developing board procedures, making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members, and managing board meetings.

(4) "CMS" means the environmental and land use hearings office case management system or any successor system designated by the board.

(5) "Compliance participant" means any person with standing to challenge legislation taken in response to a board order, as provided in RCW 36.70A.330(2).

~~((5))~~ (6) "Consolidation" means the combining of all petitions involving review of the same comprehensive plan or development regulation into a single case for hearing and decision, as provided in RCW 36.70A.290(5).

~~((6))~~ (7) "Coordination" means provision of parallel case schedules for cases involving related matters in the interest of efficient resolution and to avoid duplication of evidence and argument.

~~((7))~~ (8) "Environmental and land use hearings office" means the administrative office of the board established pursuant to RCW 36.70A.252.

~~((8))~~ (9) "Ex parte communication" is communication about issues in a pending case between a party and a board member without including or providing notice to all other parties to the matter. Ex parte communication is prohibited.

~~((9))~~ (10) "Filing" of a document means actual receipt by the board during regular office hours, as specified in WAC 242-03-230 (for a petition for review) or WAC 242-03-240 (for all other documents).

~~((10))~~ (11) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or

(b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or other legal interest of the parties in the case and which clearly states in such written finding, determination or order that it is a final decision subject to appeal to superior court.

~~((11))~~ (12) "Panel" means the three board members assigned to hear and decide a particular case pursuant to RCW 36.70A.260.

~~((12))~~ (13) "Party" means the petitioner(s) and respondent(s) in a case before the board and, if admitted in the case, intervenor(s), amicus, and compliance participant(s).

~~((13))~~ (14) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

~~((14))~~ (15) "Petitioner" means a person who files a petition for review pursuant to RCW 36.70A.290 or who brings a petition for rule making to the board.

~~((15))~~ (16) "Presiding officer" means any member of the board who is designated to conduct a conference or hearing as directed by the board. The presiding officer shall be designated pursuant to WAC 242-03-525 and have authority as provided by WAC 242-03-530.

~~((16))~~ (17) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations, or subsequent amendment pursuant to RCW 36.70A.290(2), or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology.

~~((17))~~ (18) "Respondent" means the city, county, or state agency whose action is challenged in a petition for review before the board.

~~((18))~~ (19) "Service" of a document means delivery of the document to the other parties to the appeal, as specified in WAC 242-03-230 (for the petition for review) or WAC 242-03-240 (for all other documents).

~~((19))~~ (20) "Shoreline master program" means the comprehensive use plan for a described shoreline area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies in RCW 90.58.020 and applicable guidelines. Pursuant to

RCW 36.70A.480(1), an approved shoreline master program is a component of the city or county's comprehensive plan and development regulations.

~~((20))~~ (21) "Shoreline Management Act" means chapter 90.58 RCW and subsequent amendments.

~~((21))~~ (22) "Signature" means a written signature or an electronic signature executed or adopted by a person with the intent to sign a document either in the form of s/_____ (name typed out) or a digital graphic representation of the signature as signed by the person. An electronic signature shall be considered the same as an original signature for all purposes.

(23) "State Environmental Policy Act" means chapter 43.21C RCW and subsequent amendments.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-030, filed 8/12/21, effective 9/12/21; WSR 11-13-109, § 242-03-030, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

WAC 242-03-060 Board office. (1) The administration of the board is consolidated in one office - The environmental and land use hearings office (~~. All correspondence shall be mailed to the physical address of the board~~):

Growth Management Hearings Board
 c/o Environmental and Land Use Hearings Office
 1111 Israel Road S.W., Suite 301
 Tumwater, WA 98501
 P.O. Box 40903
 Olympia, WA 98504-0953
 website: www.eluho.wa.gov
 ELUHO Main Office: 360-664-9160
 (~~Fax: 360-586-2253~~)
 Regional Email Inboxes
 email: eastern@eluho.wa.gov
 email: western@eluho.wa.gov
 email: central@eluho.wa.gov

(2) Unless a party does not have the technological capacity to do so, the filing of all petitions, briefs, exhibits, and other documents related to any proceeding before a regional panel shall be (~~made to the board, through its administrative office, the environmental and land use hearings office. However, each filing must be sent to the appropriate regional panel email inbox and must indicate the appropriate regional panel's name - Eastern, Western, or Central Puget Sound~~) electronically through the CMS. Information about accessing the CMS is available at the ELUHO website at www.eluho.wa.gov.

(3) Email or mail filings shall substitute for filing through the CMS in the event that the filing through the CMS is unavailable or impossible or if a party does not have the technological capacity, such as lack of access to an internet connection or a computer, to utilize the CMS.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-060, filed 8/12/21, effective 9/12/21; WSR 13-01-026, § 242-03-060, filed 12/11/12, effective 1/11/13; WSR 11-13-109, § 242-03-060, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 16-02-114, filed 1/6/16, effective 2/6/16)

WAC 242-03-230 Petition for review—Filing and service. (1)

Filing a petition for review. A petition for review shall be filed with the board (~~by electronic mail~~) electronically through the CMS, as provided in WAC 242-03-240, unless a petitioner does not have the technological capacity, such as lack of access to an internet connection or a computer, to do so. (~~The original and three copies of the petition for review shall be filed with the board personally, or by mail or commercial parcel delivery service. Filings may also be made with the board by fax transmission as provided in WAC 242-03-240.~~) A petition for review is deemed filed on the date the board receives it (~~by electronic mail or by fax transmission~~) by 5:00 p.m. (~~provided that the original and three copies are sent by mail or by a commercial parcel delivery service postmarked on the same date as the electronic filing.~~) See WAC 242-03-060 for contact information.

(a) Information about accessing the CMS is available at the ELUHO website at www.eluho.wa.gov.

(b) Email or mail filings shall substitute for filing through the CMS in the event that the filing through the CMS is unavailable or impossible or if a petitioner does not have the technological capacity to utilize the CMS.

(2) Service of petition for review.

(a) A copy of the petition for review shall be served upon the named respondent(s) and must be received by the respondent(s) on or before the date filed with the board. Service of the petition for review may be by mail, personal service, or a commercial parcel delivery service, so long as the petition is received by respondent on or before the date filed with the board.

(b) When a county is a respondent, the petition for review shall be served on the county auditor or on the agent designated by the legislative authority of the county. When a city is a respondent, the mayor, city manager, or city clerk shall be served. When the state of Washington is a respondent, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. In a challenge to the adoption of, or amendment to, a shoreline master program approved by the department of ecology, the department of ecology shall be named as a respondent and served.

(3) Proof of service shall be filed with the board pursuant to WAC 242-03-245.

(4) The board may dismiss a case for failure to substantially comply with this section.

[Statutory Authority: RCW 36.70A.270 (4) and (7). WSR 16-02-114, § 242-03-230, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 36.70A.270(7). WSR 13-01-026, § 242-03-230, filed 12/11/12, effective

1/11/13. Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-05-110, § 242-03-230, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-230, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

WAC 242-03-240 Filing and service of all other ((papers)) documents. (1) Filing of ((papers)) documents: All pleadings and briefs shall be filed with the board ((by electronic mail)) through the CMS unless a petitioner does not have the technological capacity to do so. ((The original and three copies of all documents shall be filed with the board personally, or by mail or commercial parcel delivery service and must be postmarked or sent on the same date as the electronic filing. Filings less than fifteen pages may be made by fax transmission. The original and three copies must be postmarked or sent on the same date as the fax transmission to be deemed filed.))

Filings ((made by electronic mail and/or fax transmission)) shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be ((stamped)) deemed to be received on the following business day. The date and time indicated by the ((board's fax machine or receiving computer)) CMS shall be presumptive evidence of the date and time of receipt of transmission. All ((papers)) documents will be deemed filed with the board on the date ((received by electronic mail provided that the original document and three copies are postmarked or commercially sent on the same date as the fax transmission or electronic mail filing. See WAC 242-03-060 for contact information)) filed through the CMS.

(2) Service: Parties shall serve copies of all filings on all other named parties by electronic mail((7)) on or before the date filed with the board, unless a party lacks technical capability. Service is accomplished when the document is transmitted electronically, or, by agreement among the parties or exception granted by the presiding officer, is postmarked or commercially sent by the required date.

(3) Filing and service requirements may be altered by the presiding officer, when filing through the CMS is unavailable or impossible, or in emergency situations, in which the governor declares a statewide emergency. Email filings shall substitute for filing through the CMS in the event that filing through the CMS is unavailable or impossible, unless otherwise specified by the presiding officer.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-240, filed 8/12/21, effective 9/12/21. Statutory Authority: RCW 36.70A.270(4) and (7). WSR 16-02-114, § 242-03-240, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 36.70A.270(7). WSR 13-01-026, § 242-03-240, filed 12/11/12, effective 1/11/13. Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-05-110, § 242-03-240, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-240, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-530 Presiding officer—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of the act or these rules to:

- (1) Inspect the petition for review to determine whether, on its face, compliance with ~~((the jurisdictional))~~ requirements for subject matter jurisdiction, procedural filing and service requirements, and standing requirements of the act is shown, and if compliance is not shown, to recommend an action or to refer the issue to the board for resolution;
- (2) Require that parties not represented by counsel designate a spokesperson(s);
- (3) Conduct the prehearing conference, seek clarification or simplification of issues, establish the case schedule, and regulate the course of the case;
- (4) Rule on all procedural matters, objections and routine motions; ~~((obtain agreement of the parties))~~ resolve procedural issues concerning service of ~~((papers electronically))~~ documents by email or by mail in light of technical capabilities or other circumstances;
- (5) Rule on all evidentiary matters including supplementation of the record;
- (6) Decide motions for intervention, amicus, or compliance participant status;
- (7) Consolidate cases for hearing pursuant to RCW 36.70A.290(5) or coordinate cases pursuant to WAC 242-03-030(5) and 242-03-030(6) when such consolidation or coordination will expedite disposition and avoid duplication of evidence and argument;
- (8) Review cases for settlement or mediation opportunities and assist the parties in arranging such sessions;
- (9) Administer oaths and affirmations if witnesses are permitted to testify, authorize discovery, or issue subpoenas in exceptional circumstances as provided in RCW 34.05.446;
- (10) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and rule on issues concerning the content of the record;
- (11) Limit the length of a brief or impose format restrictions;
- (12) Rule on requests for settlement extensions;
- (13) Determine whether oral argument will be allowed on a motion and, if so, schedule the hearing; determine whether a conference or hearing shall be held by teleconference or in person;
- (14) Require a party to provide a complete copy of the comprehensive plan, county-wide planning policy, or other core document germane to determination of the case;
- (15) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and
- (16) Take any other action necessary and authorized by these rules, the act, or the Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-530, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-540 Prehearing conference—Purpose. The purpose of a prehearing conference is to:

- (1) Determine the feasibility of and encourage settlement of the matter or any portion thereof and provide information about mediation as set forth in WAC 242-03-575;
- (2) Obtain a stipulation of relevant facts including the board's jurisdiction, the petitioner's standing in the matter, and the timeliness of the petition for review;
- (3) Obtain agreement as to the issues of law and fact presented and their clarification, simplification, limitation, or resolution, so as to frame the final issues to be decided by the board;
- (4) Rule on any pending matters of intervention, consolidation, or the qualification of individual board members or the composition of the panel;
- (5) Determine the witnesses, if any, that may be allowed to be called by the parties;
- (6) Set the final case schedule for filing motions, deadlines for briefing, and date and time of the hearing on the merits;
- (7) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties;
- (8) Obtain all other information which may aid in the prompt disposition of the matter; and
- (9) ~~((Obtain agreement of the parties))~~ Resolve procedural issues concerning service of ((papers electronically)) documents by email or by mail in light of technical capabilities or other circumstances.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-540, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

- WAC 242-03-720 Dismissal of action.** (1) Any action shall be dismissed by the board(~~(~~
~~(a))~~ upon petitioner's withdrawal of the petition for review before entry of a final decision and order(~~(~~
~~(b) Upon stipulation for dismissal by petitioner(s) and respondent(s))~~).
- (2) Any action may be dismissed by the board:
- (a) Upon motion of the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or
 - (b) Upon the board's own motion for failure by the parties to comply with these rules or any order of the board.
 - (c) Upon the board's own motion for petitions that are frivolous, not within the board's subject matter jurisdiction ((of the board)), not in compliance with procedural service and filing requirements, or the petitioner's lack of standing.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-720, filed 8/12/21, effective 9/12/21; WSR 11-13-109, § 242-03-720, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

WAC 242-03-870 Publication of final decisions and orders. Copies of all final decisions and orders are available from the environmental and land use hearings office at eluho.wa.gov. The board posts final orders, compliance orders, and other decisions on (~~its web site~~) the CMS and maintains a digest of its decisions by region.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-870, filed 8/12/21, effective 9/12/21; WSR 11-13-109, § 242-03-870, filed 6/21/11, effective 7/22/11.]

WSR 23-02-072
PROPOSED RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE
[Filed January 4, 2023, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-090.

Title of Rule and Other Identifying Information: Chapter 371-08 WAC, Practice and procedure, environmental and land use hearings office (ELUHO) (pollution control hearings board).

Hearing Location(s): On February 8, 2023, at 9:00 a.m., Zoom <https://us02web.zoom.us/j/2407504750>; or 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501. The public hearing will be conducted online via Zoom; however, participants who wish to comment may phone in using the Zoom call-in information or they may participate in person.

Date of Intended Adoption: March 31, 2023.

Submit Written Comments to: Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, email Jamie.Merly@eluhwa.gov, by February 17, 2023.

Assistance for Persons with Disabilities: Contact Jamie Merly, phone 360-485-1282, email Jamie.Merly@eluhwa.gov, by February 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule changes have several purposes and anticipated effects: (1) Clarify electronic filing procedures and remove paper filing, (the rule changes will provide procedures for electronic filing via a case management system portal); (2) require the filing of dispositive motions no later than 90 days before the hearing date, allowing more time for the board to consider dispositive issues prior to hearing; (3) clarify what the "date of receipt" means for timely filing of an appeal (this clarification reduces confusion about the timeliness of filing an appeal); (4) remove the holding of settlement conferences from the presiding officer powers and duties; (5) clarify that proof of service must be filed with the board to perfect the appeal, reducing confusion about proof of service requirements; (6) allow parties who have settled an appeal to submit a request for dismissal rather than a written order of dismissal; (7) reduce confusion about forest practices appeals by adding existing statutory language to the rule that describes the filing requirements for these appeals; (8) repeal the board jurisdictional rule. Board jurisdiction is set forth in statute and rule making lags behind the statutory delegation of authority, causing inconsistencies and confusion to appellants; and (9) remove the requirement that parties apply to the board to request a certificate of appealability for direct review of board decisions by the court of appeals. This will align with RCW 34.05.518. Without the requirement, parties may file directly with the court of appeals without receiving certification by the board.

Reasons Supporting Proposal: The rule changes provide procedures to assist pollution control hearings board litigants in filing petitions and other case documents electronically, eliminating the requirement to file in paper. Parties who lack the technological capacity to file electronically may file by other means. The rule changes assist litigants by clarifying other board procedures and aligning rules with statutes.

Statutory Authority for Adoption: RCW 43.21B.170.

Statute Being Implemented: Chapter 43.21B RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule change effective date is intended to align with the launch of the agency's new case management system. The new case management system is being built in response to RCW 43.21B.005(6) to provide greater transparency for growth management hearings board, pollution control hearings board, and shorelines hearings board decisions. The new system will allow electronic filing of case documents.

Name of Proponent: ELUHO, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, 360-485-1282.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. ELUHO is not specifically listed in RCW 34.05.328 (5)(b)(i) and does not intend to make this section voluntarily applicable to this rule update per subsection (5)(b)(ii). One of the primary purposes of the rule change is to clarify procedures for implementing existing statutes, consistent with RCW 34.05.328 (5)(b)(v). Therefore, unless subsection [(5)(b)](ii) is invoked by the joint administrative rules committee after filing [a] CR-102, no cost-benefit analysis is required.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

January 4, 2023

Jamie Merly

Director of Legal and Administrative Services

OTS-4279.1

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in RCW 34.05.010. The term "adjudicative proceeding" is used interchangeably with the terms "case" and "appeal" in this chapter.

(2) "Agency" means any state governmental entity, air pollution control authority, local health department or other agency whose decisions are subject to the board's jurisdiction.

(3) "Board" means the pollution control hearings board, a quasi-judicial board created pursuant to chapter 43.21B RCW and described in WAC 371-08-315. Where appropriate, the term "board" also refers to the designated agents of the pollution control hearings board.

(4) "Business days" means Monday through Friday exclusive of any state or federal holidays.

(5) "CMS" means the environmental and land use hearings office case management system or any successor system designated by the board.

(6) "Department" refers to and means the department of ecology.

~~((6))~~ (7) "Filing" of a document means actual receipt by the board between the hours of 8:00 a.m. and 5:00 p.m. on days other than Saturdays, Sundays, or legal holidays. The board's record of the date ((stamp placed on the document)) and time of receipt of a document shall be evidence of the date of filing. Filings received after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be considered filed on the next business day. If the last day for filing a document as required by these rules falls on a day when the board is closed under WAC 371-08-320(3), then the time for such filing shall be extended until the end of the next business day upon which the board is open for business.

(a) ~~((Electronic))~~ The filing of documents ((and fax filing of documents ten pages or less are permitted, so long as the original document and any required copies are mailed or submitted to a commercial delivery service on the same day. The date and time of receipt will be the date of transmission as indicated by the board's computer or fax machine and will constitute the date of filing, unless the transmission is completed after 5:00 p.m. or on a Saturday, Sunday, or legal holiday, in which case the date of filing will be the next business day)) with the board shall be electronically through the CMS. Information about accessing the CMS is available at the ELUHO website at www.eluho.wa.gov. If a party does not have the technological capacity to file electronically through the CMS, a party may file documents by personal delivery, commercial delivery, fax, electronic mail, or first-class, registered, or certified mail.

(b) Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency and parties.

~~((7))~~ (c) Filing of a document in the method authorized in (a) of this subsection shall substitute for filing through the CMS in the event the CMS is unavailable or in emergency situations in which the governor declares a statewide emergency.

(8) "Party" means:

(a) A person to whom any agency decision is specifically directed; or

(b) A person named as a party to the adjudicative proceeding, allowed to intervene or joined as a party by the board.

~~((8))~~ (9) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

~~((9))~~ (10) "Presiding officer" means a member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or vice chairperson.

~~((10))~~ (11) "Service" of a document for administrative review means delivery of the document to the ~~((other))~~ parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered, or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Fax transmission with mailing or submission to commercial delivery service of copies on the same day. Service by fax is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to delivery service of the copies.

(d) Commercial parcel delivery service. Service by commercial parcel delivery service is regarded as complete upon delivery to the parcel delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents (~~(, other than the appeal document itself,)~~) by email or electronic filing is authorized if ((the parties agree to electronic service or if authorized by the presiding officer)) agreed to by the receiving party. Service by email is regarded as complete when the email is sent successfully. Service by electronic filing is regarded as complete when the document is uploaded successfully to the receiving party's designated electronic filing system.

(12) "Signature" means a written signature, or an electronic signature executed or adopted by a person with the intent to sign a document either in the form of s/_____ (name typed out), a graphic representation of an electronic signature, or a digital graphic representation of the signature as signed by the person. An electronic signature shall be considered the same as an original signature for all purposes.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-305, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 371-08-305, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. WSR 05-15-017, § 371-08-305, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-305, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-310 Computation of time. (1) The time within which any act shall be done, as provided by these rules, is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, or a day when the board is closed for business under WAC 371-08-320(3), and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday, or a day when the board is closed for business under WAC 371-08-320(3) is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation.

(2) This section also pertains to the period for filing an appeal with the board, petition for rule making, petition for declaratory ruling or any other adjudication authorized by this chapter.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 371-08-310, filed 1/17/07, ef-

fective 2/17/07. Statutory Authority: RCW 43.21B.170 and 1997 c 125. WSR 97-19-064, § 371-08-310, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.170 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). WSR 96-17-016, § 371-08-310, filed 8/12/96, effective 9/12/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-315 Membership (~~(, function and jurisdiction)~~). (~~((1) Members.~~)) The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

~~((2) Function and jurisdiction.~~ The function of this board is to provide an expeditious and efficient disposition of appeals. The board has jurisdiction to hear and decide appeals from the following decisions of the department of agriculture, the department of ecology, the director of ecology, local conservation districts, air pollution control authorities established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, any state agency that is an authorized public entity under RCW 79.100.010, and the parks and recreation commission:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.95.315, 70.95M.080, 70.95N.260, 70.105.080, 70.105.095(2), 70.107.050, 70.240.050, 70.275.100, 70.275.110, 76.09.170, 77.55.291, 78.44.250, 86.16.081, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, 90.64.102, and 90.76.080.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 18.104.130, 43.27A.190, 70.94.211, 70.94.332, 70.94.640, 70.94.715, 70.95.315, 70.95C.230, 70.105.095, 70.107.060, 86.16.110, 88.46.070, 90.14.130, 90.14.190, 90.46.250, 90.48.120, 90.48.240, and 90.64.040.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, termination or denial of any permit, certificate or license by the department of ecology or any air pollution control authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, a decision to approve or deny a solid waste management plan under RCW 70.95.094, an application for a solid waste permit exemption under RCW 70.95.300, an application for a change under RCW 90.03.383, or a permit to distribute reclaimed water under RCW 90.46.220.

(d) The granting, denial, revocation, or suspension of a water right examiner certificate issued by the department under RCW 90.03.665.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW, including appeals by the department of ecology as provided in RCW 70.95.185.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use biosolids under RCW 70.95J.080.

~~(g) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.~~

~~(h) Decisions of the department of ecology regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department of ecology regarding waste-derived soil amendments under RCW 70.95.300.~~

~~(i) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026 as provided in RCW 90.64.028.~~

~~(j) Any other decision by the department of ecology or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.~~

~~(k) Decisions of the department of natural resources, the department of fish and wildlife, and the department of ecology that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).~~

~~(l) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.~~

~~(m) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.~~

~~(n) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.~~

~~(o) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.~~

~~(3) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.)~~

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-315, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 371-08-315, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 34.05.360 and 2003 c 325. WSR 04-03-001, § 371-08-315, filed 1/7/04, effective 2/7/04. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-315, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 19-20-034, filed 9/24/19, effective 10/25/19)

WAC 371-08-320 Board office hours and contact information. (1)

The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. To the extent necessary for rule making or other matters, the board will hold ((special)) meetings at the address set forth below.

(2) The information included in this section is current at the time of rule adoption, but may change. Current information is available on the board's internet site at www.eluho.wa.gov.

(a) The board is housed at the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington 98501. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

(b) The mailing address of the board is:

Pollution Control Hearings Board
P.O. Box 40903
Olympia, WA 98504-0903

(c) The telephone number of the board is 360-664-9160. The fax number is 360-586-2253. The board's email address is eluho@eluho.wa.gov.

(3) The office hours of the board and the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays or when the office is closed due to weather, technological failure, or other hazardous or emergency conditions or events.

[Statutory Authority: RCW 43.21B.170. WSR 19-20-034, § 371-08-320, filed 9/24/19, effective 10/25/19. Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-320, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-05-110, § 371-08-320, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 43.21B.170. WSR 02-06-011, § 371-08-320, filed 2/22/02, effective 3/25/02; WSR 96-15-003, § 371-08-320, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-325 Public information about practice before the board and public records. (1) Questions about practicing before the board may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone, fax, or email.

(2) The environmental and land use hearings office maintains a website with information about and access to the CMS for electronic filing, and information on the pollution control hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a handbook with helpful information for practice before the board, sample forms, and links to the board's rules of practice and other pertinent statutes and rules. This website may be accessed via the internet at www.eluho.wa.gov.

(3) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available on the website (www.eluho.wa.gov) or available for public inspection and copying during regular office hours at the environmental and land use hearings office. The procedures for obtaining public records from the board are set forth in chapter 198-14 WAC.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-325, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-05-110, § 371-08-325, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 371-08-325, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-325, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-335 Filing a timely appeal with the board. (1) An appeal before the board is initiated by filing a notice of appeal with the board ((at the environmental and land use hearings office)) and by serving a copy of the appeal notice on the agency whose decision is being appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished.

(2) As prescribed by RCW 76.09.205, a person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit or watershed analysis may seek review before the board by filing a notice of appeal with the board, and filing a copy of the notice of appeal with the department of natural resources and the attorney general within 30 days from the date of receipt of the approval or disapproval decision.

(3) The notice of appeal shall be filed with the board within ((thirty)) 30 days of the date of receipt of the order or decision unless otherwise provided by law. The board's rule governing the computation of time (WAC 371-08-310) shall determine how the ((thirty-day)) 30-day appeal period is calculated. The "date of receipt" of an order or decision means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, ((when the actual receipt date can be)) proven by a preponderance of the evidence, whichever is later. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed ((forty-five)) 45 days from the date of mailing.

((+3)) (4) An appeal ((may)) shall be filed with the board electronically through the CMS. If a party does not have the technological capacity to file electronically through the CMS, a party may file by personal delivery, commercial delivery, fax, electronic mail, or first-class, registered, or certified mail. An appeal is filed with the board on the date the board actually receives the notice of the appeal ((, not the date that the notice is mailed)). Upon receiving the notice of appeal, the board will acknowledge receipt. The board's record of the date ((stamped on the appeal notice)) and time of receipt of a document shall be prima facie evidence of the filing date. ((The board may thereafter require that additional copies be filed.)) Filings received after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be considered filed on the next business day. If the last day for filing a document as required by these rules falls on a day when the board is closed under WAC 371-08-320(3), then the time for

such filing shall be extended until the end of the next business day upon which the board is open for business.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-335, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 371-08-335, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 371-08-335, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. WSR 05-15-017, § 371-08-335, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170 and 1997 c 125. WSR 97-19-064, § 371-08-335, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.170 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). WSR 96-17-016, § 371-08-335, filed 8/12/96, effective 9/12/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-340 Contents of notice of appeal. The notice of appeal shall contain:

- (1) The name, mailing address, telephone number, fax number (if available), and email address (~~((if available))~~) of the appealing party, and of the representative, if any;
- (2) Identification of the parties, by listing in the caption or otherwise. In every case, the agency whose decision is being appealed and the person to whom the decision is directed shall be named as parties;
- (3) A copy of the order or decision appealed from, and if the order or decision followed an application, a copy of the application;
- (4) A short and plain statement showing the grounds upon which the appealing party considers such order or decision to be unjust or unlawful;
- (5) A clear and concise statement of facts upon which an appealing party relies to sustain his or her grounds for appeal;
- (6) The relief sought, including the specific nature and extent;
- (7) The signature of the representative of the appealing party or the appealing party. The signature of the representative or the appealing party shall constitute a certificate by the signatory that the signatory has read the notice of appeal and that it is consistent with civil rule 11;
- (8) All pleadings shall be so construed as to do substantial justice;
- (9) Proof of service must be filed with the board to perfect the appeal.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-340, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-340, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-370 Procedure for representing a party before the board. (1) An attorney or authorized representative as defined in WAC 371-08-365 may appear for a party by either of the following actions:

(a) Filing a notice of appeal, another pleading or a written notice of appearance containing the name of the party to be represented, and the name, address (~~and~~), telephone number, and email address of the representative; or

(b) Entering an appearance at the time and place of a conference or hearing on the appeal, and notifying the presiding officer conducting the same of the party to be represented and the name, address (~~and~~), telephone number, and email address of the representative.

(2) Copies of every written notice of appearance or pleading that identifies the representative shall be served by the representative on all other parties or their representatives of record at the time the original is filed with the board.

(3) Unless the department notifies the board otherwise, the attorney general shall, in all appeals from decisions and orders of the department and director, be deemed to have entered an appearance for the department, and shall be exempt from the requirements herein relating to the filing of written notices of appearance and to the furnishing of copies of same to other parties and their representatives.

(4) After a representative appears on behalf of a party, the board shall serve all future notices, orders and correspondence upon such representative. Service upon the representative shall constitute service upon the party.

(5) After a representative appears on behalf of a party, all other parties to the appeal shall serve all future pleadings and correspondence upon that representative. Service upon the representative shall constitute service upon the party.

[Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-370, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-390 Presiding officer—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings in cases assigned in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of these rules:

(1) To administer oaths and affirmations;

(2) To issue subpoenas and enter protective orders as provided in the Administrative Procedure Act;

(3) To rule on all procedural matters, objections and motions;

(4) To rule on all offers of proof and receive relevant evidence;

(5) To question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

(6) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as deemed necessary to fairly and equitably decide the appeal;

(7) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;

(8) To issue orders joining other parties, on motion of any party or in the judgment of the presiding officer, when it appears that such other parties may have an interest in, or may be affected by, the proceedings;

(9) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;

(10) To hold prehearing conferences (~~and settlement conferences~~);

(11) To permit and regulate the taking of discovery;

(12) To regulate the course of the hearing;

(13) To dismiss an appeal or take other appropriate actions if a party or representative fails to appear at a prehearing conference, hearing or at any other stage of the appeal proceeding;

(14) To take any other action necessary and authorized by these rules and the law.

[Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-390, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-430 Scheduling letter. (1) Upon receipt of a notice of appeal which complies with the requirements of these regulations, the board shall (~~mail written~~) issue notice to each party of the primary and, if applicable, the secondary hearing dates. The notice or scheduling letter will identify the case to be heard, the identity of the parties and the time and location of the hearing. The letter shall also state that an interpreter can be made available upon reasonable notice to the board for any witness or party who is hearing impaired or who does not speak English.

(2) The letter may set out a filing schedule for motions and prehearing briefs. Where the presiding officer decides to hold a prehearing conference, the letter shall also state the date, time and location of the prehearing conference.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-430, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-430, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-435 Prehearing conferences. (1) The board may, upon written request by a party or on its own, schedule a prehearing con-

ference on not less than seven days notice (~~mailed~~) to each party to the appeal, at a time and place fixed by the board. The purpose of the prehearing conference is to prepare the case for hearing by scheduling prehearing deadlines and by identifying the issues. At the prehearing conference, the presiding officer will encourage the parties to engage in settlement negotiations as the case proceeds.

(2) Following the prehearing conference the presiding officer shall enter a prehearing order. Normally, this will include a statement of issues, a schedule for filing motions and briefs, as well as other matters which may bear on the preparation for hearing. The issues which the prehearing order identifies for the hearing shall control the subsequent course of the appeal, and shall be the only issues to be tried at the hearing, unless modified for good cause by subsequent order of the board or the presiding officer.

(3) Appearance by a party or by the party's representative at the prehearing conference is mandatory. If a party fails to attend a prehearing conference, that is not justified by good cause, the presiding officer may issue an order of default against the absent party or take other appropriate action.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-435, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-435, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-440 Settlement and mediation agreements. (1) Where the parties settle an appeal before hearing, the parties shall prepare and submit to the board a (~~written~~) request for an order of dismissal to which the (~~written~~) settlement agreement is attached, submit that (~~order~~) request to the board, and the board shall enter an order and dismiss the case.

(2) This section also pertains to settlement agreements reached during mediation.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-440, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-440, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-450 Motions. (1) An application to the board for an order must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall af-

firmatively seek the stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request, or the board may independently set, oral argument on the motion. The presiding officer will decide whether or not oral argument will be held and notify the parties accordingly. At oral argument, the board will consider the arguments of the parties but will not take evidence or testimony from witnesses.

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than (~~sixty~~) 90 days before the secondary hearing date, or, if no secondary date applies, the primary hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion must be filed and served (~~fourteen~~) 14 days from the receipt of the motion by the non-moving party. The moving party then has (~~ten~~) 10 days from receipt of the response to file and serve a reply.

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-450, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 371-08-450, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW, and RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310. WSR 05-15-017, § 371-08-450, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 43.21B.170. WSR 02-06-012, § 371-08-450, filed 2/22/02, effective 3/25/02; WSR 96-15-003, § 371-08-450, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-470 Hearing briefs. Hearing briefs, if filed, must be submitted to the board at least seven days before the hearing or such other time as directed by the presiding officer. The (~~original~~) brief must be filed with the board and (~~a copy~~) served on the other parties or their attorneys. (~~Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order.~~) The board may permit or require the filing of additional briefs.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 371-08-470, filed 1/17/07, ef-

fective 2/17/07. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-470, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 371-08-535 Final decisions and orders. (1) When the hearing on the appeal has been concluded, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by a majority of the board may be adopted which shall contain findings and conclusions as to each contested issue of fact and law material to the disposition of the matter.

(2) The record before the board shall be considered by at least two of the members of the board; provided, that if two members cannot agree on a decision, the third member must consider the record before the board; and provided further, that if two members cannot agree on a decision in any case, the substantive decision of the agency (or authority) will control.

(3) The ~~((board shall mail copies of the))~~ board's final decision and order ~~((to))~~ shall be served on each party to the appeal or ~~((to))~~ the attorney or representative of record ~~((, if any))~~. The board's final decision and order may be served electronically when a party agrees to electronic service. Service upon the representative constitutes service upon the party.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 371-08-535, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 371-08-535, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-535, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-550 Petitions for reconsideration. (1)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed and served on all parties within ~~((ten))~~ 10 days of ~~((mailing of))~~ the board serving the final decision under WAC 371-08-535(3). The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. Any answer to a petition for reconsideration must be filed and served on all parties within five days of the receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(c) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within ~~((twenty))~~ 20 days from the date the petition is filed, the board does not act on the petition or specify a date by which it will act on the petition.

(2) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(3) The board shall (~~(mail copies of)~~) serve the final decision and order and of the board's disposition of any petition for reconsideration (~~(to)~~) on each party to the appeal or (~~(to)~~) on the attorney or representative of record. The board's final decision and order may be served electronically when a party agrees to electronic service. Service on the representative constitutes service on the party.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 371-08-550, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-550, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 371-08-555 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within (~~(thirty)~~) 30 days from the date of service of the final order or decision as provided in RCW 34.05.542. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 371-08-555, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, chapter 34.05 RCW and RCW 43.21B.190. WSR 06-07-088, § 371-08-555, filed 3/15/06, effective 4/15/06. Statutory Authority: RCW 43.21B.170 and SHB 1314. WSR 97-19-064, § 371-08-555, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.170. WSR 96-15-003, § 371-08-555, filed 7/3/96, effective 8/3/96.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 371-08-560 Direct review to the court of appeals upon certification by the board.