

WSR 23-12-023
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 26, 2023, 9:19 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: Rules are needed for the delivery of child welfare services and, more specifically, for the department of children, youth, and families (DCYF) to better identify when to apply state and federal Indian Child Welfare Acts, codified as chapter 13.38 RCW and 25 U.S.C. ch. 21 respectively. This rule making will address issues identified in the court's opinion in Matter of Dependency of Z.J.G., 196 Wn.2d 152, 471 P. 3d 853 (2020).

Citation of Rules Affected by this Order: Amending WAC 110-110-0010.

Statutory Authority for Adoption: RCW 74.08.090; chapter 13.38 RCW; and 25 U.S.C. chapter 21.

Adopted under notice filed as WSR 23-08-084 on April 5, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 26, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4324.3

AMENDATORY SECTION (Amending WSR 20-04-019, filed 1/27/20, effective 2/27/20)

WAC 110-110-0010 Foster care planning for Indian children—Definitions. For the purposes of this section through WAC 110-110-0100, the term "Indian child" is defined as any unmarried and unemancipated Indian person who is under age (~~(eighteen)~~) 18 and is, as determined by the Indian child's tribe or tribes, one of the following:

- (1) A member of an Indian tribe; or
- (2) Is eligible for membership in an Indian tribe (~~(and is the biological child of a member of an Indian tribe)~~).

[Statutory Authority: 2017 c 6. WSR 20-04-019, § 110-110-0010, filed 1/27/20, effective 2/27/20. WSR 18-14-078, recodified as § 110-110-0010, filed 6/29/18, effective 7/1/18. Statutory Authority:

RCW 74.08.090, chapter 13.38 RCW, and 25 U.S.C. chapter 21. WSR 16-13-151, § 388-70-091, filed 6/22/16, effective 7/23/16; Order 1167, § 388-70-091, filed 10/27/76.]

WSR 23-12-024

PERMANENT RULES

HORSE RACING COMMISSION

[Filed May 26, 2023, 10:11 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: Amends the distribution of source market fees to reflect a change in duties performed by commission employees because a voluntary agreement with the Horseracing [Integrity and] Welfare Unit (HIWU) was not signed and Washington horse racing commission (WHRC) employees will no longer be performing certain duties. Additionally, the Washington state 2023-2025 operating budget includes a one-time appropriation into the WHRC Operating Account.

Citation of Rules Affected by this Order: Amending WAC 260-49-070 Distribution of source market fees.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 23-09-060 on May 23 [April 18], 2023.

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

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

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

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

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

Date Adopted: May 23, 2023.

Amanda Benton
Executive Secretary

OTS-4430.2

AMENDATORY SECTION (Amending WSR 22-24-110, filed 12/7/22, effective 1/7/23)

WAC 260-49-070 Distribution of source market fee. (1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) One hundred percent of the total source market fee directly to the class 1 racing association.

(b) The class 1 racing association shall submit monthly (~~(12.5)~~) 2.5 percent of the total source market fee to the commission of which (~~(two and one-half)~~) 2.5 percent to be deposited into the Washington

bred owners' bonus fund and ((10)) zero percent to be deposited into the commission's operating account.

(c) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

(d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

[Statutory Authority: RCW 67.16.020. WSR 22-24-110, § 260-49-070, filed 12/7/22, effective 1/7/23; WSR 22-02-047, § 260-49-070, filed 1/3/22, effective 2/3/22; WSR 20-19-062, § 260-49-070, filed 9/11/20, effective 10/12/20; WSR 11-17-056, § 260-49-070, filed 8/15/11, effective 9/15/11. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 09-21-015, § 260-49-070, filed 10/9/09, effective 11/9/09; WSR 05-19-015, § 260-49-070, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 67.16.020. WSR 04-21-053, § 260-49-070, filed 10/18/04, effective 11/18/04.]

WSR 23-12-036

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed May 30, 2023, 10:55 a.m., effective June 30, 2023]

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

Purpose: These rules follow up on the previously adopted rules making inflationary adjustments to the monetary limits and reporting values of the campaign finance category (see WSR 23-07-004) and updates to the references to the newly adjusted values throughout the public disclosure commission rules, Title 390 WAC. The amendments are technical in nature to reflect the new values.

Citation of Rules Affected by this Order: Amending WAC 390-16-013, 390-16-042, 390-16-043, 390-16-058, 390-16-059, 390-16-063, 390-16-105, 390-16-226, 390-16-236, 390-16-245, 390-16-309, 390-16-310, 390-16-312, 390-16-320, 390-17-315, 390-18-010, and 390-18-025.

Statutory Authority for Adoption: RCW 42.17A.110 and [42.17A.]125.

Adopted under notice filed as WSR 23-07-099 on March 17, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 17, Repealed 0.

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

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

Date Adopted: May 25, 2023.

Sean Flynn
General Counsel

OTS-4410.2

AMENDATORY SECTION (Amending WSR 19-08-092, filed 4/3/19, effective 5/4/19)

WAC 390-16-013 Incidental committees—Registration and reporting requirements and method for reporting. (1) Chapter 42.17A RCW requires the disclosure of monetary and in-kind contributions and expenditures by nonprofit organizations that participate significantly in candidate and ballot proposition campaigns in Washington state. Non-profit organizations that make contributions or expenditures in Washington elections above specified thresholds, and are not otherwise defined under the law as political committees, must file organizational statements with the PDC and disclose certain contributors, regardless of the organization's primary purpose. These are referred to in the law as "incidental committees." To be an incidental committee, trig-

gering the requirements to file a statement of organization with the PDC and then file the required disclosure reports, an organization must expect to make contributions or expenditures of at least (~~twenty-five thousand dollars~~) \$35,000 in a calendar year for an election campaign and receive a payment of at least (~~ten thousand dollars~~) \$15,000 from a single source.

(2) The official form for providing the statement of organization by incidental committees as required by RCW 42.17A.207 is designated the incidental committee registration report, or "C-1-IC."

(3) The official form for reporting top (~~ten~~) 10 payments and expenditures by incidental committees as required under RCW 42.17A.240 is designated the incidental committee payments and political expenditures report, or "C-8."

(4) These reporting forms must be filed electronically when the PDC has provided an electronic method to do so. Until an electronic method is provided, the reporting forms should be downloaded from the PDC's website, www.pdc.wa.gov, or obtained at the PDC office, in Olympia, Washington, and submitted by postal mail or hand delivery. The executive director may make exceptions on a case-by-case basis for an incidental committee that lacks the technological ability to file reports electronically.

(5) For purposes of determining whether a nonprofit organization has the expectation of making contributions or expenditures aggregating at least (~~twenty-five thousand dollars~~) \$35,000 in a calendar year that then triggers the reporting requirements:

(a) Contributions include any monetary or in-kind contributions made to a political committee, including a political committee that the nonprofit organization sponsors; and

(b) Contributions do not include contributions made to an out-of-state political committee, unless the contribution is earmarked or otherwise designated specifically for any in-state election campaign or political committee.

(6) The sources of the top (~~ten~~) 10 largest cumulative payments of (~~ten thousand dollars~~) \$15,000 or greater, as required to be reported on the C-8 report, must include:

(a) The top (~~ten~~) 10 sources of payments within the current calendar year through the applicable reporting period, including any changes to the top (~~ten~~) 10 sources from the previous reporting period; and

(b) The total cumulative payment value, within the current calendar year through the applicable reporting period, made from a person who is reported on the current report as a source of a top (~~ten~~) 10 payment.

(7) For purposes of reporting the sources of the top (~~ten~~) 10 largest cumulative payments of (~~ten thousand dollars~~) \$15,000 or greater, for payments received from multiple persons in an aggregated form, only a payment of more than (~~ten thousand dollars~~) \$15,000 from any single person must be reported, but not the aggregated payment to the nonprofit organization itself or through any intermediary aggregated payment.

(8) An incidental committee may request a modification or suspension of reporting requirements in cases of manifestly unreasonable hardship pursuant to RCW 42.17A.120, as set forth in chapter 390-28 WAC.

(9) Each incidental committee is automatically dissolved at the end of the calendar year in which it was registered, or upon completion of all reporting requirements for that year, whichever is later.

Dissolution does not absolve the nonprofit organization that registered as an incidental committee from responsibility for any obligations resulting from a finding before or after dissolution of a violation committed prior to dissolution. Dissolution in this context refers only to the termination of an incidental committee created to fulfill the nonprofit's reporting responsibilities under chapter 42.17A RCW, and is not intended to affect the legal status of the nonprofit organization itself.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 111. WSR 19-08-092, § 390-16-013, filed 4/3/19, effective 5/4/19.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-042 Debts and obligations—Contingent liabilities—How to report. (1) Pursuant to RCW 42.17A.240 and 42.17A.005, "promise," "promise to pay," "debt" and "obligations" mean:

(a) Any oral or written order or agreement placed for goods, services, or anything else of value;

(b) Any offer to purchase advertising space, broadcast time, or other written, broadcast, or digital advertising-related product or service;

(c) Any contractual contingent liability; or

(d) Provided that the amount of the debt or obligation in (a), (b), or (c) of this subsection owed to a vendor is more than (~~seven hundred fifty dollars~~) \$1,000, and the vendor has not been paid in full for the goods received, invoices submitted, or services performed within the time periods specified below:

(i) For reports due within (~~thirty~~) 30 days of an election, debts or obligations of more than (~~seven hundred fifty dollars~~) \$1,000 must be reported if the debt or obligation has been outstanding for more than five business days as of the last day of the reporting period.

(ii) For reports due during any other reporting period, debts or obligations of more than (~~seven hundred fifty dollars~~) \$1,000 must be reported if the debt or obligation has been outstanding for more than (~~ten~~) 10 business days as of the last day of the reporting period.

(2) A contractual contingent liability (e.g., an additional fee to be paid to a political consultant or other person conditioned upon the candidate winning the election) is reportable as a debt or obligation from the time the contract or agreement is entered into until the liability is voided, paid or otherwise satisfied.

(3) Regularly recurring expenditures, of the same type and same or similar amount that have been reported at least once, need not be reported as debt unless they are past due as of the last day of the reporting period. Examples of recurring obligations that can be reported as recurring expenditures rather than debt include rent, utilities, insurance, cellular phone costs, and payments to campaign staff.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-042, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, §

390-16-042, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17.370. WSR 89-20-068, § 390-16-042, filed 10/4/89, effective 11/4/89.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-043 Candidates and political committees—Public inspection of books of account. (1) RCW 42.17A.005 defines "books of account" for candidates and political committees as "a ledger or similar listing of contributions, expenditures, and debts, such as a campaign or committee is required to file regularly with the commission, current as of the most recent business day."

(2) RCW 42.17A.225 and 42.17A.235 require that candidates and political committees participating in an election as defined in RCW 42.17A.005, must make their books of account available for public inspection. The public inspection of books of account is not intended to be an exhaustive audit of all contributions received and expenditures made.

(3) Any individual who requests to publicly inspect the books of account of a candidate or political committee, must make the request during the period beginning (~~ten~~) 10 calendar days before a primary, general, or special election, by contacting the filer's email address listed on the C-1 report for a candidate, or the C-1pc report for a political committee.

(4) The inspection of the books of account may occur on weekdays, unless the treasurer for the candidate or committee agrees otherwise, beginning on the eighth day before the election, excluding legal holidays, for at least two consecutive hours between 9:00 a.m. and 5:00 p.m. at a location that is agreed upon by the treasurer and the individual requesting the inspection. If the treasurer and requestor are unable to agree on a location and the treasurer has not provided digital access to the books of account, the default location for an appointment must be a place of public accommodation selected by the treasurer within a reasonable distance from the treasurer's office. However, if the treasurer is located out-of-state, the default location must be within the state of Washington and reasonably accessible to both parties. The inspection must be allowed within (~~forty-eight~~) 48 hours of the date and time the request was made at the agreed-upon location, provided that if the request is not made by 3:00 p.m. on the third day preceding an election, the candidate or political committee need only make best efforts to accommodate the request.

(5) The treasurer for the candidate or committee may make the books of account available electronically, in lieu of scheduling an in-person inspection, or if a location cannot be agreed upon by both parties. If the campaign's only copy of its books of account is maintained electronically with security protections, the person requesting the inspection must be given sufficient instruction to allow the inspection to proceed.

(6) The books of account, ledger and other supporting documentation must be maintained by the treasurer and kept current within one business day. The books of account of a candidate or political committee include the following: A ledger, spreadsheet, or similar listing of contributions, expenditures, loans, debts and obligations to sub-

stantiate the information disclosed on the PDC campaign finance reports. The books of account must include the underlying source documents such as receipts, invoices, copies of contribution checks, copies of canceled checks for expenditures, digital transactions, notes, or other documentation concerning expenditures, orders placed, and loans. The campaign or committee is not required to provide the name and address of contributors who gave (~~twenty-five dollars~~) \$100 or less in the aggregate in total contributions.

(7) The candidate or political committee is not required to make copies of its books of account for the requestor. Videorecording, photographing, or photocopying of the records is not required to be permitted but may be agreed to by both parties during or in advance of the inspection.

(8) At the time of making the appointment, the person requesting to inspect the books of account must provide the name(s) and contact information for all individuals who will be in attendance for the inspection. The requestor(s) must show photo identification prior to the inspection beginning, and the candidate or political committee may deny the inspection from occurring if photo identification is not provided.

(9) The records required by this section must be available for audit or examination by the PDC at any time upon request from the PDC.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-043, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-043, filed 11/30/18, effective 12/31/18.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-058 Independent expenditure—Definition and application. (1) "Independent expenditure," as that term is used in chapter 42.17A RCW, other than RCW 42.17A.255, and as used in these rules, means an "expenditure" as defined in RCW 42.17A.005 that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for public office subject to the filing requirements in chapter 42.17A RCW, by a person who is not:

(i) A candidate for that office;
(ii) An authorized committee of that candidate for that office;
(iii) A person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office.

(b) It is made in support of any or in opposition to a candidate for office by a person with whom the candidate has not collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(c) The expenditure pays in whole or in part for any political advertising that either specifically names the candidate supported or

opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name;

(d) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of (~~one thousand dollars~~) \$2,000 or more. A series of expenditures, each of which is under (~~one thousand dollars~~) \$2,000, constitutes one independent expenditure if their cumulative value is (~~one thousand dollars~~) \$2,000 or more; and

(e) The expenditure is not a contribution as defined in RCW 42.17A.005 and provided in WAC 390-05-210.

(2) Exempt activities. The following activities are not considered independent expenditures for purposes of RCW 42.17A.255, 42.17A.630, or 42.17A.320:

(a) Ordinary home hospitality;

(b) A news item, feature, commentary, or editorial, or communications with journalists or editorial staff designed to elicit the same, in a regularly scheduled news medium that is of interest to the public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(c) Participation in the creation of a publicly funded voters' pamphlet statement in written or video form;

(d) An internal political communication primarily limited to:

(i) The members of or contributors to a political party organization or political committee;

(ii) The officers, management staff, or stockholders of a corporation or similar enterprise; or

(iii) The members of a labor organization or other membership organization.

(e) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or the property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally assessed must be reported as an in-kind contribution at its fair market value and counts toward any applicable contribution limit of the person providing the facility; or

(f) The rendering of personal services of the sort commonly performed by volunteer campaign workers or incidental expenses personally incurred by volunteer campaign workers not in excess of (~~two hundred fifty dollars~~) \$350 personally paid by the worker.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-058, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-058, filed 11/30/18, effective 12/31/18.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-059 Electioneering communication reporting threshold.

(1) A "sponsor" of an electioneering communication is defined in RCW 42.17A.005.

(2) For the purposes of RCW 42.17A.005, an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

- (a) Identifies the same candidate in one or more communications satisfying RCW 42.17A.005 (21) (a) (i) and (ii) or these rules;
- (b) Is made by the same sponsor of one or more of the communications;
- (c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the (~~sixty~~) 60 days before an election, has a fair market or aggregate value of (~~one thousand dollars~~) \$2,000 or more; and
- (d) Is not a communication excluded from the meaning of "expenditure" under RCW 42.17A.005 or by these rules.
- (3) When the communications (including radio, television, electronic, mailings, billboards, newspapers, online, or periodicals) reach the (~~one thousand dollar~~) \$2,000 threshold, the sponsor must report to the commission as required by RCW 42.17A.305 within (~~twenty-four~~) 24 hours of, or on the first working day after, the date the communication is first broadcast, transmitted electronically, erected, distributed, published online or by other media, or otherwise presented to the public.
- (4) Once the (~~one thousand dollar~~) \$2,000 threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW 42.17A.305 and this rule.
- (5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the (~~one thousand dollar~~) \$2,000 threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.
- (6) Consistent with WAC 390-16-060 and the requirements of the PDC C-6 Report, a prorated portion of independent expenditure and electioneering communications expenditures must be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration must be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-059, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-059, filed 11/30/18, effective 12/31/18.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing. (1) RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of chapter 42.17A RCW to disclose an independent expenditure of (~~one hundred dollars~~) \$1,000 or more that supports or opposes a candidate or ballot measure. RCW 42.17A.260 requires the disclosure of political advertising with a fair market value of (~~one thousand dollars~~) \$2,000 or more that is presented to the public within (~~twenty-one~~) 21 days of an election, that supports or opposes a ballot proposition, or that

qualifies as an independent expenditure and supports or opposes a candidate.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of \$3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is \$2,400 (75%) and the candidate's pro rata share is \$800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs \$1,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is \$1,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed, including the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

(c) **Other applications of prorating and attributing independent expenditures.** Use the prorating and attribution steps explained in (a)(i) and (ii) of this section to determine when an independent expenditure as defined in RCW 42.17A.005 must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320 and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW 42.17A.225, 42.17A.235 and 42.17A.240 is exempt from providing on a C-6 form the sources of any funds received by the committee for an electioneering communication, unless the committee received funds that were earmarked or otherwise designated for the communication.

(3) An out-of-state political committee must report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication as defined in RCW 42.17A.005.

(4) The sponsor of an electioneering communication must report pursuant to RCW 42.17A.305 and these rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17A.005 or 42.17A.255. Persons in compliance with this subsection are deemed in compliance with RCW 42.17A.255 or 42.17A.260.

(5) Any person making an expenditure that is reportable under RCW 42.17A.640, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17A.005, must file pursuant to RCW 42.17A.305 and these rules regarding electioneering communications.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-063, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-063, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110(1). WSR 14-12-012, § 390-16-063, filed 5/22/14, effective 6/22/14. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-063, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-16-063, filed 5/23/06, effective 6/23/06.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-105 Mini campaign reporting—Eligibility. (1) A candidate or candidate's authorized committee, as those terms are defined in the act and these rules, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed (~~five thousand dollars~~) \$7,000; and

(b) No contribution or contributions from any person other than the candidate exceed (~~five hundred dollars~~) \$500 in the aggregate. However, a bona fide political party may pay the candidate's filing fee provided by law without that payment disqualifying that candidate from eligibility under this section.

(2) A political committee, as that term is defined in RCW 42.17A.005, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures exceed (~~five thousand dollars~~) \$7,000; and

(b) No contribution or contributions from any person exceed (~~five hundred dollars~~) \$500 in the aggregate.

(3) A continuing political committee, as that term is defined in the act and these rules, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures during a calendar year exceed (~~five thousand dollars~~) \$7,000; and

(b) No contribution or contributions from any person exceed (~~five hundred dollars~~) \$500 in the aggregate.

(4) A candidate or political committee that exceeds one or both of the thresholds set out in either subsection (1), (2), or (3) of this section after registering as a mini reporting campaign will no longer qualify for the mini reporting option and must comply with the provisions of chapter 42.17A RCW including, but not limited to, disclosure of contributions and expenditures, disclosure of last minute contributions, applicable contribution limits, false political advertising, sponsor identification, and public inspection of campaign books of account.

(5) Candidates and political committees eligible for mini campaign reporting are required to comply with all applicable provisions of chapter 42.17A RCW including, but not limited to, false political advertising, sponsor identification, and public inspection of campaign books of account unless specifically exempted under subsections (1) through (3) of this section.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-105, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-105, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110(8). WSR 14-12-010, § 390-16-105, filed 5/22/14, effective 6/22/14. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-105, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 (1) and (8). WSR 08-01-058, § 390-16-105, filed 12/14/07, effective 1/14/08. Statutory Authority: RCW 42.17.370. WSR 05-11-001, § 390-16-105, filed 5/4/05, effective 6/4/05. Statutory Authority: RCW 42.17.370(1). WSR 02-03-018, § 390-16-105, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 42.17.370. WSR 01-10-050, § 390-16-105, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-16-105, filed 2/5/86; Order 91, § 390-16-105, filed 7/22/77; Order 62, § 390-16-105, filed 8/26/75.]

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-226 Loans. (1) Only loans which are recorded in a written loan agreement executed at the time of the loan and properly reported may be repaid by a candidate or political committee. Surplus campaign funds under RCW 42.17A.005 and 42.17A.430 may only be used to return a contribution to the candidate if the contribution was properly reported as a loan from the candidate, as described in subsections (2) and (3).

(2) If any person gives or loans the candidate funds in connection with his or her campaign, the funds are not considered personal funds of the candidate. See WAC 390-17-305. Such funds are considered a contribution from the original source of the contribution under chapter 42.17A RCW and, unless the loan meets the exemption provided in RCW 42.17A.465(3) and this subsection, the contribution is subject to the contribution limits provided in chapter 42.17A RCW, as adjusted by WAC 390-05-400.

(a) If a candidate or candidate's own political committee or campaign or authorized committee receives a loan from a commercial lending institution, the loan is exempt from the contribution limits of

RCW 42.17A.405 and WAC 390-16-310, as adjusted by WAC 390-05-400, only if all the following criteria are met:

- (i) The loan is not guaranteed by any other person;
 - (ii) The loan is made in the regular course of business; and,
 - (iii) The loan is made on the same terms ordinarily available to the public.
- (b) A commercial loan to a candidate's own committee or campaign or authorized committee is presumed to be guaranteed by the candidate. The presumption is rebuttable by clear, cogent and convincing evidence.
- (3) The amount of campaign contributions which may be used to repay a loan made by the candidate to the candidate's own political committee or campaign, or to repay a commercial loan to a candidate's own political committee or campaign where the candidate is the borrower or guarantor, is limited to the loan repayment limit in RCW 42.17A.445(3) as adjusted by WAC 390-05-400. For purposes of the loan repayment limit, these loans are aggregated for each primary, general, special or recall election and must be designated accordingly by the candidate at the time the loan is made.
- (4) If a candidate makes documented out-of-pocket campaign expenditures on behalf of their campaign expecting repayment (not intending to make an in-kind contribution), the campaign committee must repay the candidate within (~~twenty-one~~) 21 days of the expenditure or the candidate will be deemed to have made a loan to his or her campaign committee which must qualify for repayment under subsections (1) and (2) in order for the candidate to be repaid. Undocumented out-of-pocket campaign expenditures by the candidate are in-kind contributions not eligible for repayment.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-226, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-226, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 02-03-018, § 390-16-226, filed 1/4/02, effective 2/4/02; WSR 00-22-056, § 390-16-226, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-16-226, filed 7/30/93, effective 8/30/93.]

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-236 Surplus funds accounts—Disclosure. (1) Registering a surplus funds account.

(a) Any person who opens an account into which surplus funds will be deposited shall register the account by filing PDC Form C-1, Candidate Registration with the commission. The committee name on the C-1 will be the name used by the campaign committee that raised the surplus funds followed by the designation, "surplus funds account." The C-1 must identify by name the treasurer of the account and the bank or depository where the account is held.

(b) The C-1 must be filed within two weeks after the date the account is opened.

(2) Depositing surplus funds.

(a) After a surplus funds account is established, a candidate may deposit into the account all surplus funds from subsequent campaigns.

(b) Only surplus funds may be deposited in a surplus funds account.

(c) A candidate who deposits surplus funds into a surplus funds account discloses an expenditure of campaign funds with the description "transfer to surplus funds account," the amount transferred, and the date the transfer occurred.

(3) Reporting surplus funds expenditures.

(a) The treasurer shall file with the commission a report on the (~~tenth~~) 10th day of each month detailing expenditures made in the preceding calendar month. This report need only be filed if the total expenditures made since the last such report exceeded (~~two hundred dollars~~) \$750. The report shall be on PDC Form C-4, Campaign Summary Receipt & Expenditures.

(b) The treasurer shall file reports as required by (a) of this subsection until the account is closed, at which time a final report shall be filed.

(c) All reports filed disclosing expenditures from the surplus funds account shall be certified as correct by the treasurer.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-236, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.240(11). WSR 17-01-160, § 390-16-236, filed 12/21/16, effective 1/21/17.]

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-245 Pledges. (1) "Pledge," as that term is used in the act and these rules, means a promise to make a future contribution. A pledge shall not be made or redeemed within (~~twenty-one~~) 21 days of an election specified in RCW 42.17A.420 if the amount of the pledge or redemption exceeds the maximum amount provided in RCW 42.17A.420, as adjusted by WAC 390-05-400. However, if payment of a pledge is in the possession of the recipient (~~twenty-two~~) 22 or more days before the election, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17A.220.

(2) If a pledge is made in an election campaign subject to the contribution limits provided in RCW 42.17A.405 and 42.17A.410, as adjusted by WAC 390-05-400:

(a) Except as provided in WAC 390-17-302, a pledge made with respect to the primary election shall not be made or redeemed after the date of the primary; however, if the payment of a pledge is made on or before the date of the primary, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17A.220; and

(b) A pledge made with respect to the general election shall not be made or redeemed after the final day of the applicable election cycle; however, if the payment of a pledge is made on or before the final day of the election cycle, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17A.220.

(3) During the time limit specified in RCW 42.17A.560, a state official or a person employed by or acting on behalf of a state official shall not solicit or accept a pledge or the redemption of a pledge for any purpose specified in RCW 42.17A.560.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-245, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-245, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-12-033, § 390-16-245, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.390. WSR 94-07-141, § 390-16-245, filed 3/23/94, effective 4/23/94.]

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-309 Identification of affiliated entities. (1) Two or more entities are treated as a single person and share one contribution limit under RCW 42.17A.405 and 42.17A.410, as adjusted by WAC 390-05-400, if one of the entities is:

(a) A corporation and the other is a subsidiary, branch or division of the corporation;

(b) A national or international labor union, or state body of such national or international labor union, and the other is a local union or other subordinate organization of such national or international labor union or state body;

(c) A trade association or state body of such trade association and the other is a branch or local unit of such trade association;

(d) A national or state collective bargaining organization and the other is a branch or local unit of such national or state collective bargaining organization;

(e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation;

(f) A membership organization and the other is a local unit or branch of such membership organization;

(g) Any entity referenced in (a) through (f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW 42.17A.405 and 42.17A.410, two entities shall not be treated as a single entity solely because one of the entities is a dues paying member of the other entity.

(3) In addition to subsection (1) of this section, two or more entities shall be treated as one entity and share a contribution limit under RCW 42.17A.405 and 42.17A.410, as adjusted by WAC 390-05-400, if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one or more of the following factors:

(a) Whether one entity owns a controlling interest in the voting stock or securities of another entity; or

(b) Whether one entity has authority or the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a

vote as a member, the officers or other decision making employees or members of another entity; or

(c) Whether (i) one entity has a common or overlapping membership with another which indicates either a formal or ongoing relationship between the two organizations or the creation of a successor entity; and (ii) the entity has an active or significant role in the formation of the other entity; and (iii) the entities have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the entities; or

(d) Whether one entity provides, causes or arranges, funds, services or goods in a significant amount or on an ongoing basis, through direct or indirect means to the other entity, for less than full consideration. Full consideration includes the payment of membership dues.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-309, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-309, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 10-20-012, § 390-16-309, filed 9/24/10, effective 10/25/10. Statutory Authority: RCW 42.17.390. WSR 94-11-016, § 390-16-309, filed 5/5/94, effective 6/5/94.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-310 Limitations on contributions. The limitations on contributions as provided in RCW 42.17A.420, 42.17A.405, and 42.17A.410, as adjusted by WAC 390-05-400, are as follows:

(1) (a) The limitation on contributions in RCW 42.17A.405 or 42.17A.410, as adjusted by WAC 390-05-400, do not apply to a "candidate" as that term is defined in RCW 42.17A.005 when the candidate is contributing to the candidate's own campaign using the candidate's own personal funds as defined in WAC 390-17-305.

(b) The limitation on contributions in RCW 42.17A.420, 42.17A.405, or 42.17A.410, as adjusted by WAC 390-05-400, apply to contributions to the candidate from the candidate's spouse, domestic partner or other immediate family members.

(2) Contributions by spouses are considered separate contributions. Contributions by domestic partners are considered separate contributions.

(3) Emancipated minor children (children under 18 years of age) may make contributions which do not exceed the limitations on contributions and the contribution is properly attributed to the emancipated minor child if:

(a) The decision to contribute is made knowingly and voluntarily by the emancipated minor child;

(b) The funds, goods, or services contributed are owned or controlled exclusively by the emancipated minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

Contributions by emancipated minor children which do not meet these requirements and contributions by unemancipated minor children will be considered contributions by the child's parents. Fifty percent of the contributions will be attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to that parent.

(4) Contributions from a business organized as a sole proprietorship and contributions from the owner of the sole proprietorship must be aggregated for purposes of determining the limitations of contributions under RCW 42.17A.420, 42.17A.405, or 42.17A.410, as adjusted by WAC 390-05-400.

(5) The limitations on contributions apply separately to the contributions made by a partnership, limited liability partnership and limited liability corporation from the contributions made by an individual partner or member. However, contributions made from or charged against the capital account of an individual partner, or member of a limited liability partnership or limited liability corporation must be aggregated with the partner's or member's individual contributions for purposes of determining the limitations on contributions under RCW 42.17A.420, 42.17A.405, or 42.17A.410, as adjusted by WAC 390-05-400.

(6) The limitations on contributions in RCW 42.17A.420, 42.17A.405, and 42.17A.410, as adjusted by WAC 390-05-400, apply separately to the contributions made by an entity (corporation, subsidiary or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units and other organizations and their local units) unless the criteria in RCW 42.17A.455 and WAC 390-16-309 are met.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-310, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-310, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-310, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 09-09-126, § 390-16-310, filed 4/22/09, effective 5/23/09; WSR 05-06-070, § 390-16-310, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 42.17.370(1). WSR 96-05-001, § 390-16-310, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.390. WSR 94-11-016, § 390-16-310, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-16-310, filed 7/30/93, effective 8/30/93; WSR 92-05-079, § 390-16-310, filed 2/18/92, effective 3/20/92; WSR 90-20-088, § 390-16-310, filed 9/28/90, effective 10/29/90.]

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-312 Handling contributions of uncertain origin. No contribution shall be deposited by any candidate or treasurer who believes, from the face of the contribution instrument or for any other reason, the contribution was made in a fictitious name, by one person through an agent, relative, political committee, or any other person so as to conceal the source of the contribution or to exceed the contribution limits provided in RCW 42.17A.420, 42.17A.405, or 42.17A.410, as adjusted by WAC 390-05-400, or otherwise violate the

act. The candidate or treasurer shall return such contributions within (~~ten~~) 10 days to the original contributor if his or her identity is known. Otherwise, the contribution instrument shall be endorsed and made payable to "Washington state treasurer" and the contribution sent to the commission for deposit in the state's general fund.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-312, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 17-03-028, § 390-16-312, filed 1/6/17, effective 2/6/17; WSR 12-03-002, § 390-16-312, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-16-312, filed 7/30/93, effective 8/30/93; WSR 91-14-041, § 390-16-312, filed 6/27/91, effective 7/28/91.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

- WAC 390-16-320 Candidates in small political subdivisions—Reporting.** (1) As provided in RCW 42.17A.200 and 42.17A.135(7), a candidate for election in any political subdivision must fully report if the candidate receives (~~five thousand dollars~~) \$7,000 or more in contributions or expects to receive (~~five thousand dollars~~) \$7,000 or more in contributions during an election cycle.
- (2) It is presumed the candidate "expects to receive" (~~five thousand dollars~~) \$7,000 or more when any one of the following first occurs:
- (a) The candidate or candidate's authorized committee receives at least (~~five thousand dollars~~) \$7,000 in aggregate contributions, including contributions from the candidate;
- (b) The candidate is seeking the same office last sought, the candidate's election is in the current calendar year, and the candidate's campaign contributions in the previous election for the same office were (~~five thousand dollars~~) \$7,000 or more in the aggregate;
- (c) The contributions received on or before March 31st of the election year total (~~one thousand two hundred fifty dollars~~) \$1,250 or more;
- (d) The contributions received on or before June 30th of the election year total (~~two thousand five hundred dollars~~) \$2,500 or more;
- (e) The contributions received on or before September 30th of the election year total (~~three thousand seven hundred fifty dollars~~) \$3,750 or more; or
- (f) The candidate otherwise anticipates that (~~five thousand dollars~~) \$7,000 or more will be received during the election cycle.
- (3) Surplus funds carried over from a candidate's previous campaign are not contributions to the candidate's new campaign and do not count toward the (~~five thousand dollars~~) \$7,000 reporting threshold.
- (4) A candidate or candidate's authorized committee that receives, or expects to receive, (~~five thousand dollars~~) \$7,000 or more must:
- (a) Within two weeks of the date the reporting obligation begins under subsection (1) or (2) of this section, file:
- (i) A candidate registration, PDC C-1 Report;

- (ii) A personal financial affairs statement, PDC F1 Report and, if relevant, the F1 Supplement; and
- (iii) Contribution and expenditure reports, PDC C3 and C4 reports with appropriate attachments and schedules; and
- (b) Otherwise comply with the campaign finance reporting and other provisions of chapter 42.17A RCW and Title 390 WAC.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-320, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-320, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-320, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-08-044, § 390-16-320, filed 3/28/07, effective 4/28/07.]

OTS-4395.1

AMENDATORY SECTION (Amending WSR 12-01-047, filed 12/14/11, effective 1/14/12)

- WAC 390-17-315 Political committees—Qualifications to contribute.** (1) Within (~~one hundred eighty~~) 180 days of making a contribution to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official, a political committee shall have received contributions of \$10 or more each from at least (~~ten~~) 10 individuals registered to vote in Washington state.
- (2) A political committee shall have received contributions of (~~\$10~~) \$25 or more each from at least (~~ten~~) 10 individuals registered to vote in Washington state before contributing to a Washington state political committee.
- (3) A political committee shall maintain a list of the names and addresses of these registered voters from whom contributions are received, the amount of each contribution, and the date each contribution is received. Upon written request of the commission or other person seeking this information, the political committee shall provide the list within (~~fourteen~~) 14 days.

[Statutory Authority: RCW 42.17.130 and 42.17.093. WSR 12-01-047, § 390-17-315, filed 12/14/11, effective 1/14/12. Statutory Authority: RCW 42.17.370. WSR 07-07-005, § 390-17-315, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW 42.17.370(1). WSR 02-03-018, § 390-17-315, filed 1/4/02, effective 2/4/02; WSR 96-05-001, § 390-17-315, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.390. WSR 94-07-141, § 390-17-315, filed 3/23/94, effective 4/23/94. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-17-315, filed 7/30/93, effective 8/30/93.]

OTS-4396.1

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-18-010 Sponsor identification of advertising, political advertising, electioneering communications, and independent expenditures. (1) For the purposes of chapter 42.17A RCW and Title 390 WAC:

(a) "Sponsor of political advertising, electioneering communication, or independent expenditure" is, as used in the act and in these rules, and defined in RCW 42.17A.005.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, independent expenditures that are for political advertising, or electioneering communications, subject to the provisions of chapter 42.17A RCW and as defined in RCW 42.17A.005 or 42.17A.255.

(2) All advertising must clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). Additional requirements apply for the following:

(a) Political committees that sponsor political advertising costing or having a fair market value of (~~one thousand dollars~~) \$2,000 or more supporting or opposing a ballot proposition must clearly identify the "top five contributors" to that political committee, as well as the "top three donors" of all political committees identified as a "top five contributor," pursuant to WAC 390-18-025.

(b) Advertising undertaken as an independent expenditure or electioneering communication must comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors," as well as the "top three donors" to political committee contributors, and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17A.320.

(c) Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to identify the "top five contributors" to that political committee, as well as the "top three donors" to political committee contributors. This requirement does not apply to bona fide political parties sponsoring independent expenditures.

(3) Required sponsor identification must be displayed in printed advertisements:

(a) In an area set apart from other printed matter;

(b) On the first page or fold of advertising consisting of more than one page that is intended to be presented as a single item (e.g., 3-page letter with return envelope). Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient;

(c) By respective sponsor on advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously.

(4) Required sponsor identification must be clearly identified or spoken in advertising on radio, by telephone, or on television.

(5) Required sponsor identification must be clearly identified, spoken or displayed on advertising on websites, social media and other

digital communication. Political committee websites and other online forums created by a political committee must include sponsor identification.

(6) With advertising for which no payment is demanded or for which a cost or fair market value is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed, disseminated or broadcast.

(7) If more than one person sponsors specific advertising, the identity of each sponsor must be identified. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor, provided the contribution is not earmarked for the advertising and is reported in accordance with applicable provisions of chapter 42.17A RCW and Title 390 WAC.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-010, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-010, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-015, § 390-18-010, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 11-05-051, § 390-18-010, filed 2/10/11, effective 3/13/11. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-010, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370. WSR 03-12-034, § 390-18-010, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.370(1). WSR 00-22-055, § 390-18-010, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-18-010, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-18-010, filed 7/9/85.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-18-025 Advertising—Identification of "top five contributors" and "top three donors to PAC contributors." Sponsors must identify the "top five contributors" when required to be included in political advertising, as provided in WAC 390-18-010. When the "top five contributor" list includes one or more political committees, the sponsor must further identify and separately include in the advertisement the collective "top three donors to PAC contributors" to all such political committees. This section explains how the sponsor should identify such "top three donors to PAC contributors."

(1) For purposes of RCW 42.17A.320, "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions of (~~one thousand dollars~~) \$2,000 or more during the (~~twelve~~) 12-month period preceding the date on which the advertisement is published or otherwise presented to the public. The sponsor may calculate the (~~twelve~~) 12-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation. If more than five contribu-

tors give an amount equal to the largest aggregate contribution exceeding the threshold value and the funds are received during the relevant (~~twelve~~) 12-month period, the political committee sponsoring the advertisement must select five of these contributors to identify as the top five contributors.

(2) (a) If a political committee keeps records necessary to track contributions used according to the use intended by its contributors, that committee may identify the top contributions to the advertisement, as opposed to identifying the overall top five contributors to the committee, if such identified contributors made contributions that were intended and actually used to pay for the advertisement.

(b) For purposes for identifying the top five contributors, the sponsor should not include contributions earmarked, tracked, and used for purposes other than paying for the advertisement. However, if a sponsor uses a contributor's contributions earmarked for advertising for a different candidate or slate of candidates than the candidate or candidates intended by the contributor, the sponsor must include such contribution in determining the "top five contributors" of the actual advertisement for which the contribution was used.

(3) For purposes of RCW 42.17A.350 "top three donors to PAC contributors" means the three individuals or entities, other than political committees, who gave the largest aggregate contributions to one or more political committee listed as a "top five contributor," totaling (~~one thousand dollars~~) \$2,000 or more during the (~~twelve~~) 12-month period preceding the date on which the advertisement was published or otherwise presented to the public. The sponsor may calculate the (~~twelve~~) 12-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation.

(a) If any of the contributors to a "top five" political committee is itself a political committee, the sponsor must identify the top three contributors to that political committee. Such process continues until the sponsor has identified the top three nonpolitical committee contributors for each "top five" political committees. If more than three contributors to a "top five" political committee have given an amount equal to the largest aggregate contribution, the sponsor may select three of these contributors to identify as the "top three donors to PAC contributors."

(b) If there is more than one political committee identified as a "top five contributor," the sponsor must identify the top three nonpolitical committee contributors to each "top five" political committee, and then determine the "top three donors to PAC contributors" collectively from that list.

(c) The sponsor should not include contributions to a "top five" political committee contributor for purposes of identifying the "top three donors to PAC contributors" if both:

(i) The contribution to the "top five" committee was reported as an earmarked contribution for a purpose other than the advertisement in question; and

(ii) The "top five" committee has provided written verification to the sponsor before the initial publication or public presentation of the advertisement, confirming that such contribution was tracked and used for such other purpose.

(4) For purposes of determining the "top three donors to PAC contributors," the sponsor must make reasonable efforts to identify the contributions made to a political committee. Reasonable efforts in-

clude searching through reports of contributions filed with the commission or any other state, as well as requests made to any political committee that has not disclosed its contributions to the commission or in any other state. After making reasonable efforts, the sponsor may reasonably rely on the information reported to the commission, and will not be liable for any omission or miscalculation because a contribution to any "top five" political committee has not been reported to the commission.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-025, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-025, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-015, § 390-18-025, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-025, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-08-044, § 390-18-025, filed 3/28/07, effective 4/28/07. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-025, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 02-12-007, § 390-18-025, filed 5/23/02, effective 6/23/02.]

WSR 23-12-037
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 30, 2023, 2:21 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department of children, youth, and families is amending these WAC to align with SSB 5729 (2022), which allows for a good cause exception for missed deadlines when requesting an administrative hearing for public assistance cases.

Citation of Rules Affected by this Order: Amending WAC 110-03-0020, 110-03-0040, 110-03-0260, 110-15-0280, 110-50-0590, and 110-80-0400.

Statutory Authority for Adoption: RCW 74.08.080 and 74.09.741.

Adopted under notice filed as WSR 23-09-073 on April 19, 2023.

Changes Other than Editing from Proposed to Adopted Version: In WAC 110-50-0590(2), the reference to WAC 110-03-0050 was changed to chapter 110-03 WAC.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

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

Date Adopted: May 30, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4477.1

AMENDATORY SECTION (Amending WSR 22-22-004, filed 10/20/22, effective 11/20/22)

WAC 110-03-0020 Definitions. The following definitions apply to this chapter:

"Adjudicative proceeding" means a proceeding in which an opportunity for a hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of a DCYF action. Hearings and prehearing conferences are elements of adjudicative proceedings. An adjudicative proceeding may take place before the office of administrative hearings (OAH) and may also encompass review proceedings before a DCYF board of appeals (BOA) review judge.

"Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an adjudicative proceeding resulting in an initial order, or resulting in a final order if no ap-

peal of the initial order is properly made or if no further agency appeal is available.

"Adverse action" or "DCYF action" or "department action" means licensing, the enforcement of a statute, the application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

"Board of appeals" or "BOA" means the DCYF board of appeals, the entity to which an initial order of an ALJ may be appealed and considered by a review judge.

"Business days" means all days except for Saturdays, Sundays, federal legal holidays, and state legal holidays listed in RCW 1.16.050(1).

"Business hours" means 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

"Calendar days" means all days including Saturdays, Sundays, federal legal holidays, and state legal holidays as listed in RCW 1.16.050(1).

"Case" means the entire adjudicative proceeding following the filing of a request for hearing with OAH.

"Continuance" means a change to a later date or time of a pre-hearing conference, hearing, or deadline for other action.

"DCYF" or "department" means the department of children, youth, and families.

"DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

"Documents" means papers, letters, writings, or other printed or written items.

"Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present, as provided in RCW 34.05.455. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

"File" means delivering documents to OAH or the BOA at the location designated in this chapter or in a notice or order received from OAH or the BOA. The date of filing is the date documents are actually received during office hours by OAH or the BOA.

(a) Filing may be by:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax transmission, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service; or

(v) Legal messenger service.

(b) A party cannot file documents by email, unless agreed in advance by OAH or BOA.

"Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order. However, in the case of administrative proceedings related to juvenile parole revocation or subsidy overpayments to child care providers, the ALJ's decision is the final administrative decision.

"Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules. An ALJ or review judge may use the provi-

sions of superior court civil rule 60 as a guide to determine what may be considered good cause.

For purposes of public assistance cases, good cause has the same meaning as described in RCW 74.08.080. Good cause for not requesting a hearing before the deadline may include, but is not limited to: Military deployment, medical reasons, housing instability, language barriers, or domestic violence.

"Hearing" means a meeting held before OAH or a review judge that gives an aggrieved party an opportunity to be heard, for the purpose of deciding issues of fact or law, in a dispute resulting from an appealable action taken against the party by DCYF.

"Initial order" is a decision made by an ALJ that may be reviewed by a review judge at any party's request.

"Judicial review" means a superior court's review of a final order.

"Limited-English-proficient person" or "LEP" means a person with limited ability to read, write, or speak English well enough to understand and communicate effectively.

"OAH" means the office of administrative hearings. This is a separate agency and not part of DCYF.

"Party" means DCYF or a person or entity named in a department action, or to whom a department action is directed.

"Prehearing conference" means a meeting scheduled and conducted by an ALJ in preparation for a hearing.

"Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF offices and divisions.

"Public assistance" means public assistance as defined in RCW 74.04.004.

"Reconsideration" means reexamination of a final order on request of a party because the party believes a mistake was made.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Representative" means the person selected by a party to represent that party in an administrative hearing. A representative may be an attorney or a lay representative who is not an attorney.

"Review" means the act of reevaluating an initial order by examining the record and issuing the DCYF final order as provided by RCW 34.05.464.

"Review judge" or "BOA review judge" means an attorney designated by the DCYF board of appeals to act as the reviewing officer and who is authorized to review ALJ initial orders and to prepare and enter the final order.

"Rule" means a state agency regulation found in the Washington Administrative Code (WAC).

"Serve" or "service" means a procedure by which notice of legal action is given to a party.

(a) Unless otherwise stated in law or rule, a party may serve another party by one of the following methods:

- (i) Personal service (hand delivery);
- (ii) First class, registered, or certified mail;
- (iii) Fax, if the party also mails a copy of the document the same day;
- (iv) Commercial delivery service;
- (v) Legal messenger service; or

- (vi) By any other method authorized by chapter 10-08 WAC.
- (b) Service for each method, respectively, is complete when:
- (i) Personal service is made;
- (ii) Mail is properly stamped, addressed, and deposited in the United States mail;
- (iii) Fax produces proof of transmission;
- (iv) A parcel is delivered to a commercial delivery service with charges prepaid; or
- (v) A parcel is delivered to a legal messenger service with charges prepaid.
- (c) A party cannot serve documents by email, unless agreed in advance by the receiving party.
- (d) Notice and orders served by mail by OAH or BOA are served on the date of mailing.
- "Stay" means an order temporarily halting the effective date of a DCYF action.

[Statutory Authority: RCW 13.40.220, WSR 22-22-004, § 110-03-0020, filed 10/20/22, effective 11/20/22. Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0020, filed 12/19/19, effective 1/19/20.]

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing to appeal an action by DCYF only if a law or DCYF rule expressly gives that right and a hearing is requested in a timely manner. Except for public assistance cases, there is no good cause exception to the requirement to timely request a hearing. For public assistance cases, if an applicant or recipient does not file a request for a hearing within 90 calendar days after receiving notice of an aggrieving decision, the request may still be filed within one year of the aggrieving decision upon a showing of good cause.

(2) Some DCYF programs may require a party to complete an agency review process before requesting a hearing. The notice of DCYF action that DCYF sends a party will include information about this requirement.

(3) A party has a specific, limited time to request a hearing. The deadline for the request is set by statute or department rule. In cases where the department sends a notice of DCYF action, information about how, where, and when to request a hearing will be provided in the notice.

(4) A challenge to an appealable DCYF action is heard in an administrative hearing by an ALJ employed by OAH. Not all DCYF actions may be challenged through the hearing process.

(5) If a party properly requests a hearing that is authorized under subsection (1) of this section, OAH will schedule a hearing and serve written notice of it on the parties.

(6) If DCYF or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0040, filed 12/19/19, effective 1/19/20.]

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0260 Failure to timely request a hearing, orders of dismissal, and orders of default. (1) A party's failure to request a hearing (~~(or)~~) to challenge a DCYF action within the time limit required by statute or rule results in the action becoming final and the loss of any right to a hearing. A final order resulting from a party's failure to timely request a hearing may not be vacated. Except for public assistance cases, there is no good cause exception (~~(for failing)~~) to the requirement to timely request a hearing. For public assistance cases, if an applicant or recipient does not file a request for a hearing within 90 calendar days after receiving notice of an aggrieved decision, the request may still be filed within one year of the aggrieved decision upon a showing of good cause.

(2) An order of dismissal served on the parties and their representatives by an ALJ to end an adjudicative proceeding may be based on withdrawal of the hearing request by the appealing party, the appealing party's failure to appear or refusal to meaningfully participate in the proceedings, a request for dismissal based on a written agreement between the parties, or a request for dismissal made by DCYF.

(a) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to meaningfully participate, the DCYF action becomes the final agency action.

(b) If the hearing is dismissed pursuant to a written agreement between the parties, the parties must comply with the agreement.

(3) (a) If an appealing party fails to attend or refuses to meaningfully participate in a scheduled prehearing conference or hearing, an order of default may be entered.

(b) The order of default will include notice that the party against whom the default order was entered may file a written motion requesting that the order be vacated and the hearing reinstated.

(c) An order of default becomes a final order dismissing the appealing party's request for a hearing if the appealing party does not file a motion to vacate the default order within (~~(twenty-one)~~) 21 calendar days of the date the order was served on the parties as provided under WAC 110-03-0270.

(d) After an order of default becomes a final order, the DCYF action will remain in effect and will be the final agency action.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0260, filed 12/19/19, effective 1/19/20.]

OTS-4478.2

AMENDATORY SECTION (Amending WSR 22-01-076, filed 12/10/21, effective 1/10/22)

WAC 110-15-0280 Right to request an administrative hearing. (1) **Consumers:** Consumers who disagree with DCYF's decisions affecting their WCCC benefits have administrative hearing rights under chapter 110-03 WAC.

(a) Consumers' requests for hearing:

(i) May be made by contacting DCYF in-person, by telephone, or by serving DCYF with written requests that are also filed with the office of administrative hearings (OAH) as described in WAC 110-03-0060 and 110-03-0080.

(ii) Must include the information and documents described in WAC 110-03-0050(2), if requests are made in writing.

(iii) Must be made within 90 calendar days of the date the consumers received the decisions being appealed, unless good cause for a late request can be established under chapter 110-03 WAC.

(b) After completing the administrative hearings, OAH issues initial orders pursuant to WAC 110-03-0460 and 110-03-0480. Consumers who disagree with initial orders may request reviews as provided in WAC 110-03-0510 through 110-03-0550.

(c) When consumers request reviews of the initial orders, review judges issue final orders after considering the requests for review, initial orders, and hearing records. Consumers who disagree with final orders may request reconsiderations as provided in WAC 110-03-0570 through 110-03-0580 or seek judicial reviews as described in WAC 110-03-0590.

(2) **Providers:** Child care providers who disagree with WCCC overpayment decisions may request administrative hearings pursuant to RCW 43.20B.675.

(a) To request administrative hearings, child care providers must:

(i) Make their hearing requests in writing and include the information and documents described in RCW 43.20B.675(3) including, but not limited to, copies of the overpayment notices and statements explaining why they believe the overpayment notices are incorrect; and

(ii) Serve the hearing requests on the Department of Social and Health Services, Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501, using certified mail return receipt requested or other manner that provides proof of receipt within 28 calendar days of the date they received the overpayment notices being appealed.

(b) After completing the administrative hearings, OAH will issue final orders. Child care providers who disagree with final orders may request reconsideration. Providers may also seek judicial review of final orders.

[Statutory Authority: RCW 34.05.229 and 43.216.065. WSR 22-01-076, § 110-15-0280, filed 12/10/21, effective 1/10/22. WSR 18-14-078, recodified as § 110-15-0280, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0280, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0280, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0280, filed 10/28/09, effective 12/1/09.]

OTS-4517.2

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-50-0590 How does the foster parent appeal the department's decision on review? (1) If the department upholds the rate assessment on review, the foster parent has the right to further challenge the assessment by timely requesting an administrative hearing.

(2) The request must be in writing and sent to the office of administrative hearings (OAH) (~~(. WAC 388-02-0025 lists the current addresses for OAH)~~), per chapter 110-03 WAC.

(3) The request must be received by OAH within (~~(twenty)~~) 90 calendar days from the date of the letter notifying the foster parent of the department's decision on review, unless good cause for a late request can be established under chapter 110-03 WAC.

(4) Foster care providers and recipients of foster care funds do not have a right to request an administrative hearing to challenge or dispute the established rates of the foster care program or to challenge the foster care rate assessment standardized form or program.

[WSR 18-14-078, recodified as § 110-50-0590, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0077, filed 7/28/09, effective 8/28/09.]

OTS-4479.2

AMENDATORY SECTION (Amending WSR 20-04-019, filed 1/27/20, effective 2/27/20)

WAC 110-80-0400 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues? (1) An adoptive parent has the right to an administrative hearing to contest the following department actions:

(a) Denial of a child's initial eligibility for the adoption support program or the adoption support reconsideration program;

(b) Failure to respond with reasonable promptness to a written application or request for services;

(c) Denial of a written request to modify the level of payment or service in the agreement;

(d) Delay of more than (~~(thirty)~~) 30 calendar days when responding to a written request for modification of the agreement;

(e) Denial of a request for nonrecurring adoption expenses;

(f) Suspension of adoption support benefits; or

(g) Termination from the program.

(2) To initiate the appeal, the adoptive parent must submit a request for an administrative hearing to the office of administrative hearings within (~~(ninety)~~) 90 calendar days of receipt of the department's decision to deny a request, to suspend or terminate adoption support, or failure to respond to a request, unless good cause for a late request can be established under chapter 110-03 WAC.

(3) The office of administrative hearings must apply the rules in this chapter as they pertain to the issues being contested.

[Statutory Authority: 2017 c 6. WSR 20-04-019, § 110-80-0400, filed 1/27/20, effective 2/27/20. WSR 18-14-078, recodified as § 110-80-0400, filed 6/29/18, effective 7/1/18. Statutory Authority: 42 U.S.C. § 671-675, RCW 26.33.340, 74.13A.020, 74.13A.030, 74.13A.040, 74.13A.045, 74.13A.047, 74.13A.060, 74.13A.075, 74.13A.085, 74.13A.100, 74.15.020, 45 C.F.R. § 1356.40 and RCW 74.13A.050, 74.13A.055. WSR 01-08-045, § 388-27-0365, filed 3/30/01, effective 4/30/01.]

WSR 23-12-038
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 30, 2023, 2:24 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: Adjust copayment amounts for families above 50 percent and at or below 60 percent of the state median income from \$115 to \$165, as required under RCW 43.216.1368.

Citation of Rules Affected by this Order: Amending WAC 110-15-0075.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Adopted under notice filed as WSR 23-09-074 on April 19, 2023.

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

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

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

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

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

Date Adopted: May 30, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4480.1

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0075 Determining income eligibility and copayment amounts. (1) DCYF takes the following steps to determine consumers' eligibility and copayments, when care is provided under a WCCC voucher or contract:

(a) Determine their family size as described in WAC 110-15-0015; and

(b) Determine their countable income as described in WAC 110-15-0065.

(2) DCYF calculates consumers' copayments as follows:

Table with 2 columns: If the household's income is: and Then the household's maximum monthly copayment is:
Row 1: At or below 20 percent of the SMI, Waived

If the household's income is:	Then the household's maximum monthly copayment is:
Above 20 percent and at or below 36 percent of the SMI	\$65
Above 36 percent and at or below 50 percent of the SMI	\$90
Above 50 percent and at or below 60 percent of the SMI	(\$115) <u>\$165</u>
At reapplication, above 60 percent and at or below 65 percent of the SMI	\$215

(3) DCYF does not prorate copayments when consumers use care for only part of a month.

(4) For parents age 21 years or younger who attend high school or are working towards completing a high school equivalency certificate, copayments are not required.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0075, filed 2/3/22, effective 3/6/22. Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 21-01-180, § 110-15-0075, filed 12/21/20, effective 1/21/21. WSR 18-14-078, recodified as § 110-15-0075, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0075, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0075, filed 10/5/12, effective 11/5/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0075, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0075, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0075, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0075, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-14-067, § 388-290-0075, filed 6/27/02, effective 8/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0075, filed 12/19/01, effective 1/19/02.]

WSR 23-12-039
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 30, 2023, 2:29 p.m., effective June 30, 2023]

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

Purpose: The proposed new rule clarifies who is eligible to receive support from the department for trauma-informed child care and how recipients may use the trauma-informed care supports. The anticipated effect is that child care [centers] will be better positioned to screen for and assess the needs of children in their care, better compensate staff who have early childhood mental health or other department-approved credentials, access trauma-informed care professional development and training, and access supportive services for children with complex needs.

Citation of Rules Affected by this Order: New WAC 110-15-0211.

Statutory Authority for Adoption: RCW 43.216.590.

Adopted under notice filed as WSR 23-08-061 on April 3, 2023.

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

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

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

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

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

Date Adopted: May 30, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4270.2

NEW SECTION

WAC 110-15-0211 Trauma-informed care supports. (1) Subject to available funds, DCYF will provide trauma-informed care support to aid eligible providers. For the purposes of this section, "eligible providers" means:

(a) An employee or owner of a licensed or certified child care center or outdoor nature-based program that accepts WCCC or SCC payments;

(b) An employee or owner of a licensed family home child care provider that accepts WCCC or SCC payments;

(c) A contractor or provider of the early childhood education and assistance program or birth to three early childhood education and assistance program;

(d) A license-exempt family, friends, and neighbors (FFN) provider accepting subsidy; or

(e) An early achievers coach.

(2) Trauma-informed care supports may be used by eligible providers for the following purposes:

(a) Additional compensation for individual staff who have a DCYF-approved infant and early childhood mental health credential or other DCYF-approved child development specialty credential;

(b) The purchase of screening tools, assessment materials, and relevant training associated with the use of such screening tools and assessment materials;

(c) Trauma-informed professional development and training;

(d) Supportive services for children with complex needs that are offered as fee-for-service within local communities; or

(e) Other expenses related to trauma-informed care.

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WSR 23-12-044

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 21-01—Filed May 31, 2023, 8:06 a.m., effective July 1, 2023]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: In June 2022, the Washington state department of ecology (ecology) submitted the Regulatory Determinations Report to the legislature, as directed by RCW 70A.350.050 (1)(b). During the 2023 session, the legislature had the opportunity to review the report and provide additional directions to ecology. The 2023 legislative session ended on April 23, 2023, and the legislature did not direct ecology to amend the Regulatory Determinations Report. Therefore, the regulatory actions took effect and ecology adopted rules implementing the regulatory actions, as directed by RCW 70A.350.050 (1)(c).

Purpose: On May 31, 2023, ecology adopted new chapter 173-337 WAC, Safer products restrictions and reporting. This new chapter establishes a regulatory program to reduce toxic chemicals in consumer products and increase product ingredient transparency, as directed by chapter 70A.350 RCW. Consumers use hundreds of items every day, many of which contain chemicals that are hazardous to human health and the environment. Ecology adopted a new rule to regulate hazardous chemicals in consumer products.

The adopted rule:

- Implements regulatory actions reported to the Washington state legislature in June 2022.
- Creates reporting requirements and restrictions for manufacturers, distributors, and retailers of priority consumer products that contain priority chemicals. These include:
 - o Per- and polyfluoroalkyl substances in aftermarket stain- and water-resistance treatments, carpets and rugs, and leather and textile furnishings.
 - o Ortho-phthalates in vinyl flooring and in personal care product fragrances.
 - o Organohalogen flame retardants in electric and electronic products.
 - o Flame retardants (as defined in RCW 70A.350.010) in recreational polyurethane foam.
 - o Phenolic compounds in laundry detergent, food and drink can linings, and thermal paper.
- Addresses existing stock, repair and replacement parts, refurbished products, and previously owned products.

Citation of Rules Affected by this Order: New chapter 173-337 WAC, Safer products restrictions and reporting.

Statutory Authority for Adoption: Chapter 70A.350 RCW, Toxic pollution.

Adopted under notice filed as WSR 22-24-107 on December 7, 2022.

Changes Other than Editing from Proposed to Adopted Version: Minor changes to the proposed rule filed on December 7, 2022 in WSR 22-24-107:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

- To facilitate effective program implementation.

To review the changes and reasons for making them, see the concise explanatory statement available on the safer products for Washington rule-making web page.

A final cost-benefit analysis is available by contacting Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-584-5661, for Washington relay service or TTY call 711 or 877-833-6341, email saferproductswa@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/summarypages/2304032.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 17, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 31, 2023.

Laura Watson
Director

OTS-4159.3

**Chapter 173-337 WAC
SAFER PRODUCTS RESTRICTIONS AND REPORTING**

PART A - GENERAL

NEW SECTION

WAC 173-337-010 Authority and purpose. (1) **Authority.** Chapter 70A.350 Revised Code of Washington (RCW) authorizes ecology to:

- (a) Implement, administer, and enforce chapter 70A.350 RCW.
- (b) Regulate priority chemicals in priority consumer products.

(2) **Purpose.** This chapter implements chapter 70A.350 RCW.

- (a) This chapter provides a regulatory framework to:

(i) Reduce the use of priority chemicals in priority consumer products by establishing restrictions.

(ii) Increase transparency in product ingredients by requiring notification of priority chemicals in priority consumer products.

(b) This chapter establishes:

(i) Actions applicable persons must take related to manufacturing, distributing, or selling or offering to sell (including, but not limited to, wholesale, online, or retail) priority consumer products containing priority chemicals in and into Washington state.

(ii) The enforcement process ecology will use if manufacturers fail to comply with this chapter.

[]

NEW SECTION

WAC 173-337-015 Applicability. (1) This chapter applies to any person who manufactures, distributes, or sells or offers to sell a priority consumer product that contains a priority chemical in or into Washington state.

(2) This chapter does **not** apply to:

(a) Consumer products excluded from chapter 70A.350 RCW.

(b) Consumer products transported or stored in Washington state solely for sale or distribution to consumers outside of Washington state.

(c) The recycling or disposal of existing stock.

[]

NEW SECTION

WAC 173-337-020 Requesting an exemption. (1) A person required to comply with this chapter may request an exemption from the requirements of this chapter.

(2) Ecology will use objective factors including, but not limited to, the following, when evaluating exemption requests.

(a) The priority chemical is functionally necessary to the priority consumer product and there is no alternative.

(b) It is **not** currently possible to comply with the restriction and comply with another legally imposed requirement.

(c) An unforeseen event or circumstance limited the availability of alternatives.

(3) A person seeking exemption from the requirements of this chapter must submit a request to ecology that includes the following information.

(a) Your name and address.

(b) Requirements in this chapter from which you request an exemption.

(c) A statement of the need and justification for the exemption. Include information, data, or sources relevant to the need and justification.

(4) A person who submits a request for exemption must make the following certification:

"I certify under penalty of perjury under the law of Washington that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry as the person or one of the persons who manage(s) the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

(5) A person who satisfies the requirements in subsections (3) and (4) of this section is temporarily exempt from the requirements from which they requested an exemption until ecology makes a decision on their request.

(6) A person adversely affected by ecology's initial decision about a request for exemption from the requirements of this chapter may request review of that decision by the ecology director or their designee. Ecology's final decision is **not** subject to further administrative review.

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NEW SECTION

WAC 173-337-025 Acronyms and definitions. Unless ecology determines the context requires otherwise, the following definitions apply for the purposes of this chapter.

"Bisphenol" means a chemical with two phenol rings connected by a single linker atom. The linker atom and phenol rings may have additional substituents.

"Chemical abstracts service registry number" or **"CAS RN"** means the number assigned for identification of a particular chemical by the chemical abstracts service, a service of the American Chemical Society that indexes and compiles abstracts of worldwide chemical literature called *chemical abstracts*.

"Consumer product" means any item, including any component parts and packaging, sold for residential or commercial use.

"Ecology" means the Washington state department of ecology.

"Electronic display" means a display screen and associated electronics that, as its primary function, displays visual information from wired or wireless sources.

"Environmental justice" means the term as defined in chapter 70A.02 RCW.

"Existing stock" means consumer products in commerce at the time a restriction takes effect.

"External enclosures" means the external part of the finished product that renders inaccessible all or any parts of the equipment that may otherwise present a risk of electric shock, or retards propagation of flame initiated by electrical disturbances occurring within, or both.

"FDA" means the United States Food and Drug Administration.

"Flame retardant" means a chemical that is added to or reacted with a material to effectively retard flames. Chemicals used in the product to provide anti-drip function are **not** flame retardants if other chemicals are explicitly used for the purpose of flame retardancy.

"Inaccessible electronic component" means a part or component of an electronic product that is located inside and entirely enclosed within another material and is **not** capable of coming out of the product or being accessed during any reasonably foreseeable use or abuse of the product.

"Intended for indoor use" means a product **not** "intended for outdoor use" as defined in this chapter.

"Intended for outdoor use" means a product designed for use in an outdoor setting and to maintain functionality after exposure to ultraviolet (UV) light, exposure to water, or immersion.

"Intentionally added priority chemical" or **"intentionally added"** means a chemical that serves an intended function in the final product or in the manufacturing of the product or part of the product. Chemicals present from the use of recycled materials are **not** considered "intentionally added priority chemicals."

"Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product or is an importer or domestic distributor of a product sold or offered for sale in or into the state.

"Organohalogen" means a class of chemicals that includes any chemical containing one or more halogen elements bonded to a carbon.

"Ortho-phthalates" means synthetic chemical esters of benzenedicarboxylic acid consisting of two carboxy groups at ortho positions.

"Overburdened community" means the term as defined in chapter 70A.02 RCW.

"Perfluoroalkyl and polyfluoroalkyl substances" or **"PFAS"** means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

"Phenolic compounds" means alkylphenol ethoxylates and bisphenols.

"ppm" means parts per million.

"Previously owned product" means a priority consumer product owned by an end user or consumer, regardless of whether that end user purchased the product.

"Priority chemical" means a chemical or chemical class identified by ecology as a priority chemical under chapter 70A.350 RCW, or a chemical or chemical class identified in chapter 70A.350 RCW, or both.

"Priority consumer product" means a product identified by ecology to be a significant source or use of a priority chemical.

"RCW" means the Revised Code of Washington.

"Sell" or **"offering to sell"** includes, but is not limited to, wholesale, online, and retail.

"Sensitive population" means the term as defined in chapter 70A.350 RCW.

"Thermal paper" means a paper coated with a material formulated to change color when exposed to heat.

"TMBPF" means tetramethyl bisphenol F (CAS RN: 5384-21-4).

"U.S.C." means the United States Code.

"WAC" means the Washington Administrative Code.

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NEW SECTION

WAC 173-337-030 Enforcement and penalties. (1) Any violation of this chapter is subject to the enforcement and penalty sanctions of chapter 70A.350 RCW.

(2) In accordance with chapter 70A.350 RCW:

(a) A manufacturer violating a requirement of this chapter is subject to a civil penalty **not** to exceed \$5,000 for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty **not** to exceed \$10,000 for each repeat offense.

(b) A manufacturer may appeal any penalty provided for in this chapter to the pollution control hearings board.

(c) All penalties collected under this chapter shall be deposited in the model toxics control operating account created in RCW 70A.305.180.

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NEW SECTION

WAC 173-337-035 Severability. If any provision of this chapter or its application to any person is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is **not** affected.

[]

NEW SECTION

WAC 173-337-040 Federal preemption. (1) This section applies if either of the following federal regulatory actions occurs after the effective date of this chapter.

(a) The U.S. Environmental Protection Agency takes an action under the Toxic Substances Control Act, 15 U.S.C. Secs. 2601 through 2697, that preempts pursuant to 15 U.S.C. Sec. 2617 the enforcement of a restriction imposed by this chapter on a priority chemical in a priority consumer product.

(b) The U.S. Consumer Product Safety Commission takes an action under the Consumer Product Safety Act, 15 U.S.C. Secs. 2051 through 2089, or the Federal Hazardous Substances Act, 15 U.S.C. Secs. 1261 through 1278a, that preempts pursuant to 15 U.S.C. Sec. 2075 or 15 U.S.C. Sec. 1261 note "Effect Upon Federal and State Law" at

(b) (1) (B), the enforcement of a restriction imposed by this chapter on a priority chemical in a priority consumer product.

(2) If either of the preemptive federal regulatory actions described in subsection (1) of this section occurs, manufacturers will, starting on the date of the relevant federal agency action, be subject to the requirements of WAC 173-337-060 regarding the affected priority chemical in the affected priority consumer product, instead of the restriction imposed by this chapter.

[]

NEW SECTION

WAC 173-337-045 Relation to other laws and rules. In addition to the requirements of this chapter and chapter 70A.350 RCW, other laws, rules, and ordinances may apply to priority consumer products containing priority chemicals. Nothing in this chapter is intended to excuse persons regulated by this chapter from complying with other laws, rules, ordinances, procedures, restrictions, or limitations on regulated consumer products.

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NEW SECTION

WAC 173-337-050 Equity and environmental justice. (1) To strengthen the integration of equity and environmental justice considerations when implementing, administering, and enforcing chapter 70A.350 RCW, ecology will, to the extent legal and practical:

(a) Strive to collaborate and co-develop approaches to equitable and meaningful community engagement with overburdened communities, sensitive populations, tribes and indigenous communities, and others.

(b) Pursue processes that facilitate and support the inclusion of overburdened communities and reduce barriers in equitable participation.

Examples of barriers and needs include child care, food costs, the Americans with Disabilities Act (ADA) and other accessibility needs, and compensation for lived experience and expertise.

Examples of how community input may inform decision-making include determining:

- Preliminary priority chemicals, priority consumer products, and preliminary alternatives.

- Rule requirements.

- Compliance approach.

(c) Use existing data and information to document potential exposure disparities when identifying priority chemicals and priority consumer products. Examples of data and information include peer-reviewed scientific studies, government reports and data, demographic information, market-based research, and other sources reviewed by ecology.

(d) Prioritize chemicals and consumer products where regulatory actions may reduce disproportionate exposure.

(e) Work toward equitable access to safer consumer products. This includes, but is not limited to, considering overburdened communities and low-income populations' ability to access safer consumer products.

(2) Ecology will refer to guidance from relevant authorities including, but not limited to:

(a) Title VI of the Civil Rights Act 1964, 42 U.S.C. Sec. 2000D et seq.

(b) Chapter 70A.02 RCW - Environmental justice.

(c) Chapter 43.03.220 RCW - Compensation of members of part-time boards and commissions—Class one groups.

(d) The Washington state office of equity.

(e) Ecology's office of equity and environmental justice.

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NEW SECTION**WAC 173-337-055 Previously owned priority consumer products.**

(1) No person may sell or distribute a previously owned priority consumer product that they know violates a restriction in this chapter.

(2) This does **not** apply to a:

(a) Priority consumer product manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114, even if the priority consumer product was refurbished after the effective date of the restriction.

(b) Repair part or replacement part that was made to refurbish a priority consumer product that was manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114.

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NEW SECTION**WAC 173-337-060 Reporting requirements. (1) Applicability.**

(a) This section applies to a manufacturer of a priority consumer product required to submit a notification to ecology, as listed in WAC 173-337-110, 173-337-112, and 173-337-114. This chapter refers to the person submitting the notification as the "reporting party."

(b) The manufacturer of the priority consumer product or a trade organization representing the manufacturer may serve as the reporting party.

(c) **Reporting party.** The following hierarchy determines which person or entity ecology will hold primarily responsible for ensuring that ecology receives a complete, accurate, and timely notification.

(i) The person or entity that had the priority consumer product manufactured unless it has **no** presence in the United States.

(ii) The person or entity that marketed the priority consumer product under their name or trademark unless it has **no** presence in the United States.

(iii) The first person or entity, whether an importer or a distributor, who owned the priority consumer product in the United States.

(d) This chapter requires only one reporting party to submit notification with respect to a particular priority consumer product.

(2) Timing.

(a) The reporting party must submit a notification to ecology:

(i) By January 31st of the year after the effective date of the reporting requirement, as listed in WAC 173-337-110, 173-337-112, and 173-337-114.

(ii) Annually thereafter by January 31st.

(b) The reporting party may submit a revised notification to ecology when a priority consumer product **no** longer contains an intentionally added priority chemical.

(3) Notification contents.

(a) The notification must include information about a priority consumer product containing an intentionally added priority chemical, that is sold or offered for sale in Washington state during the prior calendar year.

(b) The notification must include the following information.

(i) The name and CAS RN of the priority chemical that is intentionally added. If the priority chemical has a CAS RN, the notification must include it. If the priority chemical does **not** have a CAS RN, then include the generic name of the chemical.

(ii) The product category or product categories that contain the priority chemical. The product category means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that serve a common purpose, are of a similar form and material, and share the same set of category attributes.

(iii) The product component within the product category that contains the priority chemical. The product component means a uniquely identifiable material or coating (including ink or dye) that is intended to be included as a part of a finished priority consumer product.

(iv) A description of the function of the priority chemical.

(v) The concentration range of each intentionally added priority chemical in each product component in each product category. The reporting party may report the concentration in ranges rather than the exact concentration. If there are multiple concentrations for a given product component in a particular product category, the reporting party must report the highest concentration.

The reporting ranges are:

(A) Less than 100 ppm (0.01%).

(B) Equal to or more than 100 ppm (0.01%), but less than 500 ppm (0.05%).

(C) Equal to or more than 500 ppm (0.05%), but less than 1,000 ppm (0.1%).

(D) Equal to or more than 1,000 ppm (0.1%), but less than 5,000 ppm (0.5%).

(E) Equal to or more than 5,000 ppm (0.5%), but less than 10,000 ppm (1.0%).

(F) Equal to or more than 10,000 ppm (1.0%).

(vi) **Contact information.**

(A) The name and address of the reporting party.

(B) The name, address, phone number, and electronic mail address of the contact person for the reporting party.

(C) When a trade organization serves as the reporting party, the notification must include a list of the manufacturers they report for and all the required information.

(D) Which option in the hierarchy in subsection (1)(c) of this section best represents the reporting party.

(vii) Any other information the reporting party deems relevant to the appropriate use of the product.

(4) If the reporting party determines the information in the prior annual notification did **not** change in the current reporting year, they must resubmit the data from the previous year's notification.

(5) This chapter does **not** require the reporting party to include:

(a) Specific formulations.

(b) The specific name and address of the facility responsible for the use or addition of a priority chemical in the priority consumer product or product component.

(6) **Notification database.** The reporting party must use an ecology-designated notification database to submit the required notification to ecology.

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NEW SECTION

WAC 173-337-065 Confidential business information (CBI). A person who submits information to ecology may request that ecology treat that information as confidential as provided in RCW 43.21A.160 by providing appropriate documentation supporting the request.

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PART B - CHEMICALS AND CONSUMER PRODUCTSNEW SECTION

WAC 173-337-110 PFAS. (1) Aftermarket stain- and water-resistance treatments.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Aftermarket stain-resistant treatments for application to textile and leather consumer products.

(B) Aftermarket water-resistant treatments for application to textile and leather consumer products.

(C) Aftermarket stain-resistant and water-resistant treatments for application to textile and leather consumer products.

(ii) This subsection does **not** apply to premarket topical chemical treatments applied during the manufacturing process.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(2) **Carpets and rugs.**

(a) **Applicability.** Priority consumer products. This subsection applies to:

(i) Carpets intended for indoor use or intended for outdoor use.

(ii) Rugs intended for indoor use or intended for outdoor use, including carpeted mats.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before January 1, 2025, even if the priority consumer product was refurbished after January 1, 2025.

(B) Repair part or replacement part that was made to refurbish a priority consumer product described in (a) of this subsection that was manufactured before January 1, 2025.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(3) **Leather and textile furniture and furnishings intended for indoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to leather and textile furniture and furnishings intended for indoor use.

(ii) This subsection does **not** apply to:

(A) Leather and textile furniture and furnishings intended for outdoor use.

(B) Leather and textiles sold separately and **not** part of furniture and furnishings.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2026.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before January 1, 2026, even if the priority consumer product was refurbished after January 1, 2026.

(B) Repair part or replacement part that was made to refurbish a priority consumer product described in (a) of this subsection that was manufactured before January 1, 2026.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(4) **Leather and textile furniture and furnishings intended for outdoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to leather and textile furniture and furnishings intended for outdoor use.

(ii) This subsection does **not** apply to:

(A) Leather and textile furniture and furnishings intended for indoor use.

(B) Leather and textiles sold separately and **not** part of furniture and furnishings.

(b) **Compliance schedule.**

(i) The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(ii) The reporting party must submit a notification to ecology in accordance with WAC 173-337-060:

(A) By January 31, 2025.

(B) Annually thereafter by January 31st.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains intentionally added PFAS. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

[]

NEW SECTION

WAC 173-337-111 Ortho-phthalates. (1) Fragrances in beauty products and personal care products.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Fragrances sold separately, such as perfumes and colognes.

(B) Fragrances used in beauty products, regardless of whether the item contains drug ingredients regulated by the FDA.

(C) Fragrances used in personal care products, regardless of whether the item contains drug ingredients regulated by the FDA.

(ii) This subsection does **not** apply to:

(A) Ortho-phthalates used in beauty products or personal care products for purposes other than as a solvent or fixative for fragrances.

(B) Active ingredients in products regulated by the FDA as drugs.

(C) Consumer products regulated by the FDA as medical devices.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains an intentionally added ortho-phthalate used as a solvent or fixative for fragrance ingredients.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of ortho-phthalates **not** listed in the ingredients, indicates the intentional addition of ortho-phthalates as solvents or fixatives for fragrance ingredients.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that an ortho-phthalate was **not** intentionally added as a solvent or fixative. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an ortho-phthalate was **not** intentionally added.

(2) **Vinyl flooring.**

(a) **Applicability.** Priority consumer products. This subsection applies to vinyl flooring.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains more than 1,000 ppm of any ortho-phthalate, individually or combined.

This does **not** apply to a:

(i) Priority consumer product described in (a) of this subsection manufactured before January 1, 2025, even if the priority consumer product was refurbished after January 1, 2025.

(ii) Repair part or replacement part that was made to refurbish a priority consumer product described in (a) of this subsection that was manufactured before January 1, 2025.

[]

NEW SECTION

WAC 173-337-112 Flame retardants. (1) Electric and electronic products with plastic external enclosures, intended for indoor use.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to electric and electronic products with plastic external enclosures, intended for indoor use that are powered by either of the following.

(A) Standard 120-volt outlets and designed for up to 20-amp circuit.

(B) Battery.

(ii) This subsection does **not** apply to:

(A) Electric and electronic products with plastic external enclosures, intended for outdoor use.

(B) Consumer products that receive power only when they are hard-wired into and permanently part of the fixed electrical wiring of a building. This includes wiring devices, control devices, electrical distribution equipment, lighting equipment, sensors, dimmers, controllers, and life safety systems and devices.

(C) Consumer products regulated by the FDA as medical devices.

(D) Consumer products designed to use nonelectric heating energy sources, such as natural gas.

(iii) This subsection does **not** apply to the following parts of the priority consumer products described in (a) of this subsection.

(A) Inaccessible electronic component, such as printed circuit boards and internal fans.

(B) Internal parts that are removable and replaceable, but not accessible once the finished product is in its fully assembled and functional form.

(C) Plastic external enclosure parts that weigh less than 0.5 grams.

(D) Screens, but this subsection does apply to the plastic external enclosure surrounding the screen.

(E) Wires, cords, cables, switches, light bulbs, and connectors.

(b) **Compliance schedule.**

(i) Group definitions.

(A) "**Group 1**" means a person or entity whose worldwide gross sales equal or exceed \$1,000,000,000 in 2022.

(B) "**Group 2**" means a person or entity whose worldwide gross sales are less than \$1,000,000,000 in 2022.

(ii) Electronic displays and televisions compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2025, for persons or entities in Group 1 or Group 2 who manufacture, sell, or distribute:

- Electronic displays described in (a) of this subsection.

- Televisions described in (a) of this subsection.

(B) The compliance schedule in (b)(ii) of this subsection does **not** apply to the following priority consumer products.

- All-in-one video conference systems.

- Displays that are integrated with appliances and are not available for purchase as separate products by end-users.

- Displays with a screen area smaller than or equal to 100 square centimeters or 15.5 square inches.

- Projectors.

- Virtual reality headsets.

(iii) Group 1 compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2027, for persons or entities in Group 1 who manufacture, sell, or distribute a priority consumer product described in (a) of this subsection. The compliance schedule in (b)(iii) of this subsection applies to:

- All-in-one video conference systems.

- Displays that are integrated with appliances and are not available for purchase as separate products by end-users.

- Displays with a screen area smaller than or equal to 100 square centimeters or 15.5 square inches.

- Projectors.

- Virtual reality headsets.

(B) The compliance schedule in (b)(iii) of this subsection does **not** apply to the following priority consumer products described in (a) of this subsection.

- Electronic displays described in (a) of this subsection.

- Televisions described in (a) of this subsection.

(iv) Group 2 compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2028, for persons or entities in Group 2 who manufacture, sell, or distribute a priority consumer product described in (a) of this subsection. The compliance schedule in (b)(iv) of this subsection applies to:

- All-in-one video conference systems.

- Displays that are integrated with appliances and are not available for purchase as separate products by end-users.
- Displays with a screen area smaller than or equal to 100 square centimeters or 15.5 square inches.
- Projectors.
- Virtual reality headsets.

(B) The compliance schedule in (b)(iv) of this subsection does **not** apply to the following priority consumer products described in (a) of this subsection.

- Electronic displays described in (a) of this subsection.
- Televisions described in (a) of this subsection.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that has a plastic external enclosure that contains intentionally added organohalogen flame retardants.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before the applicable compliance schedules in (b) of this subsection, even if the priority consumer product was refurbished after the applicable compliance schedules in (b) of this subsection.

(B) Repair part or replacement part that was made to refurbish a priority consumer product described in (a) of this subsection that was manufactured before the applicable compliance schedules in (b) of this subsection.

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm with less than 5,000 ppm total phosphorus in the homogeneous material indicate intentionally added organohalogen flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that an organohalogen flame retardant was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant was **not** intentionally added.

(2) **Electric and electronic products with plastic external enclosures, intended for outdoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to electric and electronic products with plastic external enclosures, intended for outdoor use that are powered by either of the following.

(A) Standard 120-volt outlets and designed for up to 20-amp circuit.

(B) Battery.

(ii) This subsection does **not** apply to:

(A) Electric and electronic products with plastic external enclosures, intended for indoor use.

(B) Consumer products that receive power only when they are hard-wired into and permanently part of the fixed electrical wiring of a building. This includes wiring devices, control devices, electrical

distribution equipment, lighting equipment, sensors, dimmers, controllers, and life safety systems and devices.

(C) Consumer products regulated by the FDA as medical devices.

(D) Consumer products designed to use nonelectric heating energy sources, such as natural gas.

(iii) This subsection does **not** apply to the following parts of the priority consumer products described in (a) of this subsection.

(A) Inaccessible electronic component, such as printed circuit boards and internal fans.

(B) Internal parts that are removable and replaceable, but **not** accessible once the finished product is in its fully assembled and functional form.

(C) Plastic external enclosure parts that weigh less than 0.5 grams.

(D) Screens, but this subsection does apply to the plastic external enclosure surrounding the screen.

(E) Wires, cords, cables, switches, light bulbs, and connectors.

(b) **Compliance schedule.**

(i) The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(ii) The reporting party must submit a notification to ecology in accordance with WAC 173-337-060:

(A) By January 31, 2025.

(B) Annually thereafter by January 31st.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains an intentionally added organohalogen flame retardant. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm with less than 5,000 ppm total phosphorus in the homogeneous material indicate intentionally added organohalogen flame retardants.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that an organohalogen flame retardant was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant was **not** intentionally added.

(3) **Recreational covered wall padding made from polyurethane foam.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to recreational covered wall padding made from polyurethane foam.

(ii) This subsection does **not** apply to the priority consumer products listed in subsection (4)(a)(i) of this section.

(b) **Compliance schedule.**

(i) The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(ii) The reporting party must submit a notification to ecology in accordance with WAC 173-337-060:

(A) By January 31, 2025.

(B) Annually thereafter by January 31st.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains an intentionally added priority chemical listed in (c)(i) of this subsection. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Priority chemicals.

(A) Organohalogen flame retardant.

(B) The following organophosphate flame retardants.

• Ethylhexyl diphenyl phosphate (EHDPP, CAS RN: 1241-94-7).

• Isopropylated triphenyl phosphate (IPTPP, CAS RN: 68937-41-7).

• Tributyl phosphate (TNBP, CAS RN: 126-73-8).

• Triorthocresyl phosphate (TCP, CAS RN: 1330-78-5).

• Triphenyl phosphate (TPP, CAS RN: 115-86-6).

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(D) Organophosphate flame retardants listed in (c)(i) of this subsection (individual or combined) at concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organophosphate flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that an organohalogen flame retardant or an organophosphate flame retardant listed in (c)(i) of this subsection, was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant or an organophosphate flame retardant was **not** intentionally added.

(4) **Other recreational products made from polyurethane foam.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Recreational covered flooring made from polyurethane foam.

(B) Recreational covered mats made from polyurethane foam.

(C) Outdoor recreational products made from polyurethane foam.

(D) Uncovered recreational products made from polyurethane foam.

(ii) This subsection does **not** apply to:

(A) Recreational covered wall padding made from polyurethane foam.

(B) Outdoor playground equipment.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains an intentionally added priority chemical listed in (c)(i) of this subsection, individually or combined.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(i) Priority chemicals.

(A) Organohalogen flame retardant.

(B) The following organophosphate flame retardants.

- Ethylhexyl diphenyl phosphate (EHDPP, CAS RN: 1241-94-7).
- Isopropylated triphenyl phosphate (IPTPP, CAS RN: 68937-41-7).
- Tributyl phosphate (TNBP, CAS RN: 126-73-8).
- Triorthocresyl phosphate (TCP, CAS RN: 1330-78-5).
- Triphenyl phosphate (TPP, CAS RN: 115-86-6).

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organohalogen flame retardants.

(D) Organophosphate flame retardants listed in (c)(i) of this subsection (individual or combined) at concentrations above 1,000 ppm in the homogeneous material indicate intentionally added organophosphate flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that an organohalogen flame retardant or an organophosphate flame retardant listed in (c)(i) of this subsection, was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant or an organophosphate flame retardant was **not** intentionally added.

[]

NEW SECTION

WAC 173-337-113 Alkylphenol ethoxylates. Laundry detergent.

(1) **Applicability.** Priority consumer products. This subsection applies to laundry detergent.

(2) **Compliance schedule.** The restriction in subsection (3) of this section takes effect on January 1, 2025.

(3) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in subsection (1) of this section that contains more than 1,000 ppm of any alkylphenol ethoxylates, individually or combined.

This does **not** apply to a priority consumer product described in subsection (1) of this section manufactured before January 1, 2025.

[]

NEW SECTION

WAC 173-337-114 Bisphenols. (1) Drink cans.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to drink cans.

(ii) This subsection does **not** apply to food cans.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains a bisphenol-based epoxy can liner, excluding TMBPF-based epoxy can liners.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of a bisphenol, excluding TMBPF, indicates a bisphenol-based epoxy can liner.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that the priority consumer product does **not** contain a bisphenol-based epoxy can liner. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that the priority consumer product does **not** contain a bisphenol-based epoxy can liner.

(2) **Food cans.**(a) **Applicability.**

(i) Priority consumer products. This subsection applies to food cans.

(ii) This subsection does **not** apply to drink cans.

(b) **Compliance schedule.**

(i) The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(ii) The reporting party must submit a notification to ecology in accordance with WAC 173-337-060:

(A) By January 31, 2025.

(B) Annually thereafter by January 31st.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains a bisphenol-based epoxy can liner. This does **not** include TMBPF-based epoxy can liners.

The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of a bisphenol, excluding TMBPF, indicates a bisphenol-based epoxy can liner.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that the priority consumer product does **not** contain a bisphenol-based epoxy can liner. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that the priority consumer product does **not** contain a bisphenol-based epoxy can liner.

(3) **Thermal paper.**(a) **Applicability.**

(i) Priority consumer products. This subsection applies to thermal paper.

(ii) This subsection does **not** apply to consumer products regulated by the FDA as medical devices.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2026.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added bisphenols.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2026.

(ii) Ecology presumes the detection of bisphenol concentrations above 200 ppm indicate intentionally added bisphenols.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that a bisphenol was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that a bisphenol was **not** intentionally added.

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WSR 23-12-051
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-02—Filed June 1, 2023, 1:26 p.m., effective July 2, 2023]

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

Purpose: This rule amendment reclassifies the American white pelican within WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished, from threatened to sensitive.

Citation of Rules Affected by this Order: Amending WAC 220-200-100.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047.

Other authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047.

Adopted under notice filed as WSR 23-07-102 on March 20, 2023.

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

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

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

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

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

Date Adopted: May 12, 2023.

Barbara Baker
Commission Chair

OTS-4450.1

AMENDATORY SECTION (Amending WSR 23-06-035, filed 2/23/23, effective 3/26/23)

WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished. Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
sea otter	<i>Enhydra lutris</i>
green sea turtle	<i>Chelonia mydas</i>

Common Name	Scientific Name
Mazama pocket gopher	<i>Thomomys mazama</i>
(American white pelican)	<i>Pelecanus erythrorhynchos</i>)
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
<u>American white pelican</u>	<i>Pelecanus erythrorhynchos</i>
Gray whale	<i>Eschrichtius robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
Humboldt's flying squirrel	<i>Glaucomys oregonensis</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order Cetacea, including whales, porpoises, and mammals of the order Pinnipedia not otherwise classified as endangered species, or designated as threat-

ened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.08.030. WSR 23-06-035 (Order 22-13), § 220-200-100, filed 2/23/23, effective 3/26/23. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-20-010 (Order 21-196), § 220-200-100, filed 9/23/21, effective 10/24/21. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-13-032 (Order 21-60), § 220-200-100, filed 6/10/21, effective 7/11/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047. WSR 18-17-153 (Order 18-207), § 220-200-100, filed 8/21/18, effective 9/21/18. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-20-030 (Order 17-254), § 220-200-100, filed 9/27/17, effective 10/28/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-200-100, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-02-084 (Order 17-02), § 232-12-011, filed 1/4/17, effective 2/4/17; WSR 15-10-021 (Order 14-95), § 232-12-011, filed 4/27/15, effective 5/28/15. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 08-03-068 (Order 08-09), § 232-12-011, filed 1/14/08, effective 2/14/08; WSR 06-04-066 (Order 06-09), § 232-12-011, filed 1/30/06, effective 3/2/06. Statutory Authority: RCW 77.12.047, 77.12.655, 77.12.020. WSR 02-11-069 (Order 02-98), § 232-12-011, filed 5/10/02, effective 6/10/02. Statutory Authority: RCW 77.12.047. WSR 02-08-048 (Order 02-53), § 232-12-011, filed 3/29/02, effective 5/1/02; WSR 00-17-106 (Order 00-149), § 232-12-011, filed 8/16/00, effective 9/16/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770. WSR 00-10-001 (Order 00-47), § 232-12-011, filed 4/19/00, effective 5/20/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-04-017 (Order 00-05), § 232-12-011, filed 1/24/00, effective 2/24/00. Statutory Authority: RCW 77.12.020. WSR 98-23-013 (Order 98-232), § 232-12-011, filed 11/6/98, effective 12/7/98. Statutory Authority: RCW 77.12.040. WSR 98-10-021 (Order 98-71), § 232-12-011, filed 4/22/98, effective 5/23/98. Statutory Authority: RCW 77.12.040 and 75.08.080. WSR 98-06-031, § 232-12-011, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 77.12.020. WSR 97-18-019 (Order 97-167), § 232-12-011, filed 8/25/97, effective 9/25/97. Statutory Authority: RCW 77.12.040, 77.12.020, 77.12.030 and 77.32.220. WSR 97-12-048, § 232-12-011, filed 6/2/97, effective 7/3/97. Statutory Authority: RCW 77.12.020. WSR 93-21-027 (Order 615), § 232-12-011, filed 10/14/93, effective 11/14/93; WSR 90-11-065 (Order 441), § 232-12-011, filed 5/15/90, effective 6/15/90. Statutory Authority: RCW 77.12.040. WSR 89-11-061 (Order 392), § 232-12-011, filed 5/18/89; WSR 82-19-026 (Order 192), § 232-12-011, filed 9/9/82; WSR 81-22-002 (Order 174), § 232-12-011, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-011, filed 6/1/81.]

WSR 23-12-052
PERMANENT RULES
SEATTLE COLLEGES

[Filed June 1, 2023, 2:04 p.m., effective July 2, 2023]

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

Purpose: Proposed changes are to amend WAC to follow the RCW for hazing prevention policy, expanded definitions used, and the new state Sam's Law requirements amended in RCW 28B.10.900 from HB [2SHB] 1751. The amended WAC will include hazing awareness and prevention.

Citation of Rules Affected by this Order: New WAC 132F-121-035; and amending WAC 132F-121-010, 132F-121-110, 132F-121-130, 132F-121-280, 132F-121-330, and 132F-121-350.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Adopted under notice filed as WSR 23-07-012 on March 2, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

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

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

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

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

Date Adopted: May 11, 2023.

Richerson Chen
Interim Director of Compliance

OTS-4409.1

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-010 Definitions and general provisions. For purposes of this chapter, except for the Title IX supplemental procedures, the following definitions apply. The definition of "consent," however, will apply to the whole chapter.

~~((1)(a) **Bullying.** Bullying is defined as the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at another student or staff that:~~

~~(i) Intentionally causes physical or emotional imminent harm to the student or damage to the student's property;~~

~~(ii) Places the student in reasonable fear of harm to themselves or of damage to the student's property;~~

~~(iii) Creates an unlawful hostile environment at school for the student;~~

~~(iv) Infringes on the rights of the student at school; or~~

~~(v) Is conduct that is sufficiently severe or pervasive to cause material disruption to the ability of a student to participate or benefit in the education program.~~

~~(b) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording, including images or videos of a sexual nature, and nonconsensual distribution of such material.~~

~~(c) **Stalking.** Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.~~

~~(2) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, sexual violence, and domestic violence.~~

~~(a) Sexual harassment. The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.~~

~~(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(c) Sexual violence. Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.~~

~~(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(iii) Domestic violence as defined in (d) of this subsection.~~

~~(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim, and includes con-~~

~~duet that causes emotional, psychological, physical, and sexual trauma. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.~~

~~(v) Stalking as defined in subsection (1)(c) of this section.~~

~~(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.~~

~~Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.~~

~~(d) Domestic violence. Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law, and, includes conduct that causes emotional, psychological, physical, and sexual trauma.~~

~~(3)) (1) The terms "college" and "campus" are used interchangeably, and each refers to any of the district's three colleges, North Seattle College, Seattle Central College, and South Seattle College. ((The Seattle Vocational Institute is considered to be part of Seattle Central College.~~

~~(4)) (2) "Day" means calendar day, unless specified otherwise, and deadlines shall be computed in accordance with WAC 10-08-080.~~

~~((5)) (3) "District" means the sixth state college district, the district administrative offices (Siegal Center), North Seattle College, Seattle Central College, South Seattle College, and/or every other District VI educational facility, each separately and all together.~~

~~((6)) (4) "District community" includes, but is not limited to, the district itself and all enrolled students, employees, officers, and invitees of the district.~~

~~((7)) (5) "District property" includes all real property, buildings, and other facilities that are owned, leased, or controlled by the district or by the state for district purposes.~~

~~((8)) (6) "Vice president for student services" means the person whom a college president has appointed to that position or has otherwise designated to perform the functions ascribed to that position in this chapter.~~

~~((9)) (7) An action or activity that may be authorized or taken by the district chancellor, a vice chancellor, a campus president, or a campus vice president may also be authorized or taken by any other person whom that officer has specifically designated to perform that function on their behalf, but this officer retains responsibility for the function.~~

~~((10)) (8) After the adoption of these rules, if a statute or rule to which they refer is renumbered or otherwise amended, these rules shall be interpreted to the fullest extent possible to incorpo-~~

rate such amendment while still giving effect to their original purposes.

~~((11))~~ (9) Service of any document, notice, or copy under this chapter shall be made (a) by personal delivery, (b) by mailing to the recipient's last known address, which service shall be regarded as complete upon deposit in the U.S. mail properly stamped and addressed, or (c) as otherwise authorized by law or rule.

~~((12))~~ (10) The term "student" includes all persons taking courses at the district, either full-time or part-time. Persons who withdraw after allegedly violating the student code, who are not officially enrolled for a particular term but who have a continuing relationship with the district, or who have been notified of their acceptance for admission are considered "students" as are persons who are living in district resident halls, although not enrolled at the district.

(11) The term "student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027, § 132F-121-010, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.50.140(13). WSR 16-04-025, § 132F-121-010, filed 1/25/16, effective 2/25/16. Statutory Authority: RCW 28B.50.140(13) and 42.56.040. WSR 15-02-072, § 132F-121-010, filed 1/6/15, effective 2/6/15. Statutory Authority: RCW 28B.50.140(13). WSR 13-11-127, § 132F-121-010, filed 5/21/13, effective 6/21/13. Statutory Authority: RCW 28B.50.100, [28B.50].130, and/or [28B.50].140. WSR 03-16-015, § 132F-121-010, filed 7/28/03, effective 8/28/03.]

NEW SECTION

WAC 132F-121-035 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132F-121-110(15).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual as-

sault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[]

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-110 Student misconduct. Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

(1) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification.

(2) Sexual misconduct. ~~((The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence as defined in WAC 132F-121-010(2).))~~ Sexual misconduct includes sexual harassment, sexual intimidation, sexual violence, domestic violence, and dating violence. Sexual misconduct may also include acts of sexual harassment prohibited under Title IX. See WAC 132F-121-280.

(a) Sexual harassment is a form of sexual discrimination consisting of unwelcome, gender-based, verbal, written, electronic and/or physical conduct. Sexual harassment does not need to be sexual in nature and can include offensive remarks about a person's gender. There are two types of sexual harassment:

(i) Hostile environment sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing.

(ii) Quid pro quo harassment occurs when an individual, in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

(b) Sexual exploitation. Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or take advantage of anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(i) Invading another person's sexual privacy;

(ii) Prostituting another person;

(iii) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(iv) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(v) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(vi) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(vii) Causing the nonconsensual indecent exposure of another person, as defined by subsection (21) of this section.

(c) Sexual violence. Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(d) Consent: Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(e) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law, and, includes conduct that causes emotional, psychological, physical, and sexual trauma.

(f) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim, and includes conduct that causes emotional, psychological, physical, and sexual trauma. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(g) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(3) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct not otherwise protected by law,

that is directed at a person because of ~~((such person's))~~ their membership in a protected ((status)) class and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; gender expression; veteran's status; or any other legally protected classification, and includes sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic forms of communication not otherwise protected by law.

(4) Academic dishonesty. Any act of course-related dishonesty ~~((7))~~ including, but not limited to, cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(5) Other dishonesty. Any other act of ~~((college-related))~~ dishonesty related to district operations. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

(b) Tampering with an election conducted by or for district students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a district officer or employee.

(6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

(7) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, ~~((bullying, cyberbullying, stalking))~~ or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(8) Bullying is unwelcome conduct, whether verbal, physical or otherwise, including "cyber" bullying that is objectively offensive and sufficiently severe, or persistent, and/or pervasive, that it has the effect of substantially limiting the ability of an individual to participate in or benefit from the colleges' educational and/or social programs, and/or student housing. Bullying behavior is conduct that is not otherwise protected by law. Bullying may be top-down, perpetuated by someone with greater positional power towards another with lesser

positional power; bottom-up, perpetuated by someone with lesser positional power towards someone with greater positional power; or peer-to-peer. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as bullying.

(9) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording, including images or videos of a sexual nature, and nonconsensual distribution of such material.

(10) Stalking. Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(11) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

~~((9))~~ (12) Failure to comply with the direction of a district officer or employee who is acting in the legitimate performance of their duties, or failure to properly identify oneself to such a person when requested to do so.

~~((10))~~ (13) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

~~((11))~~ (14) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a firearm in their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or the president's designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

(d) This ~~((policy))~~ prohibition does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

~~((12))~~ (15) Hazing. Hazing includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

~~((13))~~ (16) Alcohol. The use, possession, delivery, or sale of any alcoholic beverage, except as permitted by law, applicable college policies, or authorized by chancellor or a college president, or being observably under the influence of alcohol.

~~((14))~~ (17) Drugs.

(a) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(b) Other drugs. The use, possession, delivery, sale or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

~~((15))~~ (18) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

~~((16))~~ (19) Conduct which is disorderly, lewd, or obscene.

~~((17))~~ (20) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

~~((18))~~ (21) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(22) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including ~~((twenty-five))~~ 25 feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

~~((19))~~ (23) Theft or other misuse of computer time or other electronic information resources of the district. Such misuse includes but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the district's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the district's electronic information resources without authorization; or

(i) Failure to comply with the district's electronic use policy.

~~((20))~~ (24) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to district property, or unauthorized entry onto or into district property.

~~((21))~~ (25) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

~~((22))~~ (26) Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person. Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((23))~~ (27) Violation of any other district rule, requirement, or procedure including, but not limited to, any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

~~((24))~~ (28) Violation of any federal, state, or local law, rule, or regulation, including any hate crime.

~~((25))~~ (29) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceeding for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

~~((26))~~ (30) Attempting to commit any of the foregoing acts of misconduct or aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

~~((27))~~ (31) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027, § 132F-121-110, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.50.140(13). WSR 16-04-025, § 132F-121-110, filed 1/25/16, effective 2/25/16; WSR 13-11-127, § 132F-121-110, filed 5/21/13, effective 6/21/13. Statutory Authority: RCW 28B.50.100, [28B.50].130, and/or [28B.50].140. WSR 03-16-015, § 132F-121-110, filed 7/28/03, effective 8/28/03.]

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-130 Disciplinary jurisdiction. ~~((1) Disciplinary action may be instituted against a student for any misconduct that is a violation of this student code, regardless of whether there is a related civil or criminal court proceeding. Proceedings under these rules may precede, accompany, or follow any such court proceeding.~~

~~(2) Except as provided in subsection (3), a student is subject to disciplinary action under these rules for any act of misconduct which (a) occurs on or damages district property or (b) occurs during any event or activity that the district conducts, participates in, or sponsors, regardless of where it occurs.~~

~~(3) The district reserves jurisdiction and authority to take disciplinary action for student misconduct beyond that described in subsection (2) when the misconduct demonstrates such flagrant disregard for the safety or well-being of others that it endangers the district community.)~~ In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) on college premises; or

(b) At or in connection with college-sponsored activities; or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education,

practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

[Statutory Authority: RCW 28B.50.100, [28B.50].130, and/or [28B.50].140. WSR 03-16-015, § 132F-121-130, filed 7/28/03, effective 8/28/03.]

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-280 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Seattle Colleges may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Title IX quid pro quo harassment. (~~(A Seattle Colleges' student conditioning)~~) Quid pro quo harassment occurs when a student in their capacity as an employee of the Seattle Colleges conditions the provision of an aid, benefit, or service of the Seattle Colleges on an individual's participation in unwelcome sexual conduct.

(2) Title IX hostile environment. Unwelcome sexual or gender-based conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Seattle Colleges' educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of (~~eighteen~~) 18.

(d) Statutory rape. Consensual sexual intercourse between someone who is (~~eighteen~~) 18 years of age or older and someone who is under the age of (~~sixteen~~) 16.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027, § 132F-121-280, filed 4/26/21, effective 5/27/21.]

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-330 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) ~~((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~) (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027, § 132F-121-330, filed 4/26/21, effective 5/27/21.]

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

WAC 132F-121-350 Appeals. (1) ~~((The parties shall))~~ All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the ((initial order's)) determination of responsibility and/or from a dismissal ((of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132F-121-170)), in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or

denied, or if the disciplinary sanctions and ((condition(s))) condi-
tions imposed in the initial order are affirmed, vacated, or amended,
and, if amended, set forth ((any)) the new disciplinary sanctions
and((/or condition(s))) conditions.

~~((3))~~ (5) The president's office shall serve the final decision
on the parties simultaneously.

(6) All administrative decisions reached through this process may
be judicially appealed pursuant to applicable provisions of chapter
34.05 RCW including, but not limited to, the timelines set forth in
RCW 34.05.542.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027,
§ 132F-121-350, filed 4/26/21, effective 5/27/21.]

WSR 23-12-053
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 1, 2023, 2:50 p.m., effective July 2, 2023]

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

Purpose: The department is amending WAC 388-478-0015 Need standards for cash assistance. RCW 74.04.770 requires the department to annually update standards of need using an existing, broadly-used national standard. Amendments reflect this required update using the University of Washington Center for Women's Welfare Self-Sufficiency Standard.

Citation of Rules Affected by this Order: Amending WAC 388-478-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.770, and 74.08.090.

Adopted under notice filed as WSR 23-09-039 on April 14, 2023.

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

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

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

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

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

Date Adopted: May 31, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4976.1

AMENDATORY SECTION (Amending WSR 22-12-023, filed 5/23/22, effective 7/1/22)

WAC 388-478-0015 Need standards for cash assistance. The monthly need and payment standards for cash assistance are based on a determination of the assistance unit size. The need standards for cash assistance units are:

Assistance unit size	Need standard
1	\$((2,998)) <u>3,258</u>
2	((4,883)) <u>5,290</u>
3	((5,893)) <u>6,396</u>
4	((7,786)) <u>8,359</u>
5	((9,144)) <u>9,872</u>
6	((10,706)) <u>11,463</u>

Assistance unit size	Need standard
7	((12,137)) <u>13,081</u>
8	((13,553)) <u>14,542</u>
9	((15,220)) <u>16,428</u>
10 or more	((17,793)) <u>19,017</u>

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 22-12-023, § 388-478-0015, filed 5/23/22, effective 7/1/22; WSR 21-23-102, § 388-478-0015, filed 11/17/21, effective 1/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0015, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 19-24-032, § 388-478-0015, filed 11/25/19, effective 1/1/20; WSR 18-22-021, § 388-478-0015, filed 10/26/18, effective 1/1/19; WSR 18-01-040, § 388-478-0015, filed 12/12/17, effective 1/12/18; WSR 16-23-146, § 388-478-0015, filed 11/22/16, effective 1/1/17; WSR 16-03-013, § 388-478-0015, filed 1/8/16, effective 2/8/16; WSR 14-24-072, § 388-478-0015, filed 11/26/14, effective 1/1/15; WSR 13-24-041, § 388-478-0015, filed 11/26/13, effective 1/1/14; WSR 12-24-034, § 388-478-0015, filed 11/29/12, effective 1/1/13; WSR 11-24-021, § 388-478-0015, filed 11/30/11, effective 1/1/12; WSR 11-01-121, § 388-478-0015, filed 12/20/10, effective 1/1/11; WSR 10-04-111, § 388-478-0015, filed 2/3/10, effective 3/6/10; WSR 08-24-070, § 388-478-0015, filed 12/1/08, effective 1/1/09; WSR 07-24-033, § 388-478-0015, filed 11/30/07, effective 12/31/07; WSR 07-06-066, § 388-478-0015, filed 3/5/07, effective 4/5/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 06-05-102, § 388-478-0015, filed 2/14/06, effective 3/17/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 05-22-077 and 05-23-012, § 388-478-0015, filed 10/31/05 and 11/4/05, effective 1/1/06; WSR 05-01-074, § 388-478-0015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 74.04.770, 74.04.050, 74.04.055, 74.04.057. WSR 03-24-059, § 388-478-0015, filed 12/1/03, effective 1/1/04; WSR 03-23-116, § 388-478-0015, filed 11/18/03, effective 12/19/03. Statutory Authority: RCW 74.08.090, 74.04.510, and 74.04.770. WSR 02-23-029, § 388-478-0015, filed 11/12/02, effective 12/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.200. WSR 01-11-108, § 388-478-0015, filed 5/21/01, effective 7/1/01. Statutory Authority: RCW 74.04.200. WSR 99-04-056, § 388-478-0015, filed 1/29/99, effective 3/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0015, filed 7/31/98, effective 9/1/98.]

WSR 23-12-059

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed June 2, 2023, 9:42 a.m., effective July 3, 2023]

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

Purpose: WAC 246-847-991 Occupational therapy licensure compact (compact) privilege fees and renewal cycle. The department of health (department) is adopting new WAC 246-847-991 to implement SB 5518 (chapter 152, Laws of 2022), which creates a new interstate licensure compact for occupational therapy and gives member states the discretion to charge a fee for granting compact privileges. The department is adopting a new rule to specify the compact fees and renewal cycle.

Citation of Rules Affected by this Order: New WAC 246-847-991.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, 43.70.280; and SB 5518 (chapter 152, Laws of 2022), codified as RCW 18.59.180.

Adopted under notice filed as WSR 23-06-059 on February 27, 2023.

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

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

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

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

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

Date Adopted: June 2, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4276.2

NEW SECTION

WAC 246-847-991 Occupational therapy licensure compact privilege fees and renewal cycle. (1) The compact privilege must be renewed no later than the expiration date of the home state license. The compact privilege holder must comply with all occupational therapy compact eligibility requirements in RCW 18.59.180 to maintain the compact privilege.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application - Original license	\$150.00
Compact renewal	\$125.00

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WSR 23-12-060
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed June 2, 2023, 10:21 a.m., effective July 15, 2023]

Effective Date of Rule: July 15, 2023.

Purpose: The 2020 legislative change to Title 70 RCW renumbered the Washington Clean Air Act from chapter 70.94 RCW to chapter 70A.15 RCW. The Spokane regional clean air agency (SRCAA) amended Regulation I to update the RCW citing as well as to correct typographical errors; provide clarification; align the wood heating exemption to RCW 70A.15.3580; separate late fee from penalty fee; update formatting in Article III and VIII; and update adoption by reference. The amendments did not change fees or add new requirements for businesses or residents to meet.

The proposed amendments are necessary to support SRCAA's implementation of the Washington Clean Air Act. The amendments will allow SRCAA to meet the state legislature's deadline for agencies to update the RCW citing in agency regulations. The amendments anticipated effects include improved readability, accurate citing, and alignment of SRCAA's local regulations to state rules and regulations.

Citation of Rules Affected by this Order: Amending SRCAA Regulation I, Articles I, II, III, IV, V, VI, VIII, and X.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 23-07-092 on April 5 [March 17], 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 41, Repealed 0.

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

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

Date Adopted: June 1, 2023.

Margee Chambers
Rule Writer
SIP Planner

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 23-14 issue of the Register.

WSR 23-12-061

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed June 2, 2023, 10:39 a.m., effective July 3, 2023]

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

Purpose: The developmental disabilities administration (DDA) is amending these rules to: Add and revise definitions for the chapter; add options for how an assessment is completed; clarify when and where home visits occur; and require case managers to request to view the living quarters of all clients receiving a paid service.

Citation of Rules Affected by this Order: Amending WAC 388-828-1020 and 388-828-1520.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.16.050 and 71A.12.310.

Adopted under notice filed as WSR 23-05-064 on February 13, 2023.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-828-1520(2), DDA changed "must conduct a home visit" to "must ask permission to view your living quarters during a home visit."

This change was made to clarify that RCW 71A.12.310 does not require the home visit to occur, and instead, requires the case manager to ask permission to view the client's living quarters.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: June 2, 2023.

Lisa N. H. Yanagida
Chief of Staff

SHS-4970.3

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-1020 What definitions apply to this chapter? The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"Administration" means the developmental disabilities administration of the department of social and health services.

"Adult family home" or "AFH" means a residential home in which a person or ~~((persons))~~ entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to ((the person or persons providing the services per chapter 388-76 WAC)) a provider, entity representative, resident manager, or caregiver who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under chapter 388-76 WAC.

"Agency provider" means a business that is licensed, certified, or both, and that is contracted with the department or a county to provide DDA services.

"Algorithm" means a numerical formula used by the DDA assessment for one or more of the following:

- (1) Calculation of assessed information to identify a client's relative level of need; and
- (2) Assignment of a service level to support a client's assessed need.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020 ~~((+3))~~ who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW.

"Collateral contact" means a person or agency that is involved in the client's life such as legal guardian, family member, care provider, or friend.

"Companion home" is a DDA contracted residential service that provides ~~((twenty-four))~~ 24 hour training, support, and supervision, to one adult living with a paid provider.

"Contracted provider" means an individual provider contracted with the department, individual provider employed by the consumer directed employer, or an individual or agency who is one or more of the following: Licensed, certified, or contracted by the department to provide services to DDA clients.

"DDA" means the developmental disabilities administration of the department of social and health services.

"Department" means the department of social and health services (DSHS).

"Group home" or "GH" means a licensed adult family home or assisted living facility contracted and certified to provide residential services and support to adults with developmental disabilities.

"Home visit" means viewing a client's living quarters with the client present.

"ICF/IID" means a ~~((facility))~~ medicaid-certified ((as an intermediate care)) facility ((for individuals with intellectual disabilities)) operating under Title XIX of the Social Security Act in 42

C.F.R. 440-150 to ((provide)) furnish health or rehabilitation services ((to DDA clients)).

"ICF/IID level of care" is a standardized assessment of a client's need for ICF/IID level of care per 42 C.F.R. Sec. 440 and 42 C.F.R. Sec. 483. In addition, ICF/IID level of care refers to one of the standards used by DDA to determine whether a client meets minimum eligibility criteria for one of the DDA HCBS waivers or the community first choice program.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of ~~((eighteen))~~ 18.

"Living quarters" means the client's bedroom and main living area(s).

"LOC score" means a level of care score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/IID level of care.

"Panel" refers to the visual user-interface in the DDA assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Person-centered service plan (PCSP)" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Raw score" means the numerical value when adding a person's "frequency of support," "daily support time," and "type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

~~"Residential habilitation center" or "RHC" is a state-operated facility ((certified to provide ICF/IID or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW))~~ under RCW 71A.20.020.

"Respondent" means the adult client or another person familiar with the client who participates in the client's DDA assessment by answering questions and providing information. Respondents may include DDA contracted providers.

~~("SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD).)~~

"Service provider" refers to a department contracted agency or person who provides services to DDA clients. Also refers to state operated living alternative programs (SOLA).

"Significant change assessment" means a DDA assessment completed any time a change is reported in a client's support needs, such as an increased need for medical or behavioral supports.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD).

"SOLA" means a state operated living alternative program for adults that is operated by DDA.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA eligible Social Security income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by DDA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the individual and family services (IFS), children's intensive in-home behavioral support (CIIBS), basic plus, and core waivers per chapter 388-845 WAC.

"You" and "your" means the client.

[Statutory Authority: RCW 71A.12.030 and 71A.16.050. WSR 21-19-093, § 388-828-1020, filed 9/17/21, effective 10/18/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-1020, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1020, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 17-12-012, filed 5/26/17, effective 6/26/17)

WAC 388-828-1520 Where is the DDA assessment (~~and reassessment~~) administered and when do home visits occur? (1) (~~DDA~~) Initial, annual, and significant change assessments (~~and reassessments~~) are administered at a location and in a way that is convenient to you, such as:

- (a) In-person at your home (~~or place of residence~~);
- (b) In-person in another setting;
- (c) Remotely using approved technology; or
- (d) A combination of in-person and remote.

~~((2) If you receive or plan to receive a DDA-paid service in your home or place of residence and the DDA assessment is not administered in your home or place of residence, DDA will conduct a follow-up home visit to ensure your person-centered service plan/individual support plan can be implemented in your living environment.)~~

~~((3))~~ (2) If your initial, annual, or significant change assessment is not completed face-to-face in your home, DDA must still see you in person. (~~receive or plan to receive a DDA-paid service in your home or place of residence,~~) DDA must (~~ask permission to~~) ask permission to view your living quarters during (~~the DDA assessment or follow-up~~) a home visit.

(3) DDA may conduct a home visit:

- (a) During your assessment;
- (b) Up to 30 days before or after your assessment;
- (c) Up to 30 days after you move from an institutional setting to a community-based setting.

[Statutory Authority: RCW 71A.12.030 and 71A.12.310. WSR 17-12-012, § 388-828-1520, filed 5/26/17, effective 6/26/17. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-1520, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1520, filed 4/23/07, effective 6/1/07.]

WSR 23-12-071
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 6, 2023, 8:50 a.m., effective July 7, 2023]

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

Purpose: Correcting a typographical error in the retro fatality calculation from \$33,500 to \$35,000 for the medical aid incurred loss.

Citation of Rules Affected by this Order: Amending WAC 296-17B-540 Determining loss incurred for each claim.

Statutory Authority for Adoption: RCW 51.18.010 (retrospective rating) and 51.04.020(1) (general authority).

Other Authority: RCW 51.18.010 (retrospective rating) and 51.04.020(1) (general authority).

Adopted under notice filed as WSR 23-08-065 on April 4, 2023.

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

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

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

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

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

Date Adopted: June 6, 2023.

Joel Sacks
Director

OTS-4437.1

AMENDATORY SECTION (Amending WSR 22-24-019, filed 11/30/22, effective 1/1/23)

WAC 296-17B-540 Determining loss incurred for each claim. (1) Calculating the initial loss incurred:

For each of your claims, we will multiply the case incurred loss by the appropriate discounted loss development factors to determine the initial loss incurred.

If you have a fatality, we will use \$521,600 as the claim's initial incurred loss for the claim, with \$486,600 for accident fund incurred loss and (~~(\$33,500)~~) \$35,000 for the medical aid incurred loss, regardless of the case incurred loss, and before recovery factors if applicable.

(2) Applying the single loss occurrence limit:

The initial loss incurred for a claim will be the amount we use as the loss incurred unless the single loss occurrence limit applies.

The single loss occurrence limit applies when the sum of all initial losses incurred for your claims arising out of a single event is

greater than your selected single loss occurrence limit. In that case, each claim's initial loss incurred will be its proportionate share of your single loss occurrence limit.

(3) Applying the expected loss ratio factors:

The preliminary loss incurred for a claim will be the amount of the initial loss incurred, after application of the single loss limit, multiplied by the appropriate expected loss ratio factor. The accident fund and medical aid fund portions of each claim will have separate expected loss ratio factors applied.

[Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 22-24-019, § 296-17B-540, filed 11/30/22, effective 1/1/23; WSR 21-24-066, § 296-17B-540, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17B-540, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17B-540, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17B-540, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17B-540, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17B-540, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17B-540, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17B-540, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17B-540, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17B-540, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17B-540, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.16.100, 51.04.020(1), and 51.18.010. WSR 10-21-086, § 296-17B-540, filed 10/19/10, effective 11/19/10.]

WSR 23-12-075

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 6, 2023, 11:38 a.m., effective August 1, 2023]

Effective Date of Rule: August 1, 2023.

Purpose: This rule making is necessary to incorporate ESHB 1023, 2020 regular session, into the rules. This passed legislation allows certain adult family home providers to increase their capacity from six residents to eight. This rule making is also intended to address challenges that the adult family home industry is facing related to complying with the liability insurance requirements in the current rules and to clarify use, implementation, and enforcement of management agreements. New rules were developed to create a process for adult family home providers to request an exemption to rule. This was requested during the stakeholder meetings.

Citation of Rules Affected by this Order: New WAC 388-76-10004, 388-76-10031 and 388-76-10032; repealing WAC 388-76-10193; and amending WAC 388-76-10000, 388-76-10030, 388-76-10055, 388-76-10175, 388-76-10191, 388-76-10192, 388-76-10780, 388-76-11050, and 388-76-11055.

Statutory Authority for Adoption: RCW 70.128.040.

Other Authority: RCW 70.128.066.

Adopted under notice filed as WSR 23-04-046 on January 26, 2023.

Changes Other than Editing from Proposed to Adopted Version:

Amended definition of "mandated reporter" for consistency with statutory definition (RCW 74.34.020) effective July 23, 2023.

A final cost-benefit analysis is available by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, email colleen.jensen1@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 3, Amended 9, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 6, 2023.

Lisa N. H. Yanagida
Chief of Staff

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 23-13 issue of the Register.

WSR 23-12-077

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 21-03—Filed June 6, 2023, 12:48 p.m., effective July 7, 2023]

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

Purpose: Ecology is adopting amendments to 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.

Rule amendments to both chapters will implement updates to RCW 88.46.165. Amendments include necessary administrative updates, expand on existing requirements, and establish new requirements as described below.

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.

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.

Chapter 173-184 WAC:

- Update advance notice reporting timeframe 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.

Citation of Rules Affected by this Order: Amending chapters 173-180 and 173-184 WAC.

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.

Adopted under notice filed as WSR 23-02-052 on January 3, 2023.

Changes Other than Editing from Proposed to Adopted Version: The following content describes the changes between the rule proposal language and the adopted language and provides ecology's reasons for making them.

Chapter 173-180 WAC

WAC 173-180-025 Definitions.

- The definition of boom was updated to reference the 2022 version of ASTM F625/F625M-94. The definition was previously referenced the 2017 version of this standard. This update does not change any regulatory requirements.
- The definition of Class 3 facility was updated to correct a grammatical error. This update does not change any regulatory requirements.
- The definition of storage tank was updated to include the conversion between gallons and barrels. Ecology received feedback during the public comment period that it is useful to maintain the conversion between gallons and barrels where it previously existed in the language. This update does not change any regulatory requirements.
- The definition of transfer pipeline was updated to the definition that previously existed in the language. Ecology received feedback during the public comment period that the proposed changes made to this definition created confusion. This update does not change any regulatory requirements.

WAC 173-180-080 Compliance schedule.

- A compliance schedule for operations manual requirements for Class 1 and 2 facilities in WAC 173-180-420 and 173-180-421 was added to this section. Ecology received feedback during the public comment period that it would be helpful to specify a compliance schedule for operations manuals and training and certification programs. Additionally, ecology received feedback that the compliance schedule for operations manuals should allow for alignment with safe and effective threshold determination reports. This change requires facilities to incorporate updates by their current operations manual's expiration date, instead of by the effective date of the rule.
- A compliance schedule for training and certification program requirements for Class 1 and 2 facilities in WAC 173-180-510 and 173-180-511 was added to this section. Ecology received feedback during the public comment period that it would be helpful to specify a compliance schedule for operations manuals and training and certification programs. This change requires facilities to incorporate updates by their current training and certification

program's expiration date, instead of the by the effective date of the rule.

WAC 173-180-221 Rate A prebooming and alternative measures requirements.

- Subsection (2) of this section was updated for clarity. This update does not change any regulatory requirements.

WAC 173-180-320 Secondary containment requirements for storage tanks.

- Subsection (4) of this section was updated to align with federal requirements in 40 C.F.R. Part 112.12 (c)(2). This update does not change any regulatory requirement as the requirement already exists in federal law for the same regulated entities.
- Subsection (8) of this section was updated to include the conversion between gallons and barrels. Ecology received feedback during the public comment period that it is useful to maintain the conversion between gallons and barrels where it previously existed in the language. This update does not change any regulatory requirements.

WAC 173-180-330 Storage tank requirements.

- Subsection (3)(a)(iii) of this section was updated to reference the latest publication of API Standard 620, Design and construction of large welded, low-pressure tanks. The proposed language did not include the correct published year of 2013. This update also includes addendum 1 (2014), 2 (2018), and 3 (2021). This update does not change any regulatory requirements.

WAC 173-180-340 Transfer pipeline requirements.

- Subsection (5)(a) of this section was updated to reference the latest publication of ASME B31.3-2022, published in 2023, and ASME B31.4-2022, published in 2022. This update does not change any regulatory requirements.
- Subsection (10) of this section was updated to remove an error in the proposed language. The year 1991 was included with ASME B31G-2012 (R2017). This is incorrect and was removed. This update does not change any regulatory requirements.

WAC 173-180-525 Class 1 and 2 facilities—Training and certification program approval process.

- Subsection (7) of this section was updated to provide clarity. This update does not change any regulatory requirements.

WAC 173-180-630 Class 1 facility—Prevention plan content requirements.

- Subsection (10)(g)(ii) of this section was updated to provide clarity. Ecology received feedback that this requirement was unclear. This update does not change any regulatory requirements.
- Subsection (12) of this section was updated to include the conversion between gallons and barrels. Ecology received feedback during the public comment period that it is useful to maintain the conversion between gallons and barrels where it previously existed in the language. This update does not change any regulatory requirements.
- Subsection (13)(b)(ii) of this section was updated to provide a correction. Ecology received feedback requesting clarity as to

whether this requirement should apply to each secondary containment system or the entire facility. This update states the requirement is to evaluate spill minimization and containment systems using the worst case spill volume for each secondary containment system.

WAC 173-180-815 Drill scheduling, design, evaluation, and records.

- Subsection (1)(b) of this section was updated to correct a typographical error. This update does not change any regulatory requirements.

Chapter 173-184 WAC

WAC 173-184-025 Definitions.

- The definition of boom was updated to reference the 2022 version of ASTM F625/F625M-94. The definition previously referenced the 2017 version of this standard. This update does not change any regulatory requirements.
- The definition of Class 3 facility was updated to correct a grammatical error. This update does not change any regulatory requirements.

WAC 173-184-115 Rate A prebooming and alternative measures requirements.

- Subsection (2) of this section was updated for clarity. This update does not change any regulatory requirements.
- Subsection (2)(a) of this section was updated to correct a grammatical error. This update does not change any regulatory requirements.

A final cost-benefit analysis is available 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, Washington relay service or TTY call 711 or 877-833-6341, email Brittany.flittner@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/SummaryPages/2308011.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 15, Amended 65, Repealed 24.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, Amended 61, Repealed 23.

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

Date Adopted: June 6, 2023.

Laura Watson
Director

OTS-4167.5

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 (2022), and the Resource Typing Guidelines found in the Worldwide Response Resource List (WRRL) 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; or 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 charters)) 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 (238 barrels), 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 first valve 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))~~ piping, 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 operations manual's expiration date, all Class 1 and 2 facilities must meet manual requirements in WAC 173-180-420 and 173-180-421.

(g) By the current training and certification program's expiration date, all Class 1 and 2 facilities must meet program requirements in WAC 173-180-510 and 173-180-511.

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

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

(j) 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 (~~(u)~~). For the purposes of this section, reinforcement(~~(u)~~) 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; (~~(+)~~)

(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 ~~((ninety))~~ 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: oiltransfernotefications@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))~~ 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 173-180-221.

(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. The safe and effective ~~((threshold values are determined using the safe and effective threshold))~~ determination ~~((report — see WAC 173-180-224))~~ must be based on the conditions at the transfer location.

(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 boom7))~~ 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 ~~((7))~~.

(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

~~((ii))~~ (iii) Nonsparking hand scoops, shovels, and buckets ~~((7 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))~~ (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))~~ entire 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 (238 barrels) 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 (2013 with Addendum 1 (2014), 2 (2018), and 3 (2021)); 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 - 2022 (2023) or B31.4 - 2022 (2022), 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 re-

quirement: 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 require-

ment 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((+))~~ supplement to 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))~~, API Standard 570 (2016 with Addendum 1 (2017) and 2 (2018), and Errata 1 (2018)), or another standard approved by ecology, 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) Have)) (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 execute 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).

(3) ~~((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, preventative 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 re-lease 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 shut-down; 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 con-

~~ditional 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 competency 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.

~~((c))~~ (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 facility 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.

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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 identify 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, sub-

mit, 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.

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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, verifica-~~

~~tion 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))~~ 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 secondary containment 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))~~) (1,050 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 each secondary containment system;

(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 preven-

tion 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;~~

~~(c)) (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 instruc-

tions 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 facility 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.

((Type of Drill	Drill Expectations and Duration
Deployment drills	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.
Notification and emergency shutdown procedure drills	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>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>Type of Drill</u>	<u>Frequency Within the Triennial Cycle</u>	<u>Scope and Scale</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 committees 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.

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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.

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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 instrumentation 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-4169.5

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 (2022), and the Resource 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; or 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. ((,)) 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((,)) 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((,)) or 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.

~~((18))~~ (20) "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.

~~((19))~~ (21) "Person" means any political subdivision, government 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 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.

~~((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 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.

~~((24))~~ (26) "Ship" means any boat, ship, vessel, barge, or other 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 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.

~~((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, 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.

[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. Statutory 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 accordance 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~~((+))~~ (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 ~~((+))~~ (c).

(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(~~(, or)~~) before or during a transfer. (~~(This safe and effective)~~) To make this determination, the deliverer must use the following safe and effective threshold values. The safe and effective determination must be based on the conditions at the transfer location:

(a) Transfers at a Class 1 facility must use the (~~(class 1)~~) facility's values found in the 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 de-

termination 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)~~ (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.

~~((ii))~~ (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.

~~((iii))~~ (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

~~((iii))~~ (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.

~~((In addition to the boom,))~~ (b) 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

~~((iii))~~ (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.

~~((For alternative measures:))~~ (d) 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

~~((ii))~~ (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~~

~~(c))~~.

(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 23-12-082

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 6, 2023, 3:50 p.m., effective July 7, 2023]

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

Purpose: The department adopted amended sections to WAC 388-106-0270(5) What services are available under community first choice (CFC)? and 388-106-0274 (1) and (3) Are there limits to the assistive technology I may receive? The purpose of the amended language provided clarification to our stakeholders on what CFC assistive technology is, the examples of CFC assistive technology, the examples of items that are not covered as CFC assistive technology, and what a treating professional providing a written recommendation should know about the assistive technology item. The rules also addressed the process when individuals request the assistive technology. The adopted amendments assist case managers and CFC clients in understanding program requirements.

Citation of Rules Affected by this Order: Amending WAC 388-106-0270 and 388-106-0274.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.400; and 42 C.F.R. 441.500-590.

Adopted under notice filed as WSR 23-05-102 on February 15, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: June 6, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4957.3

AMENDATORY SECTION (Amending WSR 17-03-127, filed 1/18/17, effective 2/18/17)

WAC 388-106-0270 What services are available under community first choice (CFC)? The services you may receive under the community first choice program include:

(1) Personal care services as defined in WAC 388-106-0010.

(2) Relief care, which is personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.

(3) Skills acquisition training, which is training that allows you to acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are specific tasks related to the needs of an individual that under state law licensed health professionals can delegate or assign to a qualified health care practitioner.

(4) Personal emergency response systems (PERS), which are basic electronic devices that enable you to secure help in an emergency when:

(a) You live alone in your own home;

(b) You are alone in your own home for significant parts of the day and have no provider for extended periods of time; or

(c) No one in your home, including you, is able to secure help in an emergency.

(5) Assistive technology, including assistive equipment, which are adaptive and assistive items that increase your independence or substitute for human assistance specifically with ADLs, IADLs, or health related tasks, including but not limited to:

(a) ~~((Additions to the standard)) PERS ((unit)) add-on services, such as fall detection, GPS, or medication ((delivery with or without)) reminder systems;~~

(b) Department approved devices that are not excluded by WAC 388-106-0274, including but not limited to: ~~((visual alert systems, voice activated systems, switches and eyegazes, and timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance;))~~

(i) Adaptive utensils to assist with activities such as eating, dressing, and writing;

(ii) Communication applications/software or devices;

(iii) Visual alert systems;

(iv) Voice activated systems;

(v) Switches and eyegazes; and

(vi) Timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance;

(c) Repair or replacing items as limited by WAC 388-106-0274; and

(d) Training of participants and caregivers on the maintenance or upkeep of equipment purchased under assistive technology.

(6) Nurse delegation services as defined in WAC 246-840-910 through 246-840-970.

(7) Nursing services when you are not already receiving nursing services from another source. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, which is care that requires authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, including but not limited to medication administration or wound care such as debridement; nursing services will only provide skilled treatment in the event of an emergency and in nonemergency situations, the nurse will refer the need for any skilled

medical or nursing treatments to a health care provider, home health agency, or other appropriate resource;

(e) File review; and

(f) Evaluation of health-related care needs that affect service plan and delivery.

(8) Community transition services, which are nonrecurring, setup items or services to assist you with discharge from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, when these items or services are necessary for you to set up your own home, including but not limited to:

(a) Security deposits that are required to lease an apartment or home, including first month's rent;

(b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and linen supplies;

(c) Setup fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;

(d) Services necessary for your health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Activities to assess need, arrange for, and procure necessary resources.

(9) Caregiver management training on how to select, manage, and dismiss personal care providers.

[Statutory Authority: RCW 74.08.090. WSR 17-03-127, § 388-106-0270, filed 1/18/17, effective 2/18/17. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.400 and 42 C.F.R. § 441.500-590. WSR 16-04-020, § 388-106-0270, filed 1/22/16, effective 2/22/16.]

AMENDATORY SECTION (Amending WSR 17-03-127, filed 1/18/17, effective 2/18/17)

WAC 388-106-0274 Are there limits to the assistive technology I may receive? (1) There are limits to the assistive technology you may receive. Assistive technology excludes:

(a) Any purchase solely for recreational purposes;

(b) Items of general utility, meaning they are used by people in the absence of illness, injury, or disability, such as a wood splitter, facial wipes, menstrual supplies, or a slow cooker;

(c) Subscriptions, ~~((and))~~ data plan charges, and ~~((monthly))~~ on-going recurring fees;

(d) Educational software, game applications, or gift cards for educational/game applications;

~~((e))~~ (e) Medical supplies and medical equipment, items available as specialized equipment and supplies, or durable medical equipment;

(f) Specialized clothing or slip-on shoes that are for convenience and not adaptive in nature;

(g) Exercise equipment;

~~((d))~~ (h) Home/environmental modifications; ~~((and))~~

(i) Medically necessary items, including but not limited to compression socks/stockings, orthotics, hearing aids, and eyeglasses; and

~~((e))~~ (j) Any item that would otherwise be covered under any other payment source, including but not limited to medicare, medicaid, ~~((and))~~ private insurance, or another resource.

(2) In combination with skills acquisition training, assistive technology purchases are limited to a yearly amount determined by the department per fiscal year.

(3) To help decide whether to authorize assistive technology the department may require a treating professional's written recommendation regarding the need for an assistive technology evaluation. The treating professional who makes this recommendation must:

(a) Have personal knowledge of ~~((or))~~ and experience with the requested assistive technology that is in alignment with their profession; and

(b) Have ~~((examined))~~ evaluated you, reviewed your medical records, ~~((and))~~ have knowledge of your level of functioning, and your ability to use the requested assistive technology or device.

(4) Your choice of assistive technology is limited to the most cost effective option that meets your health and welfare needs.

(5) Replacement of an assistive technology item or piece of equipment is limited to once every two years.

[Statutory Authority: RCW 74.08.090. WSR 17-03-127, § 388-106-0274, filed 1/18/17, effective 2/18/17. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.400 and 42 C.F.R. § 441.500-590. WSR 16-04-020, § 388-106-0274, filed 1/22/16, effective 2/22/16.]

WSR 23-12-101

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 7, 2023, 9:37 a.m., effective October 29, 2023]

Effective Date of Rule: October 29, 2023.

Purpose: To delay the effective date of the rules adopted under WSR 22-14-091, the 2021 Washington State Energy Code, Commercial Provisions, chapter 51-11C WAC. The council is delaying the effective date for an additional 120 days, from July 1, 2023, to October 29, 2023, to evaluate what, if any, changes are necessary to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. All sections filed within WSR 22-14-091 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3) (b).

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 22-14-091.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025, 19.27A.160.

Other Authority: Chapters 19.72A, 19.27 RCW.

Adopted under notice filed as WSR 22-02-076 on January 5, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from July 1, 2023, to October 29, 2023.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

WSR 23-12-102

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 7, 2023, 9:38 a.m., effective October 29, 2023]

Effective Date of Rule: October 29, 2023.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-060, the 2021 Washington State Energy Code, Residential Provisions, chapter 51-11R WAC. The council is delaying the effective date for an additional 120 days, from July 1, 2023, to October 29, 2023, to evaluate what, if any, changes are necessary to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. All sections filed within WSR 23-02-060 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3) (b).

Citation of Rules Affected by this Order: All new, repealed, and amended sections filed within WSR 23-02-060.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.045, 19.27A.160.

Other Authority: Chapter 19.72A [19.27A] RCW.

Adopted under notice filed as WSR 22-17-149 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from July 1, 2023, to October 29, 2023.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

WSR 23-12-103

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 7, 2023, 9:40 a.m., effective October 29, 2023]

Effective Date of Rule: October 29, 2023.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-073 and 22-13-094, the 2021 International Building Code and the 2021 International Existing Building Code, published by the International Code Council (ICC), with state amendments. The council is delaying the effective date of the statewide building codes scheduled to go into effect on July 1, 2023, until October 29, 2023, to evaluate what, if any, changes may be necessary to the Washington State Energy Commercial and Residential Codes to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. All sections filed within WSR 23-02-073 and 22-13-094 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3) (b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-073 and 22-13-094.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Other Authority: RCW 19.27.540.

Adopted under notice filed as WSR 22-17-151 on August 23, 2022, and WSR 22-02-040 on December 30, 2021.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from July 1, 2023, to October 29, 2023.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

WSR 23-12-104

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 7, 2023, 9:42 a.m., effective October 29, 2023]

Effective Date of Rule: October 29, 2023.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-058, the 2021 International Residential Code, published by the International Code Council (council), with state amendments. The council is delaying the effective date of the statewide building codes scheduled to go into effect on July 1, 2023, until October 29, 2023, to evaluate what, if any, changes may be necessary to the Washington State Energy Commercial and Residential Codes to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. All sections filed within WSR 23-02-058 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3) (b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-058.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Adopted under notice filed as WSR 22-17-148 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from July 1, 2023, to October 29, 2023.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

WSR 23-12-106

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 7, 2023, 9:43 a.m., effective October 29, 2023]

Effective Date of Rule: October 29, 2023.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-055, the 2021 International Mechanical Code and the 2021 International Fuel Gas Code, published by the International Code Council (council), with state amendments. The council is delaying the effective date of the statewide building codes scheduled to go into effect on July 1, 2023, until October 29, 2023, to evaluate what, if any, changes may be necessary to the Washington State Energy Commercial and Residential Codes to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. All sections filed within WSR 23-02-055 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3)(b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-055.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Other Authority: RCW 19.27.031, 19.27.074.

Adopted under notice filed as WSR 22-17-147 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from July 1, 2023, to October 29, 2023.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

WSR 23-12-107

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 7, 2023, 9:45 a.m., effective October 29, 2023]

Effective Date of Rule: October 29, 2023.

Purpose: To delay the effective date of the rules adopted under WSR 22-13-093, the 2021 International Fire Code, published by the International Code Council, with state amendments. The council is delaying the effective date of the statewide building codes scheduled to go into effect on July 1, 2023, until October 29, 2023, to evaluate what, if any, changes may be necessary to the Washington State Energy Commercial and Residential Codes to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. All sections filed within WSR 22-13-093 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3)(b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 22-13-093.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 22-02-041 on December 30, 2021.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from July 1, 2023, to October 29, 2023.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

WSR 23-12-109

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 7, 2023, 9:49 a.m., effective October 29, 2023]

Effective Date of Rule: October 29, 2023.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-056, the 2021 Washington Wildland-Urban Interface Code. The council is delaying the effective date of the statewide building codes scheduled to go into effect on July 1, 2023, until October 29, 2023, to evaluate what, if any, changes may be necessary to the Washington State Energy Commercial and Residential Codes to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. All sections filed within WSR 23-02-056 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3) (b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-056.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Other Authority: RCW 19.27.560.

Adopted under notice filed as WSR 22-17-150 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from July 1, 2023, to October 29, 2023.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

WSR 23-12-110

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 7, 2023, 9:50 a.m., effective October 29, 2023]

Effective Date of Rule: October 29, 2023.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-057, the 2021 Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, with state amendments. The council is delaying the effective date of the state-wide building codes scheduled to go into effect on July 1, 2023, until October 29, 2023, to evaluate what, if any, changes may be necessary to the Washington State Energy Commercial and Residential Codes to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. All sections filed within WSR 23-02-057 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3)(b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-057.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Adopted under notice filed as WSR 22-17-153 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from July 1, 2023, to October 29, 2023.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

WSR 23-12-112
PERMANENT RULES
CENTRALIA COLLEGE

[Filed June 7, 2023, 11:03 a.m., effective July 8, 2023]

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

Purpose: The passage of HB [2SHB] 1751 required the addition of anti-hazing language to the student code of conduct.

Citation of Rules Affected by this Order: Amending WAC 132L-351-020, 132L-351-025, 132L-351-040, and 132L-351-050.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B50.140(13).

Adopted under notice filed as WSR 23-06-004 on February 16, 2023.

A final cost-benefit analysis is available by contacting Robert Cox, 600 Centralia College Boulevard, Centralia, WA 98531, phone 360-623-8385, email robert.cox@centralia.edu, website www.centralia.edu.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

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

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

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

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

Date Adopted: June 6, 2023.

Robert Cox
Vice President of Student Services

OTS-4249.1

AMENDATORY SECTION (Amending WSR 21-12-044, filed 5/25/21, effective 6/25/21)

WAC 132L-351-020 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(2) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(3) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ~~((ten))~~ 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Respondent" is the student against whom disciplinary action is initiated.

(7) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(8) "Student group" for the purpose of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(9) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

~~((9))~~ (10) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

~~((10))~~ (11) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, persons who are not officially enrolled for a particular term but who have a continuing relationship with the college, and persons who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

~~((11))~~ (12) "Business day" means a weekday, excluding weekends and college holidays.

~~((12))~~ (13) "Complainant" is an alleged victim of sexual misconduct.

~~((13))~~ (14) "Sexual misconduct" has the meaning ascribed to this term in WAC 132L-351-130.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-12-044, § 132L-351-020, filed 5/25/21, effective 6/25/21.]

AMENDATORY SECTION (Amending WSR 21-12-044, filed 5/25/21, effective 6/25/21)

WAC 132L-351-025 Jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

Hazing:

(1) The student code of conduct shall apply to conduct and student groups that occurs:

(a) On college premises; or

(b) At or in connection with college-sponsored activities; or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admissions to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be

applied to conduct by students or student groups that occurs off-campus.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-12-044, § 132L-351-025, filed 5/25/21, effective 6/25/21.]

AMENDATORY SECTION (Amending WSR 21-12-044, filed 5/25/21, effective 6/25/21)

WAC 132L-351-040 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Conduct, not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group;

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132L-351-210.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking.

(d) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(e) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(f) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of ((eighteen)) 18.

(g) **Statutory rape.** Consensual intercourse between a person who is ((eighteen)) 18 years of age or older, and a person who is under the age of ((sixteen)) 16.

(h) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(i) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship,

(j) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(k) For purposes of this code, "**consent**" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity.

For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating or hostile environment for other campus community members.

Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-12-044, § 132L-351-040, filed 5/25/21, effective 6/25/21.]

AMENDATORY SECTION (Amending WSR 21-12-044, filed 5/25/21, effective 6/25/21)

WAC 132L-351-050 Disciplinary sanctions terms and conditions.

(1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation or repetition of the same or similar may be cause for more severe disciplinary action. This sanction is not subject to appeal.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Summary suspension.** Immediate exclusion from classes and other privileges or activities in accordance with this code.

(e) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(f) **Deferred suspension.** Notice of suspension from the college with the provision that the student may remain enrolled contingent on meeting any condition(s) specified. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

(g) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any form of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **Disqualification from athletics.** Any student found by the college to have violated this code related to the use, possession, sale, or delivery of legend drugs is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(f) **College or community service.** Assignment of labor or responsibilities to any student or student organization with the college or local community. May also include mandatory attendance at educational programs or courses or other assignments.

(3) Hazing disciplinary sanctions for individual and group incidents prohibited pursuant to WAC 132L-351-040(9):

(a) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(b) Washington state law provides that:

(i) Any student that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors or the corporation may be held individually liable for damages.

(ii) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(iii) Student groups that knowingly permit hazing to be conducted by its members or others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(iv) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanctions(s) imposed.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-12-044, § 132L-351-050, filed 5/25/21, effective 6/25/21.]

WSR 23-12-113
PERMANENT RULES
CENTRALIA COLLEGE

[Filed June 7, 2023, 11:03 a.m., effective July 8, 2023]

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

Purpose: The passage of HB [2SHB] 2513 prohibits institutions of higher education to hold transcripts for payment of fines and penalties.

Citation of Rules Affected by this Order: Amending WAC 132L-117-170.

Statutory Authority for Adoption: HB [2SHB] 2513.

Other Authority: State board for community and technical colleges.

Adopted under notice filed as WSR 23-06-005 on February 16, 2023.

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

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

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

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

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

Date Adopted: June 6, 2023.

Dr. Bob Mohrbacher
President

OTS-4247.1

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-117-170 Fines and penalties. The chief administrative officer, or designee, is authorized to impose the following fines and penalties for violation of the regulations contained in this chapter:

(1) The president shall set a schedule of fines. The schedule shall be published by the college in the College Policy Manual, on the parking permit request form, and on the traffic parking citation form. In addition, the schedule is available upon request.

(2) Fines will be assessed in accordance with the fees and fines schedules as established by the president for the following violations:

- (a) No valid permit displayed
- (b) Visitor parking violations
- (c) Occupying more than one parking space
- (d) Occupying space/area not designated for parking
- (e) Handicapped parking violation
- (f) Parking in area not authorized by permit

- (g) Parking in reserved staff space without authorization
- (h) Blocking or obstructing traffic (may be towed at owner's expense)
- (i) Parking adjacent to fire hydrant (may be towed at owner's expense)
- (j) Parking in fire lane (may be towed at owner's expense)
- (k) Parking in zone or area marked no parking
- (l) Other violations of college parking traffic regulations.
- (3) At the discretion of the chief administrative officer, or designee, an accumulation of citations by a staff, administrator, or faculty member may be turned over to a private collection agency for the collection of past due fines. Other appropriate collection procedures may be initiated as deemed necessary.
- (4) Vehicles parking in a manner so as to obstruct traffic, including access to and from parking spaces and areas, may be subject to a fine and may be impounded and taken to such place for storage as the chief administrative officer, or designee, selects. The expenses of such impounding and storage shall be the responsibility of the registered owner or driver of the vehicle.
- (5) Vehicles impounded by means of an immobilizing device shall be charged a service fee according to the current fee schedule.
- (6) The college shall not be liable for loss or damage of any kind resulting from impounding and storage of vehicles.
- (7) Vehicles involved in violations of these regulations may be impounded as provided for in these regulations.
- (8) Persons may appeal the issuance of a citation according to WAC 132L-117-180.
- (9) In the event a person fails or refuses to pay an uncontested fine which has been outstanding in excess of five days, the chief administrative officer, or designee, may initiate the following actions:
 - (a) ~~((Student may not be able to obtain transcript of credits until all fines are paid.~~
 - ~~(b))~~ Students will not be able to register for subsequent quarters until all fines are paid.
 - ~~((e))~~ (b) Students may be turned over to a private collection agency for the collection of past due fines.

[Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-117-170, filed 9/15/04, effective 10/16/04. Statutory Authority: RCW 28B.50.140(10). WSR 90-17-060 (Order A-4(90)), § 132L-117-170, filed 8/14/90, effective 9/14/90.]

WSR 23-12-114
PERMANENT RULES
CENTRALIA COLLEGE

[Filed June 7, 2023, 11:03 a.m., effective July 8, 2023]

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

Purpose: The passage of HB [2SHB] 2513 prohibits transcript holds for financial obligations. Students will be able to access transcripts while having financial obligations.

Citation of Rules Affected by this Order: Amending WAC 132L-122-010.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B50.140.

Other Authority: State board for community and technical colleges.

Adopted under notice filed as WSR 23-06-00[6] on February 16, 2023.

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

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

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

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

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

Date Adopted: June 6, 2023.

Dr. Bob Mohrbacher
President

OTS-4248.1

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-122-010 Policy. If any person, including faculty member, staff member, student, or former student, is indebted to the institution for an outstanding overdue debt, the institution need not provide any further services of any kind to such individual((~~τ~~)) including, but not limited to, admission, course registration, library access, transmitting files, records, ((~~transcripts~~)) or other services which have been requested by such person.

[Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-122-010, filed 9/15/04, effective 10/16/04.]