WSR 18-06-002
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 18-26—Filed February 22, 2018, 10:20 a.m., effective February 22, 2018, 10:20 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting threatened or endangered species under the Endangered Species Act (ESA).

Citation of Rules Affected by this Order: Amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon,* Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Opens the treaty winter fishery for commercial sales to Washington wholesale buyers and the public. Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on February 21, 2018. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

Date Adopted: February 22, 2018.

Joe Stohr
Acting Director

NEW SECTION

WAC 220-359-02000P Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F, 1G, and 1H (The Dalles Pool):

(a) Season: Immediately through 6:00 p.m. March 3, 2018 in Dalles Pool,

(b) Gear: Gill nets with no minimum mesh restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length may be sold only when caught during open periods for that pool. Legal-sized sturgeon may be kept for subsistence purposes. Live release of all oversize and undersize sturgeon is required. Fish landed during the open periods are allowed to be sold after the period concludes.

(2) Open Areas: SMCRA 1F, 1G, and 1H (The John Day Pool):

(a) Season: Immediately through 6:00 p.m. March 3, 2018.

(b) Gear: Gill nets with no minimum mesh restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length may be sold only when caught during open periods. Legal sized sturgeon may be kept for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Fish landed during the open periods are allowed to be sold after the period concludes.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-180, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000N Columbia River salmon seasons above Bonneville Dam. (18-22)

WSR 18-06-003
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 18-25—Filed February 22, 2018, 10:30 a.m., effective March 1, 2018]

Effective Date of Rule: March 1, 2018.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Sets the 2018 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to the Oregon/Washington border, and hatchery raised steelhead from Buoy 10 to the 395 Bridge. The regulation allows for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery Chinook. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v Oregon* Management Agreement (MA) and the associated biological opinion (BO). Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 21, 2018.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* MA (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a BO under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* MA. The 2008-2017 MA and BO have been extended through February 2018 while the MA and BO covering 2018-2027 are finalized. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such BOs in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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

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

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

Date Adopted: February 22, 2018.

Joe Stohr
Acting Director

NEW SECTION

WAC 220-312-06000Y Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective March 1 through April 7, 2018

(a) Open for boat and bank fishing for Chinook, coho, steelhead from a true north-south line through Buoy 10 to Beacon Rock, plus bank angling only from Beacon Rock upstream to the Bonneville Dam deadline.

(b) Legal upstream boat boundary defined as: A deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

(c) Daily limit is 2 adipose fin clipped salmonids, of which no more than 1 may be an adult Chinook.

(d) Release all wild (unclipped) Chinook and wild steelhead.

(e) Salmon minimum size is 12 inches.

(2) Effective March 16 through May 7, 2018:

(a) Open to fishing for Chinook, coho or steelhead from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

(b) Daily limit is 2 adipose fin clipped salmonids (hatchery Chinook or hatchery coho or hatchery steelhead), of which no more than 1 may be an adult Chinook.

(c) Release all wild (unclipped) Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(3) Effective March 16 through May 15, 2018:

(a) On days and in areas open to fishing for hatchery (adipose clipped) spring Chinook, fishing for adipose fin clipped steelhead from Buoy 10 upstream to the Highway 395 bridge and shad from Buoy 10 to Bonneville Dam (except for those waters closed under permanent regulations) is allowed.

WSR 18-06-004

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed February 22, 2018, 11:42 a.m., effective February 22, 2018, 11:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To extend the emergency rules filed in October for chapters 51-50 and 51-54A WAC pertaining to Section 907, Fire alarm and detection systems. These were filed as WSR 17-20-098 and 17-22-040, respectively. The council has completed permanent rule making on this issue and the permanent rule will go into effect on July 1, 2018. This emergency rule will keep the amendment in place until that permanent rule takes effect.

Citation of Rules Affected by this Order: Amending WAC 51-54A-0907 and 51-50-0907.

Statutory Authority for Adoption: Chapter 19.27 RCW.

Other Authority: RCW 19.27.031, 19.27.074.

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

Reasons for this Finding: The 2016 legislature took action to modify the requirements of this section under ESHB 2380.SL/New Section 6012. A new section is added to 2015 3rd32sp.s. c 3 (uncodified) to read as follows: To avoid unnecessary duplication of infrastructure installation and reduce school construction costs funded through the school construction assistance program in this budget, the building code council adopted emergency amendments as directed by the legislature to provide that buildings classed as E occupancies, as defined in the state building code, are not required to install an emergency voice alarm system as defined in the 2012 International Building Code and International Fire Code Section 907.2.3. The school district must comply with RCW 28A.320.126 by working collaboratively with local law enforcement agencies to develop an emergency response system using evolving technologies and the school district must adopt a safe school plan under RCW 28A.320.125. The state building code council technical advisory group worked with stakeholders to develop amendatory language for emergency and permanent rule making. The permanent rule, filed under WSR 18-01-104, will go into effect July 1, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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: February 21, 2018.

Doug Orth
Council Chair

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0907 Section 907—Fire alarm and detection systems.

[F] 907.2.3 Group E. ((~~A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.~~

((~~EXCEPTIONS: 1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.~~

~~2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.~~

~~3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:~~

~~3.1 Interior corridors are protected by smoke detectors.~~

~~3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.~~

~~3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.~~

~~4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.~~))

Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or

2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

2.1 The ability to broadcast voice messages or customized announcements;

2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;

2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;

2.4 The ability for two-way communications;

2.5 The ability for individual room calling;

2.6 The ability for a manual override;

2.7 Installation in accordance with NFPA 72;

2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and

2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

EXCEPTIONS: A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:

3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or

3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).

4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

4.1 Interior *corridors* are protected by smoke detectors.

4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by *heat detectors* or other *approved* detection devices.

4.3 Shops and laboratories involving dusts or vapors are protected by *heat detectors* or other *approved* detection devices.

5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

5.1 The building is equipped throughout with an *approved automatic sprinkler system* installed in accordance with Section 903.3.1.1.

5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.

5.3 Manual activation is provided from a normally occupied location.

[F] 907.2.3.1 Sprinkler systems or detection. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

[F] 907.2.6 Group I. A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS: 1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.

2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

[F] 907.2.6.1 Group I-1. An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and kitchens. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS: 1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.

2. Smoke detection is not required for exterior balconies.

[F] 907.2.6.4 Group I-4 occupancies. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS: 1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.

2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

[F] 907.5.2.1.2 Maximum sound pressure. The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

[F] 907.10 NICET: National Institute for Certification in Engineering Technologies.

907.10.1 Scope. This section shall apply to new and existing fire alarm systems.

907.10.2 Design review. All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction. (Effective July 1, ((~~2017~~)) 2018.)

907.10.3 Testing/maintenance. All inspection, testing, maintenance and programing not defined as "electrical construction trade" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms. (Effective July 1, ((~~2017~~)) 2018.)

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 17-10-028, filed 4/25/17, effective 5/26/17)

WAC 51-54A-0907 Fire alarm and detection systems.

907.2.3 Group E. ((~~A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.~~

~~EXCEPTIONS: 1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.~~

~~2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.~~

~~3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:~~

~~3.1 Interior corridors are protected by smoke detectors.~~

~~3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.~~

~~3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.~~

~~4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.~~))

Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or

2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

2.1 The ability to broadcast voice messages or customized announcements;

2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;

2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;

2.4 The ability for two-way communications;

2.5 The ability for individual room calling;

2.6 The ability for a manual override;

2.7 Installation in accordance with NFPA 72;

2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and

2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

Exceptions:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:

3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or

3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).

4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

4.1 Interior *corridors* are protected by smoke detectors.

4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by *heat detectors* or other *approved* detection devices.

4.3 Shops and laboratories involving dusts or vapors are protected by *heat detectors* or other *approved* detection devices.

5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

5.1 The building is equipped throughout with an *approved automatic sprinkler system* installed in accordance with Section 903.3.1.1.

5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.

5.3 Manual activation is provided from a normally occupied location.

907.2.3.1 Sprinkler systems or detection. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

907.2.6 Group I. A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.

2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

907.2.6.1 Group I-1. An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and kitchens. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS:

1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.

2. Smoke detection is not required for exterior balconies.

907.2.6.4 Group I-4 occupancies. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS:

1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.

2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

907.5.2.1.2 Maximum sound pressure. The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

907.10 NICET: National Institute for Certification in Engineering Technologies.

907.10.1 Scope. This section shall apply to new and existing fire alarm systems.

907.10.2 Design review: All construction documents shall be reviewed by a NICET III in fire alarms or a licensed profes-

sional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction (effective July 1, ((~~2017~~)) 2018).

907.10.3 Testing/maintenance: All inspection, testing, maintenance and programing not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms (effective July 1, ((~~2017~~)) 2018).

WSR 18-06-011
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 18-27—Filed February 23, 2018, 4:43 p.m., effective March 1, 2018]

Effective Date of Rule: March 1, 2018.

Purpose: Amends recreational fishing regulations for the lower Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000Y; and amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This corrects the previous emergency rule to now allow retention of hatchery jacks for the 2018 spring recreational salmon season in the Columbia River and ensures rules are consistent with the compact action of February 21, 2018. There is insufficient time to promulgate permanent rules.

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

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 0, Repealed 1.

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: February 23, 2018.

Amy H. Windrope
for Joe Stohr
Acting Director

NEW SECTION

WAC 220-310-06000Z Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Salmon and Steelhead:

(a) Effective March 1 through April 7, 2018

(i) Open for boat and bank fishing for Chinook, coho, or steelhead from a true north-south line through Buoy 10 to Beacon Rock, plus bank angling only from Beacon Rock upstream to the Bonneville Dam deadline.

(ii) Legal upstream boat boundary defined as: A deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

(iii) Daily limit 6, no more than 2 may be adults of which no more than 1 may be an adult Chinook.

(iv) Release all salmon and steelhead other than adipose clipped fish.

(v) Salmon minimum length is 12 inches.

(b) Effective March 16 through May 7, 2018:

(i) Open to fishing for Chinook, coho, or steelhead from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

(ii) Daily limit is 6, no more than 2 may be adults of which no more than 1 may be an adult Chinook.

(iii) Release all salmon and steelhead other than adipose clipped fish.

(iv) Salmon minimum size is 12 inches.

(c) Effective March 16 through May 15, 2018:

(i) On days and in areas open to fishing for adipose clipped spring Chinook, fishing for adipose fin clipped steelhead from Buoy 10 upstream to the Highway 395 bridge and shad from Buoy 10 to Bonneville Dam (except for those waters closed under permanent regulations) is allowed.

REPEALER

The following section of the Washington Administrative code is repealed immediately:

WAC 220-312-06000Y	Exceptions to statewide rules—Columbia River. (17/25)

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 18-06-014
EMERGENCY RULES
WASHINGTON STATE UNIVERSITY

[Filed February 26, 2018, 9:18 a.m., effective February 26, 2018, 9:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add new rules, chapter 504-49 WAC, regarding the administration of the state renewable energy system incentive program for citizens, businesses, and utilities. The incentive program is to be administered by the Washington State University (WSU) energy program, in accordance with the renewable energy system incentive program law, ESSB 5939, signed into law on July 7, 2017. Note: This emergency rule-making order was originally filed on October 30, 2017. A preproposal for similar permanent rules was filed as WSR 18-02-092, with a proposal intended to be filed on March 7, 2018, and intended for adoption on May 4, 2018.

Citation of Rules Affected by this Order: New WAC 504-49-010, 504-49-100, 504-49-103, 504-49-105, 504-49-108, 504-49-110, 504-49-115, 504-49-120, 504-49-125, 504-49-130, 504-49-135, 504-49-140, 504-49-145, 504-49-150, 504-49-155, 504-49-160, 504-49-165, 504-49-170, 504-49-175, 504-49-180, 504-49-185, 504-49-190, 504-49-195, 504-49-200, 504-49-205, 504-49-210, 504-49-215, 504-49-220, 504-49-225, 504-49-230, 504-49-235, 504-49-240, 504-49-245, 504-49-250, 504-49-300, 504-49-305, 504-49-310, 504-49-400, 504-49-405, 504-49-500, 504-49-505, 504-49-510, 504-49-515, 504-49-520, 504-49-525, 504-49-600, 504-49-605, 504-49-610, 504-49-615, 504-49-700, 504-49-705, 504-49-710, and 504-49-715.

Statutory Authority for Adoption: RCW 28B.30.150.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The emergency rules are necessary to preserve the general welfare in that the Washington State University energy program is replacing the Washington state department of revenue to administer an existing program that provides incentives for renewable energy. Failure to having [have] rules in place for an existing program that is now managed by a different agency for a considerable amount of time would cause considerable disruption to the program. These emergency rules will allow for the continuation of the program while the WSU energy program goes through the process of establishing permanent rules. Further, the emergency rules are necessary for the fair and equitable implementation of ESSB 5939 to provide consistent application of procedures, program definitions, eligibility, incentive payment rates, and decision appeal procedures - all in accordance with the language and intent of ESSB 5939. Further, emergency rules are necessary to provide immediate guidance to interested applicants because the WSU energy program became the administrator of this incentive program on October 1, 2017.

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 53, 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 53, Amended 0, Repealed 0.

Date Adopted: February 26, 2018.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

Chapter 504-49 WAC

RENEWABLE ENERGY SYSTEM INCENTIVE PROGRAM

NEW SECTION

WAC 504-49-010 Introduction. (1) The rules in this chapter explain the renewable energy system incentive program, which is administered by the Washington State University energy program (hereinafter referred to as "energy program"). It is the legislature's intent to provide the incentives as described in RCW 82.16.130 in order to ensure the sustainable job growth and vitality of the state's renewable energy sector. The purpose of the incentive is to reduce the costs associated with installing and operating renewable energy systems by persons or entities receiving the incentive. This incentive program authorizes an incentive payment based on electricity generated by renewable energy systems located in Washington state. Qualified renewable energy systems include:

(a) Solar energy systems;

(b) Wind generators; and

(c) Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that generates electricity.

(2) The rules in this chapter are divided into seven parts based on subject matter, as follows:

(a) Part I: Definitions;

(b) Part II: Participation and application requirements, and incentive levels by project type;

(c) Part III: Calculation of incentives;

(d) Part IV: General topics;

(e) Part V: Manufactured in Washington state;

(f) Part VI: Application process for currently certified renewable energy systems in the cost recovery incentive program; and

(g) Part VII: Appeals rights.

PART I

DEFINITIONS

NEW SECTION

WAC 504-49-100 Overview. The definitions in Part I of this chapter (this section and WAC 504-49-103 through 504-49-195) apply throughout this chapter unless the context clearly requires otherwise.

NEW SECTION

WAC 504-49-103 Administrator. The term "administrator" has the following two meanings in this chapter:

(1) For purposes of a shared commercial solar project, the administrator is a utility or a business under contract with a utility which administers a shared commercial solar project that meets the eligibility requirements specified in this chapter. The administrator applies for certification on behalf of each of the project participants. In addition, the administrator performs administrative tasks on behalf of the owners as may be necessary, such as:

(a) Receiving the renewable energy incentive payments;

(b) Allocating and paying appropriate amounts of such payments to owners; and

(c) Communicating with the energy program about any changes in participants.

(2) For purposes of a community solar project as defined in WAC 504-49-120, the administrator is the utility, nonprofit, or local housing authority (as defined in RCW 35.82.020) that organizes and administers the community solar project. The administrator is responsible for applying for the renewable energy system incentive on behalf of the system's owners. In addition, the administrator performs administrative tasks on behalf of the owners as may be necessary, such as:

(a) Receiving the renewable energy incentive payments;

(b) Allocating and paying appropriate amounts of such payments to owners; and

(c) Communicating with the energy program about any changes in participants.

NEW SECTION

WAC 504-49-105 Caps and limits. "Caps and limits" are defined as follows:

(1) "Annual incentive limits" means the annual limits on total incentives paid per person, business, or household for a given fiscal year of electricity generation from the four project types described in chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939). Each incentive recipient may qualify for payments up to the incentive cap within each project type. However, incentive recipients who have multiple projects within one project type are subject to the cap for the applicable project type. These caps are as follows:

(a) Residential-scale systems: Five thousand dollars;

(b) Commercial-scale systems: Twenty-five thousand dollars;

(c) Shared commercial solar projects: Up to thirty-five thousand dollars per year per project participant, as determined by the terms specified in chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939); and

(d) Community solar projects: Five thousand dollars per project participant.

(2) "Utility credit cap" means that the maximum annual incentives paid by an electrical utility may not exceed one and one-half percent of the businesses' taxable power sales generated in calendar year 2014 and due under RCW 82.16.020 (1)(b) or two hundred fifty thousand dollars, whichever is greater, up to the utility's public utility tax liability.

(3) "Project type cap" has the following two meanings in this chapter:

(a) For commercial-scale systems, the project type cap is twenty-five percent of the remaining funds for credit available to a utility as of July 1, 2017; and

(b) For community solar and shared commercial solar projects combined, the project type cap is fifty percent of the remaining funds for credit available to a utility as of July 1, 2017.

(4) "Incentive rate limit" for shared commercial solar project participants means that the incentive rate must not exceed the difference between the levelized cost of energy output and the participant's retail rate.

(5) "Total program limit" means that the total incentive payments made under this program (in this chapter) may not exceed one hundred ten million dollars.

NEW SECTION

WAC 504-49-108 Certification. "Certification" means the authorization issued by the energy program establishing a system's eligibility and the eligibility of a person, business, or household to receive annual incentive payments from the serving utility for the incentive program term.

NEW SECTION

WAC 504-49-110 Commercial-scale system. "Commercial-scale system" means a renewable energy system or system other than a community solar project or a shared commercial solar project with a direct current combined nameplate capacity greater than twelve kilowatts that meets the applicable system eligibility requirements established in section 6, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-115 Community solar project. "Community solar project" means a solar energy system that:

(1) Has a nameplate generating capacity that is no larger than one thousand kilowatts direct current;

(2) Must have at least ten participants or one participant for every ten kilowatts direct current nameplate capacity, whichever is greater; and

(3) Meets the applicable eligibility requirements established in sections 6 and 7, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-120 Consumer-owned utility. "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

NEW SECTION

WAC 504-49-125 Customer-owner. "Customer-owner" means the owner of a residential-scale or commercial-scale renewable energy system, where such owner:

(1) Is not a utility;

(2) Is the primary account holder of the utility account; and

(3) Either owns or occupies the premises where the renewable energy system is installed.

NEW SECTION

WAC 504-49-130 Direct current. "Direct current" means the unidirectional flow of electric charge.

NEW SECTION

WAC 504-49-135 Electric utility or utility. "Electric utility" or "utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.-020.

NEW SECTION

WAC 504-49-140 Fiscal year. "Fiscal year" means July 1st through June 30th of the following year for the purposes of this rule. For example, fiscal year 2018 goes from July 1, 2017, through June 30, 2018.

NEW SECTION

WAC 504-49-145 Nonprofit organization. "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

NEW SECTION

WAC 504-49-150 Person, business, and household. "Person, business, and household" means any individual, firm, partnership, corporation, company, association, agency, or any other legal entity that resides on a property or has a business located on a property within the service area of the utility where the renewable energy system is located.

(1) No person, business, or household is eligible to receive incentive payments provided under section 1, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939) of more than:

(a) Five thousand dollars per year for residential-scale systems or community solar projects;

(b) Twenty-five thousand dollars per year for commercial-scale systems; or

(c) Thirty-five thousand dollars per year for shared commercial solar projects.

(2) Example: Two or more individuals living together in one household, with one customer account with the participating utility, constitutes a household. Although they may each individually participate in this incentive program, these same individuals living together in one household receive incentives in accordance with this chapter.

NEW SECTION

WAC 504-49-155 Program term. "Program term" means eight years, or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first. Eight years is equivalent to ninety-six months of electricity generation from the time of certification.

NEW SECTION

WAC 504-49-160 Project participant. "Project participant" has the two following meanings:

(1) For purposes of community solar projects, a utility customer who participates in a community solar project in order to obtain a beneficial interest. Eligible participants of a community solar project that are business entities, such as a limited liability company or a corporation, are analyzed for participant eligibility and applicable incentive caps and limits by looking through the business entity to the members or stockholders that own the business entity.

(2) For purposes of shared commercial solar projects, a customer of a utility and located in the state of Washington.

NEW SECTION

WAC 504-49-165 Renewable energy system. "Renewable energy system" means:

(1) A solar energy system;

(2) An anaerobic digester as defined in RCW 82.08.900; or

(3) A wind generator used for producing electricity.

NEW SECTION

WAC 504-49-170 Residential-scale system. "Residential-scale system" means a renewable energy system or systems located at a single situs with combined nameplate capacity of twelve kilowatts direct current or less that meets the applicable system eligibility requirements established in section 6, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-175 Shared commercial solar project. "Shared commercial solar project" means a solar energy system, owned or administered by an electric utility, which:

(1) Has a combined nameplate capacity of greater than one megawatt direct current and not more than five megawatts direct current;

(2) Has at least five participants; and

(3) Meets the applicable eligibility requirements established in sections 6 and 8, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-180 Solar energy system. "Solar energy system" means any device or combination of devices or elements that rely on direct sunlight as an energy source for use in the generation of electricity.

NEW SECTION

WAC 504-49-185 Solar inverter. "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

NEW SECTION

WAC 504-49-190 Solar module. "Solar module" means the smallest nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

NEW SECTION

WAC 504-49-195 Total system price. (1) "Total system price" includes only the renewable energy system components (defined as "machinery and equipment" in WAC 458-20-263) and fees that are integral and necessary for the generation of electricity. Components and fees include:

(a) Renewable energy system equipment (depends on system type):

(i) Solar energy system: Solar modules, inverter(s);

(ii) Wind generator: Turbine(s), tower(s), inverter(s);

(iii) Anaerobic digester: Digester/reactor, electrical generator.

(b) Balance of system (such as racking, wiring, switch gear, meter base);

(c) Nonhardware costs incurred up to the date of the final electrical inspection (such as fees associated with engineering, permitting, interconnection, application);

(d) Labor;

(e) Sales tax (as applicable).

(2) Total system price does not include structures and fixtures that are not integral to the generation of electricity per WAC 458-20-263.

PART II

PARTICIPATION AND APPLICATION REQUIREMENTS, AND INCENTIVE LEVELS BY PROJECT TYPE

NEW SECTION

WAC 504-49-200 Participation by a utility in the renewable energy system incentive program is voluntary. (1) A utility electing to participate in the incentive program must notify the energy program of such election in writing.

(2) The utility may terminate its voluntary participation in the incentive program by providing notice in writing to the energy program to cease issuing new certifications for renewable energy systems that would be served by that utility.

(3) Such notice of termination of participation is effective after fifteen days, at which point the energy program may not accept new applications for certification of renewable energy systems that would be served by that utility.

(4) Upon receiving a utility's notice of termination of participation in the incentive program, the energy program must report on its web site that customers of that utility are no longer eligible to receive new certifications under the incentive program.

(5) A utility's termination of participation does not affect the utility's obligation to continue to make annual incentive payments for electricity generated by systems that were certified prior to the effective date of the notice. The energy program must continue to process and issue certifications for renewable energy systems that were received by the energy program before the effective date of the notice of termination.

(6) A utility that has terminated participation in the program may resume participation upon filing notice with the energy program.

NEW SECTION

WAC 504-49-205 Certification restrictions. No new certification may be issued under this chapter for a system which an applicant received notice of eligibility from the department of revenue under the cost recovery program (RCW 82.16.120), or for a renewable energy system served by a utility that has elected not to participate in the incentive program, as provided in WAC 504-49-200.

NEW SECTION

WAC 504-49-210 Renewable energy project requirements. Any person, business, or household, as defined in WAC 504-49-150, that participates in any of the four types of renewable energy projects defined in sections 5 through 8, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939), must meet the specified participation requirements and is subject to the system capacity limits, application requirements, and incentive limits, as follows:

(1) Residential-scale:

(a) Participation: The participant must be an owner of a residential-scale renewable energy system that is not a utility and:

(i) Is a customer of the utility that serves that location and has established an interconnection agreement with the utility for the renewable energy system;

(ii) Is located on contiguous property; and

(iii) Either owns or occupies the premises where the renewable energy system is installed.

(b) Capacity: Twelve kilowatts direct current or less, combined:

(i) Example 1: A property with a six kilowatts direct current solar system on one structure and a five kilowatts direct current system on the same or separate structure qualifies for the residential-scale incentive rate because the total capacity is less than twelve kilowatts direct current, combined.

(ii) Example 2: A property with a six kilowatts direct current solar system on one structure and a seven kilowatts direct current system on the same or separate structure does not qualify for the residential-scale incentive rate because the

total capacity is greater than twelve kilowatts direct current, combined. This combined system instead qualifies for the commercial-scale incentive rate.

(iii) In the case of multiple renewable energy systems on a structure such as a condominium or commercial building, each having a separate customer-owner and separate utility and production meters, each system, if under twelve kilowatts direct current, would qualify for the residential-scale rate.

(c) Application: The owner submits a completed application to the energy program for certification per requirements specified in WAC 504-49-220.

(d) Annual incentive limit: Five thousand dollars per person, business, or household.

(2) Commercial-scale:

(a) Participation: The participant must be an owner of a commercial-scale renewable energy system that is not a utility and:

(i) Is a customer of the utility that serves that location and has established an interconnection agreement with the utility for the renewable energy system;

(ii) Is located on contiguous property; and

(iii) Either owns or occupies the premises where the renewable energy system is installed.

(b) Capacity: Greater than twelve kilowatts direct current, combined.

(i) Example 1: A property with a six kilowatts direct current solar system on one structure and a seven kilowatts direct current system on the same or separate structure qualifies for the commercial-scale incentive rate because the total capacity is greater than twelve kilowatts direct current, combined.

(ii) Example 2: A property with a six kilowatts direct current solar system on one structure and a five kilowatts direct current system on the same or separate structure qualifies for the residential-scale incentive rate because the total capacity is less than twelve kilowatts direct current, combined.

(c) Application: The owner submits a completed application to the energy program for certification per requirements specified in WAC 504-49-220.

(d) Annual incentive limit: Twenty-five thousand dollars per person, business, or household.

(3) Shared commercial solar:

(a) Administration: Administrators of this project type must be a utility or a business under contract with a utility;

(b) Participation: Projects must have at least five project participants, each of which is a customer of the utility and located in the state of Washington;

(c) Capacity: Combined nameplate capacity greater than one megawatt direct current and not more than five megawatts direct current;

(d) Application:

(i) Precertification. Prior to applying for certification, a shared commercial solar administrator must apply for precertification against the remaining funds available for incentive payments as of July 1, 2017. Precertification application requirements include, but are not limited to:

(A) The name of the utility serving the project location;

(B) Contact information for the project administrator and technical management personnel; and

(C) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable;

(D) Additional information regarding deployment of projects in low- and moderate-income communities, as those terms are defined in RCW 43.63A.510, as requested.

(ii) Certification. The application for certification may not exceed the precertified system capacity. An application for certification must be completed by the shared commercial solar project administrator and approved by the energy program within one year of precertification issuance. Extensions past the three hundred sixty-five-day period are not granted. Projects that do not meet this deadline lose precertification status.

(e) Incentive rate: The incentive rate is set at the date of precertification approval;

(f) Annual incentive limit: Thirty-five thousand dollars per participant (person, business, household), consistent with their share of participation.

(4) Community solar project:

(a) Administration: A utility, nonprofit, or local housing authority that organizes or administers a solar project;

(b) Participation: The project must have at least ten participants, or one participant for every ten kilowatts direct current nameplate capacity, whichever is greater; and all participants must be customers of the participating utility;

(c) Capacity: Nameplate capacity that is no more than one thousand kilowatts direct current;

(d) Application:

(i) Precertification. Prior to applying for certification, a community solar project administrator must apply for precertification against the remaining funds available for incentive payments as of July 1, 2017. Precertification application requirements include, but are not limited to:

(A) The name of the utility serving the project location;

(B) Contact information for the project administrator and technical management personnel; and

(C) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(ii) Certification. The application for certification may not exceed the precertified system capacity. An application for certification must be completed by the community solar project administrator and approved by the energy program within one year of precertification issuance. Extensions past the three hundred sixty-five-day period are not granted. Projects that do not meet this deadline lose precertification status.

(e) Incentive rate: The incentive rate is set at the date of precertification approval;

(f) Annual incentive limit: Five thousand dollars per participant (person, business, household), consistent with their share of participation.

NEW SECTION

WAC 504-49-215 Department of revenue-certified renewable energy systems. To continue to be eligible to receive incentive payments under the renewable energy sys-

tem cost recovery program (as described in WAC 458-20-273), the applicants (as defined in WAC 458-20-273) with the department of revenue certification must reapply with the energy program. This reapplication process is described in Part VI of this chapter and must be completed by April 30, 2018.

(1) Participation: Only applicants with renewable energy systems previously certified by the department of revenue may reapply for continued incentives.

(2) Application: Submit a completed reapplication to the energy program for certification in accordance with the requirements specified in Part VI of this chapter. For community solar projects, also submit a list of participants in the project.

(3) Annual incentive limit: Five thousand dollars per individual, household, business, or local governmental entity.

(4) Deadline: Reapplications must be submitted by April 30, 2018.

NEW SECTION

WAC 504-49-220 Requirements to apply for certification—Residential-scale and commercial-scale projects. The application must contain, but is not limited to, the following information; additional requirements are specified in WAC 504-49-210.

(1) The name and address of the customer-owner and location of the renewable energy system.

(2) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(3) An executed interconnection agreement with the serving utility.

(4) The date and supporting documentation verifying that the local jurisdiction issued its final electrical inspection of the renewable energy system.

(5) Documentation, including final sales invoice, and details of the total system price as defined in WAC 504-49-195.

(6) A signed statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(7) A signed statement that the applicant has not previously received a notice of eligibility from the department of revenue under RCW 82.16.120 entitling the applicant to receive annual incentive payments for electricity generated by the renewable energy system.

(8) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

(9) Payment of the one hundred twenty-five dollar application fee.

(10) Provisional certification. The energy program may grant provisional certification prior to proof of final electrical inspection. Provisional certification expires one hundred eighty days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction, or the energy program extends the certification for a term or terms of thirty days due to extenuating circumstances.

NEW SECTION

WAC 504-49-225 Requirements to apply for certification—Shared commercial and community solar projects. The application must contain, but is not limited to, the information detailed below. Additional requirements are specified in WAC 504-49-210.

(1) The name and address of the project administrator and location of the renewable energy system.

(2) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(3) An executed interconnection agreement with the serving utility.

(4) The date and supporting documentation verifying that the local jurisdiction issued its final electrical inspection of the renewable energy system.

(5) Documentation, including final sales invoice, and details of total system price as defined in WAC 504-49-195.

(6) A signed statement that the administrator understands that this information is true, complete, and correct to the best of administrator's knowledge and belief under penalty of perjury.

(7) A signed statement that the administrator has not previously received a notice of eligibility from the department of revenue under RCW 82.16.120 entitling the community solar project participants to receive annual incentive payments for electricity generated by the solar energy system.

(8) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

(9) Payment of the one hundred twenty-five dollar application fee.

(10) Additional information required for certification of shared commercial solar and community solar projects may include, but is not limited to:

(a) Shared commercial solar projects:

(i) Project design details;

(ii) Levelized cost of energy output of the system over its production life, and the calculations used to determine such cost;

(iii) A list of participants, including:

(A) Name;

(B) Address;

(C) Retail rate; and

(D) Utility account number;

(iv) Interconnection information; and

(v) Details regarding the majority of the installation work. If the majority of the installation of a shared commercial solar project is awarded to out-of-state contractors, the administrator must submit to the energy program:

(A) The reasons for using out-of-state contractors;

(B) The percentage of installation work performed by out-of-state contractors; and

(C) A cost comparison of the installation services performed by out-of-state contractors compared to the same services performed by Washington-based contractors.

(b) Community solar projects:

(i) System ownership information and business address;

(ii) Project design details;

(iii) Proof of administrator registration with the utilities and transportation commission, as applicable;

(iv) A list of participants, including:

(A) Name;

(B) Address; and

(C) Utility account number.

(v) Subscription information, including:

(A) Rates;

(B) Fees;

(C) Terms and conditions.

(vi) Executed interconnection agreement if the project size is greater than five hundred kilowatts direct current; and

(vii) Updated information regarding deployment of projects in low- and moderate-income communities, as those terms are defined in RCW 43.63A.510, as requested.

NEW SECTION

WAC 504-49-230 Response from the energy program. Within thirty days of receipt of the application for precertification or certification, the energy program must notify the customer-owner or administrator, electronically or by mail, whether the renewable energy system qualifies for incentive payments. This notice must state the rate to be paid per kilowatt-hour of electricity generated by the renewable energy system, as provided in section 6(12), chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939), subject to any applicable caps and limits on total annual payment as defined in this chapter.

NEW SECTION

WAC 504-49-235 Public disclosure. System certifications and the information contained therein are subject to public disclosure. In addition, all energy generation and incentive payment information associated with the certified system (as collected by the energy program) is subject to public disclosure.

NEW SECTION

WAC 504-49-240 Denial or revocation of system certification. The energy program may deny or revoke the approval of a system's certification and an appeal of this final determination may be initiated. The appeal provisions under Part VII of this chapter apply here.

NEW SECTION

WAC 504-49-245 Utility liability. A utility is not liable for incentive payments to a customer-owner if the utility has disconnected the customer due to a violation of a customer service agreement, such as nonpayment of the customer's bill or a violation of an interconnection agreement.

NEW SECTION

WAC 504-49-250 Modification to system. Modification details must be provided to the energy program. Examples are provided in WAC 504-49-305.

PART III

CALCULATION OF INCENTIVES

NEW SECTION

WAC 504-49-300 Incentive payment rate. The incentive payment rate is the sum of the base rate and the made-in-Washington bonus, if applicable. To determine the incentive payment, the incentive payment rate is then multiplied by the system's gross kilowatt-hours generated during the fiscal year to determine the incentive payment.

(1) Determining the base rate. The first step in computing the incentive payment is to determine the correct base rate to apply. This rate depends on the fiscal year in which the system was certified and the type of renewable energy project under consideration, as defined in the table in subsection (2) of this section.

(2) Made-in-Washington bonus. The bonus rate is determined by whether all applicable system components (solar modules, wind turbines or towers) are manufactured in Washington state. See additional manufacturing details in Part V of this chapter. Bonus rates vary depending on the fiscal year in which the system is certified, as provided in the table below.

Fiscal year of system certification	Base rate: Residential-scale	Base rate: Commercial-scale	Base rate: Community solar	Base rate: Shared commercial solar	Made-in-Washington bonus
2018	$0.16	$0.06	$0.16	$0.06	$0.05
2019	$0.14	$0.04	$0.14	$0.04	$0.04
2020	$0.12	$0.02	$0.12	$0.02	$0.03
2021	$0.10	$0.02	$0.10	$0.02	$0.02

(3) Examples: A renewable energy system certified in fiscal year 2019 and generate:

(a) Residential-scale system: Two thousand five hundred kilowatt-hours; commercial-scale system: Fourteen thousand kilowatt-hours.

(i) If a residential-scale or commercial-scale renewable energy system has only solar modules manufactured out-of-state, the computation is as follows:

(A) Residential-scale: 0.14 × 2,500 = $350.00;

(B) Commercial-scale: 0.04 × 14,000 = $560.00.

(ii) If a residential-scale or commercial-scale renewable energy system has all solar modules manufactured in Washington state, the computation is as follows:

(A) Residential-scale: (0.14 + 0.04) × 2,500 = $450.00;

(B) Commercial-scale: (0.04 + 0.04) × 14,000 = $1,120.00.

(iii) If a residential-scale or commercial-scale renewable energy system has a solar module manufactured in Washington state combined with additional solar modules manufactured out-of-state, the computation would be as follows:

(A) Residential-scale: 0.14 × 2,500 = $350.00;

(B) Commercial-scale: 0.04 × 14,000 = $560.00.

(iv) If residential-scale or commercial-scale wind generator equipment has an out-of-state turbine combined with a tower manufactured in Washington state, the computation is as follows:

(A) Residential-scale: (0.14 + 0.04) × 2,500 = $450.00;

(B) Commercial-scale: (0.04 + 0.04) × 14,000 = $1,120.00.

(v) If residential-scale wind generator equipment has both an out-of-state turbine and tower, the computation is as follows:

(A) Residential-scale: 0.14 × 2,500 = $350.00;

(B) Commercial-scale: 0.04 × 14,000 = $560.00.

(b) Shared commercial solar project system: Four million kilowatt-hours.

(i) If a shared commercial system has out-of-state solar modules, the computation is as follows: 0.04 × 4,000,000 = $160,000.00. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $160,000.00 × 0.05 = $8,000.00 (contingent on the rates, fees, terms or conditions of the project).

(ii) If a shared commercial system has all solar modules manufactured in Washington state, the computation is as follows: (0.04 + 0.04) × 4,000,000 = $320,000.00. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $320,000.00 × 0.05 = $16,000.00 (contingent on the rates, fees, terms or conditions of the project).

(c) Community solar project system: Fifty thousand kilowatt-hours.

(i) If a community solar energy system has all solar modules manufactured in Washington state combined with an out-of-state inverter, the computation is as follows: (0.14 + 0.04) × 50,000 = $9,000.00. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $9,000.00 × 0.05 = $450.00 (contingent on the rates, fees, terms or conditions of the project).

(ii) If a community solar energy system has some solar modules manufactured in Washington state combined with additional solar modules manufactured out-of-state, the computation is as follows: 0.14 × 50,000 = $7,000.00. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $7,000.00 × 0.05 = $350.00 (contingent on the rates, fees, terms or conditions of the project).

NEW SECTION

WAC 504-49-305 Additions or changes to existing certified systems. (1) All additions or changes to existing certified systems are subject to existing utility standards and policies.

(2) If a residential-scale or commercial-scale customer-owner makes investments that result in an expansion of capacity, the applicant must provide this information to the energy program. The energy program may:

(a) Issue a new certification for an additional system installed with a previously certified system, as long as the new system meets the program requirements and its production can be measured separately from the previously certified system; or

(b) Issue a recertification if the additional capacity is not measured separately. Such recertification expires on the same day as the original certification for the residential-scale or commercial-scale system, and applies the incentive rates and program rules that are in effect as of the date of the recertification.

(3) The following examples illustrate how increases in system capacity may affect incentive payments:

(a) A five kilowatts direct current residential-scale system is certified in February 2019 and is eligible for the fourteen cents incentive rate. Two kilowatts direct current of capacity is added in February 2021 without a separate production meter and the system is recertified in the same fiscal year. The incentive rate of ten cents per kilowatt-hour applies to all future incentive payments of the entire seven kilowatts direct current system. Incentive payments end in 2027 or when cumulative incentive payments reach fifty percent of the total system price plus the expansion price, including applicable sales tax, whichever comes first;

(b) A five kilowatts direct current residential-scale system is certified in February 2019 and is eligible for the fourteen cents incentive rate. If two kilowatts direct current of capacity is added in February 2021 with its own production meter, the addition may be certified separately and the ten cent rate applies only to the production from this separate system and ends in 2029. The originally certified five kilowatts direct current system continues to be certified at the fourteen cents rate, with those payments ending in 2027. Cumulative incentive payments of fifty percent of the total system price, including applicable sales tax, apply separately to the five kilowatts direct current and two kilowatts direct current installations;

(c) An increase in nameplate capacity results in the total system size being greater than twelve kilowatts direct current. The system requires recertification and the applicable commercial-scale incentive rate applies.

NEW SECTION

WAC 504-49-310 Cumulative limit on incentive payments. Incentive payments continue for eight years or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

PART IV

MANUFACTURED IN WASHINGTON STATE

NEW SECTION

WAC 504-49-400 What constitutes manufactured in Washington? The energy program must, in consultation with the department of commerce, establish a list of equipment that is eligible for the bonus rates described in this chapter.

(1) In order for a solar module, or a wind turbine or tower, to qualify as manufactured in Washington state, the manufactured component must meet the following definitions:

(a) "Solar module" means the smallest nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. The lamination of the modules must occur in Washington state;

(b) "Wind turbine" refers to a device that converts the wind's kinetic energy into electrical energy and "tower" refers to the supporting structure.

(2) Is combining products considered to be manufacturing? When determining whether a solar module, or a wind turbine or tower, are manufactured in Washington, the energy program considers various factors to determine if a manufacturer combining various items into a single package is engaged in a manufacturing activity. Any one of the following factors is not considered conclusive evidence of a manufacturing activity:

(a) The ingredients are purchased from various suppliers;

(b) The manufacturer combining the ingredients attaches his or her own label to the resulting product;

(c) The ingredients are purchased in bulk and broken down to smaller sizes;

(d) The combined product is marketed at a substantially different value from the selling price of the individual components; and

(e) The manufacturer combining the items does not sell the individual items except within the package.

NEW SECTION

WAC 504-49-405 What is the process for a manufacturer to get its product qualified as made in Washington? The manufacturer must request certification from the energy program that its product, such as a module, or wind turbine or tower, qualifies as made in Washington.

(1) Manufacturer's statement. The manufacturer must supply the energy program with a statement specifying what processes were carried out in Washington state to qualify the product.

(2) Penalty of perjury. The manufacturer's statement must be made under penalty of perjury.

(3) Field visit to view manufacturing process. The energy program performs a field visit to view the manufacturing process for the product, which may also include, but is not limited to:

(a) An inspection of the process by an engineer or other technical expert;

(b) Testing and evaluation of a product pulled off the production line;

(c) Review of purchase invoices to verify the vendor sources for the parts used in the manufacturing of the product;

(d) Inspection of the production line; and

(e) Requests for clarification concerning questions, if any, discovered during the inspection.

(4) Approval or disapproval of manufacturer's certification. Within thirty days of the field visit, the energy program issues a written decision to the manufacturer on its product's qualification as made in Washington state. The energy program makes the decision available to the public.

(5) Change in manufacturing process. The manufacturer must notify the energy program of any change in the manufacturing process for previously certified products within ten days of such a change.

(6) Inspection of previously certified product's manufacturing process. The energy program reserves the right to perform an inspection of the manufacturing processes for each product, such as a solar module, or a wind tower or turbine, that has been previously certified as manufactured in Washington state. The inspection is conducted to verify that the product continues to qualify as manufactured in Washington state.

(7) Denial or revocation of approval of certification. The energy program may revoke the approval of certification that a product, such as a module, or a wind turbine or tower, is made in Washington state when it finds that the product does not qualify for certification as manufactured in Washington state.

(8) The appeal provisions under Part VII of this chapter apply here.

(9) Document retention. The manufacturer must retain the documentation of the made in Washington certification process for five years after the application period for the related incentive program closes.

PART V

GENERAL TOPICS

NEW SECTION

WAC 504-49-500 Is there a time limit on when incentive payment may be made for a system's generated electricity? Yes. Incentive payments may only be made for kilowatt-hours generated on or after July 1, 2017, and for the following eight years, or until cumulative incentive payments for electricity generated by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

(1) Authorization of incentive payments. No incentive payments may be authorized or accrued until the final electrical inspection and executed interconnection agreement are submitted to the energy program.

(2) Certification is valid for the incentive program term. This certification entitles the person, business, or household to receive incentive payments for electricity generated from the date the renewable energy system commences operation, or the date the system is certified, whichever date is later.

(3) Changes to incentive rates. Incentive rates determined by certification date may not be retroactively changed except to correct errors that were made during the original application or certification process and that are discovered later.

(4) Incentive schedule. Incentives are issued based on the gross kilowatt-hours generated during the fiscal year beginning on July 1st and ending on June 30th. For the last year of incentive payments, the payment is the balance of the last year of generation less the first year of generation. A negative balance for the last year results in nonpayment.

(5) Certification date. Certification date is determined by the date when the energy program completes its review of a submitted application. However, due to the timing of this program, the following administrative processes apply:

(a) For applications submitted from July 1, 2017, to December 31, 2017:

(i) For purposes of systems that commenced operation on or after July 1, 2017: The certification date is assigned based on the date that the local jurisdiction issued its final approval of the electrical inspection of the renewable energy system.

(ii) For purposes of systems that commenced operation before July 1, 2017: The certification date is assigned as July 1, 2017.

(b) For applications submitted on or after January 1, 2018: The certification date is assigned on the date when the energy program completes its review of a submitted application. The energy program encourages customer-owners to submit all applications on the date the local jurisdiction issues its final approval of the electrical inspection of the renewable energy system. In instances where the certification date might follow the final electrical inspection by more than thirty days, the customer-owner or the serving utility must provide additional information to ascertain the correct initial electrical generation amount to use in calculating the first year of incentive payments.

NEW SECTION

WAC 504-49-505 Must the customer-owner or administrator keep records regarding incentive payments? (1) Customer-owners or administrators receiving incentive payments must keep and preserve, for a period of five years after the receipt of the last incentive payment from the utility, suitable records as may be necessary to determine the amount of incentive received.

(2) Examination of records. Such records must be open for examination at any time upon notice by the energy program.

NEW SECTION

WAC 504-49-510 How to determine if community solar or shared commercial solar projects located on the same property are one combined system or separate systems for determining the applicable limit? In determining if a community solar or shared commercial solar project is within the applicable limit when more than one community solar or shared commercial solar project is located on one property, the energy program treats each project's system as separate from the other projects if there are separate production meters and separate certification applications have been submitted to the energy program.

NEW SECTION

WAC 504-49-515 Are the renewable energy system's environmental attributes transferred when ownership of the renewable energy system changes? The nonpower attributes of the renewable energy system belong to the utility customer who owns or hosts the system or, in the case of a community solar project or a shared commercial solar project, the participant. The attributes may be kept, sold, or transferred at the utility customer's discretion unless, in the case of a utility-owned community solar or shared commercial solar project, a contract between the customer and the utility clearly specifies that the utility retains the attributes.

NEW SECTION

WAC 504-49-520 What do I have to do if I purchase property that has an existing renewable energy system? If a person, business, or household purchases a property that has a certified renewable energy system, the new customer-owner must (at a minimum) notify the energy program of the transfer of ownership and provide an executed interconnection agreement with the utility serving the premises.

NEW SECTION

WAC 504-49-525 What if I sell my share in a community solar or shared commercial solar project? The administrator of a community solar project or shared commercial solar project must provide notice to the energy program of any changes or transfers in project participation.

PART VI

APPLICATION PROCESS FOR CURRENTLY CERTIFIED RENEWABLE ENERGY SYSTEMS IN THE COST RECOVERY INCENTIVE PROGRAM

NEW SECTION

WAC 504-49-600 Requirements to reapply for certification. The reapplication for continued incentive payments through June 30, 2020, must be submitted to the energy program by April 30, 2018. This reapplication must contain, but is not limited to, the following information as specified in the applicant and eligibility requirements in WAC 458-20-273:

(1) The name and address of the applicant and location of the renewable energy system;

(2) The applicant's tax registration number;

(3) The utility name and utility account number;

(4) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable;

(5) A signed statement that the applicant understands that this information is true, complete, and correct to the best of their knowledge and belief under penalty of perjury; and

(6) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

NEW SECTION

WAC 504-49-605 May a renewable energy system that has already been certified by the department of revenue be certified in the new program for incentive payments beyond June 30, 2020? No. If the applicant's renewable energy system has already been certified by the department of revenue for cost recovery incentives, that system is ineligible for the new incentive program.

NEW SECTION

WAC 504-49-610 May I increase the capacity of a department of revenue-certified system? The person, business, or household may not increase the capacity of a department of revenue-certified system to receive additional cost recovery program incentive payments.

NEW SECTION

WAC 504-49-615 Is there a fee to reapply? No. There is no fee for reapplication for a department of revenue-certified renewable energy system.

PART VII

APPEALS RIGHTS

NEW SECTION

WAC 504-49-700 What are the appeal rights under the renewable energy system incentive payment program? (1) The energy program may take four different types of actions that may result in a right to an appeal:

(a) Denying a system's precertification or certification;

(b) Revoking a system's precertification or certification;

(c) Denying a manufacturer's statement of a product as qualifying as made in Washington state; and

(d) Revoking a previously approved certification of a product qualifying as made in Washington.

(2) The same appeal procedures apply to all four types of action. All appeals involving the renewable energy system incentive program in this chapter are conducted as formal adjudicative proceedings under RCW 34.05.413 through 34.05.476 and chapter 10-08 WAC.

(3) The notice issued by the energy program provides an explanation of the reasons for the denial or revocation, and advises the recipient about how to appeal the decision if the recipient disagrees.

(4) The energy program's action is final unless the recipient files an appeal petition with the energy program within thirty days of service (receipt) of the notice of the energy program's action. RCW 34.05.010(19) defines "service" and includes service by postal mail, electronic mail, and personal service.

NEW SECTION

WAC 504-49-705 Presiding officer—Final order—Review. For both a denial of an application for certification and a notice of intent to revoke a previously approved certification, the presiding officer of a formal adjudicative proceeding is the Washington state office of administrative hearings. The presiding officer makes the final decision and enters a final order as provided in RCW 34.05.461 (1)(b).

NEW SECTION

WAC 504-49-710 Petitions for reconsideration. RCW 34.05.470 governs petitions for reconsideration. Petitions for reconsideration must be addressed to or delivered to the presiding officer at the address provided in the final order. The petition for reconsideration must be filed and served as required by WAC 10-08-110.

NEW SECTION

WAC 504-49-715 Judicial review. Judicial review of the final order of the presiding officer is governed by RCW 34.05.510 through 34.05.598.

WSR 18-06-028
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 18-28—Filed February 27, 2018, 1:38 p.m., effective February 27, 2018, 1:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000M; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Area 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. There is insufficient time to adopt permanent rules.

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 0, Repealed 1.

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: February 27, 2018.

Nate Pamplin
for Joe Stohr
Acting Director

NEW SECTION

WAC 220-330-16000M Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. March 2, 2018 through 11:59 p.m. March 3, 2018, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 4, 2018:

WAC 220-330-16000M Razor clams—Areas and seasons.

WSR 18-06-033
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 18-29—Filed February 28, 2018, 2:20 p.m., effective February 28, 2018, 2:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for the Puget Sound commercial scallop fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-340-61000C; and amending WAC 220-340-610.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to open Burrows Bay Scallop Area 3. Department of health has classified this area as restricted and harvestable surplus of pink and spiny scallops exists to allow for commercial harvest. There is insufficient time to adopt permanent rules.

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 0, Repealed 1.

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: February 28, 2018.

Nate Pamplin
for Joe Stohr
Acting Director

NEW SECTION

WAC 220-340-61000D Commercial scallop fishery—Puget Sound. Notwithstanding the provisions of WAC 220-340-610, effective immediately until further notice, it is

unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(2) Pink or spiny scallop harvest using shellfish diver gear is only allowed in Washington Department of Health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 25A and 25B, except as noted in (3) below.

(3) Pink or spiny scallop harvest using shellfish diver gear is also allowed within DOH Restricted Scallop Area 2 Rosario Strait and Scallop Area 3 Burrows Bay defined by the Washington Department of Health in Marine Fish/Shellfish Catch Reporting Areas 20B, 21A, and 22A.

(4) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(5) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations and when pink or spiny scallops are onboard the harvest vessel.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-61000C Commercial scallop fishery. (18-20)

WSR 18-06-062
EMERGENCY RULES
DEPARTMENT OF TRANSPORTATION
(Public Transportation Division)

[Filed March 5, 2018, 11:07 a.m., effective March 5, 2018, 11:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To make revisions to chapter 468-550 WAC to meet the new requirements set by the Federal Transit Administration (FTA), and to increase safety pending the passage of the permanent rule, for the Washington state department of transportation (WSDOT) state safety oversight program for rail fixed guideway public transportation in the state of Washington as required under 49 C.F.R. Part 674.

Citation of Rules Affected by this Order: New WAC 468-550-015, 468-550-061, 468-550-062, 468-550-063, 468-550-100 and 468-550-110; and amending WAC 468-550-010, 468-550-020, 468-550-030, 468-550-040, 468-550-050, 468-550-060, 468-550-070, 468-550-080, and 468-550-090.

Statutory Authority for Adoption: RCW 81.104.115.

Other Authority: 49 C.F.R. Part 674.

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

Reasons for this Finding: To make revisions to chapter 468-550 WAC to meet the new requirements set by FTA to increase the WSDOT state safety oversight program safety enforcement authority for rail fixed guideway public transportation in the state of Washington as required under 49 C.F.R. Part 674. In addition this rule making is required for the WSDOT state safety oversight program to become certified by FTA as required under 49 C.F.R. Part 674 and failure to do so will result in the forfeiture of all funds given by FTA for public transportation in the state of Washington.

The emergency rule making increases WSDOT's flexibility to respond to potential light rail events while the rulemaking process is conducted. In addition, several current light rail projects are in various states of development. The new rule will provide clear oversight authority from design through operation. This allows us to identify hazards in the design stage, which could otherwise be costly to avert during operation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 6, Amended 9, 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 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: March 5, 2018.

Streator Johnson
Administrative Risk Manager

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-010 Purpose. This chapter is adopted to comply with 49 C.F.R. Part ((~~659~~)) 674 and RCW 81.104.115, which requires the state of Washington to oversee the ((~~system~~)) agency safety program ((~~and the security and emergency preparedness plans~~)) of rail fixed guideway ((~~systems (RFGS) not regulated by the Federal Railroad Administration~~)) public transportation systems (RFGPTS) as defined in 49 C.F.R. Part 674.7. These rules prescribe the ((~~system~~)) safety ((~~and security~~)) criteria to be met by ((~~RFGS~~)) RFGPTS and are intended to improve the safety ((~~and security of RFGS~~)) of RFGPTS in Washington state. 49 C.F.R. Part 674.11c and Part 674.13a require the establishment of a state safety oversight agency (SSOA) in accordance with the requirements of 49 U.S.C. 5329c and 5329e(3)c. The Wash-

ington state department of transportation was designated in 1997 by Governor Gary Locke as the SSOA for the state of Washington. WSDOT's designation and authority as the SSOA is codified in RCW 81.104.115 and more recently in chapter 33, Laws of 2016 (Senate Bill 6358).

NEW SECTION

WAC 468-550-015 Effective date. These rules are necessary to comply with C.F.R. Part 674 and take effect upon filing with the code reviser for emergency rule making per the requirements outlined in RCW 34.05.350.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-020 Applicability. These rules are applicable to all Washington state entities, public or private, which own, operate, or maintain ((~~RFGS that are not regulated by the Federal Railroad Administration~~)) RFGPTS as defined in 49 C.F.R. Part 674.7.

These rules apply to all owners of rail fixed guideway public transportation systems, as defined by ((~~RCW 81.104.015~~)) 49 C.F.R. Part 674, which are required by RCW 81.112.180, 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, ((~~or 81.112.180~~)) 81.104.015 to comply with the requirements of the Washington state department of transportation for the development and implementation of ((~~a system~~)) an agency safety program plan ((~~and a security and emergency preparedness plan~~)).

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-030 Definitions. For the purposes of this chapter, the following definitions of terms shall apply unless the context clearly indicates otherwise:

(1) Accident((~~, reportable~~)) means ((~~any~~)) an event ((~~involving the operation of a RFGS along a revenue line segment, if as a result:~~

~~(a) An individual dies; or~~

~~(b) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or~~

~~(c) A collision, derailment, or fire causes property damage in excess of $25,000.~~

~~(2) APTA Guidelines means the American Public Transit Association's "*Manual for the Development of Rail Transit System Safety Program Plans*."~~

~~(3) Chief executive officer means, but is not limited to, the mayor, county executive, or chair of the municipality, or corporate president of the public or private entity that owns, operates, or maintains a RFGS.~~

~~(4) Contractor means an entity that performs tasks required by this chapter on behalf of the department or a RFGS.~~

~~(5)~~)) that involves any of the following: A report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.

(2) Accountable executive means a single, identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; responsibility for carrying out the agency's transit asset management plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan in accordance with 49 U.S.C. 5329(d) and the agency's transit asset management plan in accordance with 49 U.S.C. 5326.

(3) Agency means any entity that provides rail fixed guideway public transportation services.

(4) Agency safety plan is a document developed and implemented for each rail fixed guideway system, which describes its safety policies, objectives, responsibilities, and procedures. The requirements for this plan are established by the Federal Transit Administration in C.F.R. 49 Part 674 and further by the Washington state rail safety oversight program standard.

(5) APTA guidelines means the American Public Transit Association's *Manual for the Development of Rail Transit System Safety Program Plans*.

(6) Collision means a vehicle/vessel accident in which there is an impact of a transit vehicle/vessel with another transit vehicle, a nontransit vehicle, a fixed object, a person(s) including a suicide or attempted suicide, an animal, a rail vehicle, a vessel, or a dock.

(7) Contractor means an entity that performs tasks required by this chapter on behalf of the department or a RFGPTS.

(8) Department means the Washington state department of transportation, which has been designated as the state safety oversight agency.

(((~~(6) Directional route mile means the mileage in each direction over which public transportation vehicles travel while in revenue service. Directional route miles are a measure of the route path over a facility or roadway and not the service carried on the facility. Directional route miles are computed with regard to direction of service, but without regard to the number of traffic lanes or rail tracks existing in the right of way. Directional route miles do not include staging or storage areas at the beginning or end of a route.~~

~~(7)~~)) (9) Emergency means a situation which is life-threatening to passengers, employees, or others or which causes damage to any rail fixed guideway vehicle or facility or results in a significant ((~~theft~~)) loss of services which severely affects the ability of the system to fulfill its mission.

(((~~(8)~~))) (10) Fatality means a death or suicide confirmed within thirty days of a reportable event. Excludes deaths in or on transit property that are a result of illness or other natural causes.

(11) FTA means the Federal Transit Administration, or its successors, an agency within the U.S. Department of Transportation.

(((~~(9)~~))) (12) Hazardous condition means a set of circumstances that if not identified and corrected has or will result in personal injury or property damage. It includes unacceptable hazardous conditions.

(((~~(10)~~))) (13) Incident means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage

to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail transit agency.

(14) Incident reporting thresholds are criteria established by Federal Transit Administration in C.F.R. 49 Part ((~~659~~)) 674 and further by the Washington state rail safety oversight program standard for determining which accidents/incidents require investigation.

(((~~11~~))) (15) Investigation means a procedure that the department or a ((~~RFGS~~)) RFGPTS utilizes to determine the cause of a reportable accident, hazardous condition, or security breach.

(((~~12~~))) (16) Major system enhancement means any modification to an existing RFGPTS that will significantly impact the operations and maintenance of the system, including opening new stations, system wide modification or replacement of equipment, expanded operations and maintenance facilities, or significant increases to system capacity.

(17) Medical attention means emergency care at a state-licensed general hospital, critical access hospital, or health clinic, or by a religious practitioner.

(((~~13) Plan means the system safety program plan and the security and emergency preparedness plan of rail fixed guideway systems not regulated by the Federal Railroad Administration adopted by the RFGS detailing its safety and security policies, objectives, responsibilities and procedures.~~

~~(14)~~))) (18) Procedure means an established and documented method to perform a task.

(((~~15~~))) (19) Rail fixed guideway public transportation system or ((~~"RFGS"~~)) "RFGPTS" means ((~~a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high-capacity transportation system that is not regulated by the Federal Railroad Administration or its successor. "RFGS" does not include elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system~~)) any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a state, and is not regulated by the Federal Railroad Administration, or its successor. Rail fixed guideway public transportation system (or "RFGPTS") also means any such projects in engineering or construction phases. Rail fixed guideway public transportation systems include, but are not limited to, rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

(((~~16~~))) (20) Rail transit agency (RTA) means any city, town, county, transportation authority, public transportation benefit area, regional transit authority, or other agency that owns a RFGPTS and bears ultimate accountability for it.

(21) Revenue line segment means that portion of a fixed guideway system upon, under, or through which a ((~~RFGS~~)) RFGPTS provides service available to the ((~~general~~)) public. It includes stations used by the system's passengers to enter or leave the ((~~RFGS's~~)) RFGPTS's conveyance.

(((~~17) Risk means the probability that a security breach will occur.~~

~~(18)~~))) (22) Safety means freedom from danger.

(((~~19) Security and emergency preparedness plan or "SEPP" is a document developed and implemented for each rail fixed guideway system which describes its security policies, objectives, responsibilities, and procedures. This plan is a requirement of RCW 81.104.115 and meets the standards established by the Federal Transit Administration in C.F.R. 49 Part 659 and the Washington state rail safety oversight program.~~

~~(20) Seasonally means the provision of service available to the general public fewer than a total of one hundred eighty days within a twelve month period. The provision of service any time on a calendar day is a day counted towards the threshold of one hundred eighty days.~~

~~(21)~~))) (23) Security means freedom from intentional danger.

(((~~22~~))) (24) Security breach means an unforeseen event or occurrence that endangers life or property and may result in the loss of services or system equipment.

(((~~23) Service available to the general public does not include operations for a specific private function when a RFGS accepts hire, such as group charters, weddings, or other private events that are not available to the general public on a walk-in basis.~~

~~(24) Standard means the system safety and security program standard which is the standard developed and adopted by the department which complies with the requirements of C.F.R. 49 Part 659.~~

~~(25) System means a composite of people, property, environment, and procedures which are integrated to perform a specific operational function in a specific environment.~~

~~(26) System safety program plan or "SSPP" is a document developed and implemented for each rail fixed guideway system which describes its safety policies, objectives, responsibilities, and procedures. The requirements for this plan are established by the Federal Transit Administration in C.F.R. 49 Part 659 and further by the Washington state rail safety oversight program standard.~~

~~(27) Triennial safety and security audit means a formal, comprehensive, on-site examination by the department of a RFGS's safety and security procedures to determine whether it complies with the RFGS's policies and procedures as outlined in the RFGS's plan.~~

~~(28) Washington state rail safety oversight program is the program administered by the Washington state department of transportation to ensure compliance by rail fixed guideway systems with the Washington state rail safety oversight program standard.~~

~~(29)~~))) (25) System expansion means any modification to an existing RFGPTS that will increase the distance over which trains can travel in passenger service, including line extensions or new lines.

(26) Washington state rail safety oversight program is the program administered by the Washington state department of transportation to ensure compliance by rail fixed guideway public transportation systems with the Washington state rail safety oversight program standard.

(27) Washington state rail safety oversight program standard is a document developed and adopted by the Washington state department of transportation that describes the policies, objectives, responsibilities, and procedures used to provide safety and security oversight of rail fixed guideway systems. This document is a requirement established by the Federal Transit Administration in C.F.R. 49 Part ((~~659~~)) 674.

(((~~(30) Unacceptable hazard is a real or potential condition that may endanger human life or property that after an assessment of its severity and probability cannot remain and must be mitigated.~~

~~(31)~~))) (28) Unacceptable hazardous condition means a hazardous condition classified by the rail transit agency as being unacceptable based on a hazardous resolution matrix or other evaluation methodology approved by the department.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-040 Requirements for ((~~system safety program plan and security and emergency preparedness plans~~)) agency safety plans. (((~~(1) Each RFGS, except any that operate seasonally, shall prepare a system safety program plan and security and emergency preparedness plans. Such plans shall describe the RFGS's procedures for:~~

~~(a) Reporting and investigating reportable accidents and unacceptable hazardous conditions;~~

~~(b) Submitting corrective action plans and annual safety and security audit reports;~~

~~(c) Facilitating on-site safety and security reviews by the department; and~~

~~(d) Addressing passenger and employee security.~~

~~The plans and any revisions thereto shall, at a minimum, conform to the standard set forth in WAC 468-550-050, be approved by the RFGS's chief executive officer and submitted for departmental review, or within three months prior to beginning operations or instituting revisions to the plans. The RFGS shall not transmit the security portions of its security and emergency preparedness plan to the department. The RFGS shall notify the department of the location and availability of the security portions of its plan.~~

~~(2) Each RFGS shall implement and comply with the provisions of its plans and any revisions thereto. Further, should the RFGS change ownership or operating or maintenance providers, the RFGS shall require its successors, assigns, and contractors to continue to comply with the RFGS's established plans and shall notify the department of any change of ownership or operating or maintenance providers within thirty days of the effective date of transfer or contract.~~

~~(3) The security section of the security and emergency preparedness plan is exempt from public disclosure under chapter 42.56 RCW. Each RFGS may develop procedures to implement this subsection. Completed reports of reportable accidents and unacceptable hazardous conditions, corrective action plans, annual safety and security audit reports, published reviews of the department, published RFGS internal safety and security audits, and notifications of reportable accidents and unacceptable hazardous conditions are not subject to this exemption.~~

~~(4) Each RFGS that operates seasonally shall submit a system description and organization structure to the department within ninety days of commencing operations. Each RFGS shall update this submittal within thirty days after any changes to the system description or organizational structure occur.~~

~~(a) The system description shall identify the revenue line segments, revenue equipment, and all locations for embarking or debarking passengers.~~

~~(b) The organizational structure shall identify the decision-making structure for the RFGS, including any firm or organization contracted to undertake its seasonal operations.~~

~~(c) This submittal shall include safety contact information for the RFGS and any firm or organization contracted to undertake its seasonal operations.~~)) (1) Rail transit agencies must establish an agency safety plan that complies with the requirements set forth in the Washington state rail safety oversight program standard, which conforms to current federal regulations for agency safety plans. These requirements include the establishment of an agency safety policy, a safety and risk management program, a safety assurance program, and a safety promotion program.

(2) Agency safety plans must establish the agency procedures for the review and revision of the plan. The filing, submittal, review, and approval of agency safety plans must comply with the standard set forth in WAC 468-550-050.

(3) As described in WAC 468-550-060, agency safety plans are subject to reviews and audits from the Washington state rail safety oversight program and the Federal Transit Administration.

(4) Rail transit agencies must conduct internal audits of agency safety plans per the requirements of WAC 468-550-060.

(5) Agency safety plans must establish procedures for the notification, investigation, and reporting of accidents, incidents, and hazards in conformance with the requirements of WAC 468-550-070.

(6) Agency safety plan policy statements must be approved and signed by the agency's accountable executive. The policy statement must assign responsibility for carrying out the plan to the designated agency accountable executive.

(7) Each RFGPTS shall implement and comply with the provisions of its plans and any revisions thereto. Further, should the RFGPTS experience a change in ownership or a change in operating or maintenance providers, the RFGPTS shall require continued compliance with the RFGPTS's established plans and shall notify the department of any change of ownership or operating or maintenance providers within thirty days of the effective date of transfer or contract.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-050 ((~~Department~~)) Procedures for ((~~reviewing, approving~~)) the submittal, review, approval, and filing ((~~rail fixed guideway system safety program plan and security and emergency preparedness plans and inspections~~)) of agency safety plans. (((~~(1)(a) The department shall review each RFGS system safety program plans, and all subsequent revisions, for compliance with these rules and the standard, using the system safety checklist which includes:~~

- ~~Policy statement and authority for the plan~~
- ~~Description of purpose for the plan~~
- ~~Clearly stated goals for plan~~

- ~~Identifiable and attainable objectives~~
- ~~System description and organizational structure~~
- ~~The plan control and update procedures~~
- ~~Hazard identification and resolution process~~
- ~~Accidents, hazardous conditions and reporting and investigation procedures~~
- ~~Internal safety audit process~~
- ~~Facilities inspections (includes system equipment and rolling stock)~~
- ~~Maintenance audits and inspections (all systems and facilities)~~
- ~~Rules and procedures review~~
- ~~Training and certification reviews and audits~~
- ~~Emergency response planning, coordination and training~~
- ~~System modification review and concurrence process~~
- ~~Safety data acquisition and analysis~~
- ~~Interdepartmental and interagency coordination~~
- ~~Configuration management~~
- ~~Employee safety program~~
- ~~Hazardous materials program~~
- ~~Drug abuse and alcohol misuse programs~~
- ~~Contractor safety coordination~~
- ~~Procurement~~

~~(b) The department shall provide written concurrence with the RFGS's system safety program plan or provide written comments to the RFGS specifying required changes. The RFGS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGS of its concurrence with the plans. The plans and the department's concurrence shall be maintained by the department in a permanent file.~~

~~(2)(a) The department shall review RFGS's security and emergency preparedness plan, and all subsequent revisions, for compliance with these rules and the standard, using the WSDOT security and emergency preparedness checklist which includes:~~

- ~~Policy statement for the plan~~
- ~~Purpose for the plan~~
- ~~Clearly stated goals and identifiable and attainable objectives~~
- ~~Scope of plan and system security program~~
- ~~Security and law enforcement functions that manage and support plan~~
- ~~Management authority which oversees the operation and management of the agency~~
- ~~Interface of the plan with local, state and federal authorities~~
- ~~Security acronyms and definitions~~
- ~~Background and history of agency's rail transit services~~
- ~~Organization charts and lines of authority~~
- ~~Description of passenger and ridership characteristics~~
- ~~Description of operations and services including operating environment~~
- ~~Description of how the plan integrates with other plans including the SSPP~~
- ~~Current security conditions~~
- ~~Capabilities and practices~~
- ~~Identification of person(s) responsible for establishing SEPP policy and developing and approving plan~~
- ~~Identification of person(s) responsible for the management of the SEPP program~~
- ~~Listings of the SEPP related responsibilities of individuals working within the security function~~
- ~~Description of equipment used to support implementation of the plan~~
- ~~Description of training, exercises, and procedures in place to ensure employee proficiency and readiness~~
- ~~Description of activities to identify threats and vulnerabilities and to access their likely impacts~~
- ~~Response strategies for prioritizing vulnerabilities~~
- ~~Identification and schedule of tasks to be performed for implementing the plan~~
- ~~Description of methods for evaluating the effectiveness of the plan~~
- ~~Process for reviewing and revising the plan and for implementing any revisions~~

~~(b) The department shall provide written concurrence with the RFGS's security and emergency preparedness plan or provide written comments to the RFGS specifying required changes. The RFGS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGS of its concurrence with the plan. The plan and the department's concurrence shall be maintained by the department in a permanent file.~~)) (1) Agency safety plans must be submitted within three months prior to operations of a new RFGPTS, a system expansion, or a major system enhancement to an existing RFGPTS.

(2) Full compliance and approval of agency safety plans must be obtained in writing from WSDOT prior to commencing RFGPTS operations. The department and the RTA must accelerate review and revision timelines as necessary to ensure agency safety plan approval prior to the RFGPTS start of service date.

(3) The department must review and evaluate plans according to criteria set forth in the Washington state rail safety oversight program standard.

(4) Each calendar year, as part of its annual safety program report submittal, the transit agency must provide the department with documentation of its annual review of the agency's safety plan.

(5) The department shall provide written approval of the RFGPTS's agency safety plan or provide written comments to the RFGPTS specifying required changes. The RFGPTS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGPTS of its concurrence with the plans. The plans and the department's concurrence shall be maintained by the department in a permanent file.

(6) The RFGPTS shall not transmit any security sensitive portions of its plans, as defined by 49 C.F.R. Part 1520. The RFGPTS shall notify the department of the location and availability of any security sensitive information.

(7) Each RFGPTS may develop procedures to implement this subsection. The Washington state rail safety oversight program standard may require these procedures to be included, summarized, or cited in the agency safety plan.

(8) Failure to comply with the requirements established in WAC 468-550-040, 468-550-050, 468-550-060, 468-550-070, and the Washington state rail safety oversight program standard may result in financial or other penalties. Financial or other penalties will be determined in accordance with WAC 468-550-080.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-060 Annual ((~~and triennial~~)) internal safety ((~~and security~~)) audits and reports. (1)(((~~(a) Each RFGS~~)) Each RFGPTS shall perform scheduled internal safety ((~~and security~~)) audits to evaluate compliance with the Washington state rail safety oversight program standard, to identify hazardous and risk conditions, and ((~~measure the effectiveness of its plans. The RFGS~~)) to verify that it is fully implementing its safety program as described in its plans and procedures. The RFGPTS shall include its internal safety ((~~and security~~)) audit schedule for the ((~~next year with~~)) following year in the annual report as required ((~~in~~)) by WAC 468-550-070(5). These audits shall ((~~include, but are not limited to:~~

~~(i) Observing work practices and employee performance during system operations;~~

~~(ii) Sampling and inspecting selected system components to verify proper maintenance; and~~

~~(iii) Reviewing RFGS records for all phases of system operations, maintenance, and security.~~)) determine the level at which the agency has implemented the agency safety plan. Audits may include, but are not limited to, the observation of employees performing system operations and maintenance activities, employee rules compliance checks, the sampling and inspection of selected system components, interviews, and records reviews.

(2) The ((~~RFGS~~)) RFGPTS shall select a qualified person(s) or contractor to perform its internal audits and shall notify the department not later than ten days prior to performing the internal audits. The notification shall include date(s) of audit, what is to be audited, and the qualifications of those selected to perform the audit, such qualifications are subject to departmental concurrence and should describe what relevant experience and/or training qualifies the auditor(s) to conduct these audits. The department may assess the effectiveness of each ((~~RFGS~~)) RFGPTS audit program; however, any departmental review or concurrence shall not substitute for the ((~~RFGS's~~)) RFGPTS's own safety ((~~and security~~)) inspection audit programs, nor relieve the ((~~RFGS~~)) RFGPTS from its ((~~sole liability~~)) responsibility for the safety ((~~and security~~)) of its system.

(((~~(b) Each RFGS, as a basis for its audit process, shall prepare, maintain, and make available for departmental review records that document the results of all tests, inspections, and audits conducted by the RFGS or its contractor in compliance with the plans. These records shall include, but are not limited to:~~

~~(i) Start up test records;~~

~~(ii) Drug and alcohol test records;~~

~~(iii) Training and certification records;~~

~~(iv) Operation performance evaluation records;~~

~~(v) Facility inspections;~~

~~(vi) Maintenance audits and inspections (all systems and facilities);~~

~~(vii) Rules and procedures review;~~

~~(viii) Emergency response planning, coordination, and training;~~

~~(ix) System modification review and approval process;~~

~~(x) Safety and security data acquisition and analysis;~~

~~(xi) Interdepartmental and interagency coordination;~~

~~(xii) Employee safety and security program;~~

~~(xiii) Hazardous materials program;~~

~~(xiv) Contractor safety coordination; and~~

~~(xv) Procurement records.~~

~~These records shall be maintained by the RFGS for a minimum of three years.~~

~~(2)~~)) (3) Where the agency is not fully implementing its agency safety plan, or is not implementing its safety program in accordance with the agency safety plan, the agency must clearly identify deficiencies in its audit report, per the requirements of Washington state rail safety oversight program standard.

(4) Each RFGPTS shall prepare, maintain, and make available for departmental review, records that document the results of all tests, inspections, and audits conducted by the RFGPTS or its contractor in compliance with the plans. These records shall be maintained by the RFGPTS for a minimum of three years. Failure to provide the department with audit reports and associated records and documentation may result in financial or other penalties as described in WAC 468-550-080.

(5) Internal safety ((~~and security~~)) audits shall be documented in an annual report that includes the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity and the results of

each audit in terms of the adequacy and effectiveness of the plan. This annual report for the internal safety ((~~and security~~)) audits performed during the preceding year shall be included with the annual safety report ((~~required~~)) specified in WAC ((~~468-550-070(5)~~)) 468-550-100.

(((~~3~~))) (6) The department ((~~shall audit each RFGS plan at least once every three years. The RFGS shall be given written notification at least thirty days in advance of the department's audit. The notification shall include a proposed schedule, planned scope, and list of activities to be reviewed for the audit. Each audit shall be preceded by an on-site, preaudit conference attended by the department's audit team, the RFGS's owner, and the RFGS staff in charge of the activities subject to audit. Each audit shall be conducted in accordance with an audit checklist. Checklists shall not restrict the department from performing additional investigations as it deems appropriate. The department shall use as a basis for its checklist the RFGS's plan and records which shall include, but are not limited to:~~

~~(a) The RFGS operating rule book, bulletins, and procedures;~~

~~(b) The RFGS maintenance manuals and procedures for vehicles, track and signals;~~

~~(c) The RFGS procedures for identifying, documenting, evaluating, and correcting hazards;~~

~~(d) The RFGS system design criteria and project engineering procedures for system modifications;~~

~~(e) The RFGS annual internal audit reports for the previous three years;~~

~~(f) The RFGS corrective action plans for reportable accidents and unacceptable hazardous conditions reported to the department during the previous three years;~~

~~(g) APTA audit reports;~~

~~(h) National Transportation Safety Board accident investigation reports, and any other agency peer review reports, if any, prepared during the previous three years and previously prepared department audit reports.~~

~~(4) Upon the department's completion of the triennial on-site audit, the audit team leader shall prepare a draft final audit report and submit it to the RFGS. The RFGS shall respond, in writing to the recommendations made in the draft final audit report, with a plan and schedule of corrective actions within thirty days of receipt thereof. An on-site, post audit conference shall be held following each departmental audit to review the results of the audit. Audit results that identify a deficiency that is not corrected before the post audit conference is held shall be documented in the final audit report. The final audit report shall contain the department audit team's findings and recommendations and the RFGS plan and schedule for corrective action. The final audit report shall also include the department audit team's evaluation of the effectiveness of the RFGS plan and a determination of whether the plan should be updated.~~

~~(5) The department shall summarize oversight activities for all RFGS performed during the preceding twelve months in a publicly available annual report and submit it to the FTA before March 15 of each year.~~

~~(6) Each RFGS that operates seasonally shall be exempt from the provisions of this section~~)) may conduct an independent investigation of the agency's audit program or of specific deficiencies and findings identified by the RFGPTS internal safety audits.

NEW SECTION

WAC 468-550-061 Triennial safety program audits conducted by the department. (1) The department shall audit each RFGPTS's compliance with the agency safety plan at least once every three years in accordance with the requirements of the Washington state rail safety oversight program standard. The RFGPTS shall be given written notification of the audit scope and schedule at least thirty days in advance of the department's audit. Each audit shall be conducted in accordance with an audit checklist. Documentation which may be requested by the department as part of the audit includes, but is not limited to:

(a) The RFGPTS operating rule book, bulletins, and procedures;

(b) Operations and maintenance logs and records;

(c) The RFGPTS maintenance manuals and procedures for vehicles, facilities, track and signals;

(d) The RFGPTS procedures for identifying, documenting, evaluating, and correcting hazards;

(e) The RFGPTS system design criteria and project engineering procedures for system modifications;

(f) The RFGPTS annual internal audit reports for the previous three years;

(g) The RFGPTS corrective action plans for reportable accidents and unacceptable hazardous conditions reported to the department during the previous three years;

(h) APTA audit reports;

(i) National Transportation Safety Board accident investigation reports, Federal Transit Agency investigation or audit reports, or peer review reports, if any, prepared during the previous three years.

(2) Upon the department's completion of the on-site portion of the triennial safety program audit, the audit team leader shall issue a final audit report following the process established in the Washington state rail safety oversight program standard. The final audit report shall contain the department audit team's findings and recommendations. The final audit report shall also include the department audit team's evaluation of the RFGPTS agency safety plan's compliance with the Washington state rail safety oversight program standard and a determination of whether it should be updated. The RFGPTS must address all findings and recommendations identified in the final report by following the requirements set forth in the Washington state rail safety oversight program standard.

NEW SECTION

WAC 468-550-062 Additional external audits conducted on RFGPTS safety programs and plans. (1) The RFGPTS must notify the department of the schedule and scope for all external audits and investigations which will include the review of the agency safety plan, safety programs, safety critical functions, safety certification, transit asset management plan or drug and alcohol program. These include, but are not limited to, audits and investigations to be conducted by the Federal Transit Administration, USDOT,

DHS, NTSB, or OSHA. The RFGPTS must notify the department of the schedule and scope at least one week prior to the start of audit activities.

(2) The Federal Transit Administration conducts an audit of WSDOT's state safety oversight program once every three years. The RFGPTS will participate in these audits and provide relevant safety program documentation and records if requested by the Federal Transportation Administration or the department.

NEW SECTION

WAC 468-550-063 Audits conducted of department's state safety oversight program. The RFGPTS will provide documentation if requested by auditors or by department personnel in support of external state or federal audits of the department's state safety oversight program. These include, but are not limited to, triennial reviews conducted by the FTA Transit Safety Oversight office of the department's SSO program compliance.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-070 Notifying of, investigating, and reporting accidents and unacceptable hazardous conditions. (1) Each ((~~RFGS~~)) RFGPTS shall notify the department ((~~by telephone, electronic mail or facsimile~~)) per the requirements set forth in the Washington state rail safety oversight program standard within two hours of the occurrence of any reportable accident((~~, or within twenty-four hours of the identification or discovery of any unacceptable hazardous condition. The department shall notify each RFGS of the person to notify and the telephone, electronic mail and facsimile numbers for notification. The notification shall include all of the following details:~~

~~(a) Name and title of the person making the notification;~~

~~(b) Time and date the notification is transmitted;~~

~~(c) Synopsis of what happened, such as, but not limited to: Collision with another RFGS revenue vehicle, derailment, collision with a motor vehicle, collision with a pedestrian, collision with a bicyclist, fire, bomb threat, or hostage-taking;~~

~~(d) Specific location of the accident or unacceptable hazardous condition;~~

~~(e) Time of the accident or discovery of the unacceptable hazardous condition;~~

~~(f) Identification of RFGS vehicle(s) and/or facility involved;~~

~~(g) Initial number of fatalities and/or individuals who suffered bodily injury and immediately received medical attention away from the scene of the accident; and~~

~~(h) Description of and preliminary value of property damage.~~

~~(2) The department has authority to perform separate, independent investigations of reportable accidents or unacceptable hazardous conditions at its own discretion.~~

~~(3) Each RFGS shall investigate all reportable accidents and unacceptable hazardous conditions. The RFGS may use its own staff or a contractor to conduct its investigation and shall designate a staff person to be responsible for submitting written investigation reports and findings to the department, on a department form, within forty-five calendar days after the reportable accident or unacceptable hazardous condition was discovered. This report shall identify the causal factors contributing to the occurrence and contain a corrective action plan with an implementation schedule to prevent a recurrence of the accident, or to mitigate the unacceptable hazardous condition.~~

~~(4) The department shall review the RFGS investigation report, corrective action plan, and accompanying implementation schedule to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident or unacceptable hazardous condition. In the event that the department does not concur with the findings of the RFGS investigation, the department shall confer with the RFGS of its preliminary review findings. The RFGS may amend its report to the department in writing, within ten calendar days after conferring with the department. If, after conferring with the RFGS, the department does not concur with the findings of the RFGS, the department shall notify the RFGS in writing of its review findings. The RFGS shall submit its response to the department's findings within forty-five calendar days of receipt thereof. Should the department and the RFGS disagree, the department will notify the FTA.~~

~~(5) Each RFGS shall submit an annual summary report to the department covering all reportable activities. The RFGS shall ensure delivery of the annual report to the department no later than February 1 after the year being reported~~)).

(2) Each RFGPTS shall notify the Federal Transit Administration (FTA) of reportable hazards, incidents, and accidents per the requirements of 49 C.F.R. 674.33.

(3) Each RFGPTS shall notify the department per the requirements set forth in the Washington state rail safety oversight program standard within two hours of the discovery of any unacceptable hazardous condition.

(4) Each RFGPTS shall notify the department of all other reportable hazards or incidents within the reporting timelines set forth in the Washington state rail safety oversight program standard.

(5) Each RFGPTS shall investigate all reportable accidents and unacceptable hazardous conditions. The RFGPTS may use its own staff or a contractor to conduct its investigation and shall designate a staff person to be responsible for submitting written investigation reports and findings to the department, on a department form, within forty-five calendar days after the reportable accident or unacceptable hazardous condition was discovered. This report shall identify the causal factors contributing to the occurrence and contain a corrective action plan with an implementation schedule to prevent a recurrence of the accident, or to mitigate the unacceptable hazardous condition.

(a) In the event that the RFGPTS does not have all of the data and analysis necessary to complete a final report, the RFGPTS must submit a draft within forty-five days that documents progress to date.

(b) Under no circumstance may the final report be submitted more than four months from the date of the incident.

(c) The department shall review the RFGPTS final investigation report, corrective action plan, and accompanying implementation schedule to ensure that it meets the goal of

preventing and mitigating a recurrence of the reportable accident or unacceptable hazardous condition.

(d) In the event that the department does not concur with the findings of the RFGPTS investigation, the corrective action plan, or the implementation schedule, the department shall take the following actions:

(i) Within forty-five calendar days of receipt of the investigation report, confer with the RFGPTS about its preliminary review findings and explain what needs to be changed;

(ii) If the RFGPTS agrees with the department's recommendations, then the RFGPTS shall amend its report to the department in writing within ten calendar days. This then follows the normal WSDOT approval process;

(iii) If the RFGPTS does not agree with the department's recommendations, then it must submit its concerns and issues in writing within ten days to the department. The department shall submit the plan to the FTA transit safety oversight office for their review. The FTA shall make the final determination.

(6) The department has authority to perform separate, independent investigations of reportable accidents or unacceptable hazardous conditions at its own discretion.

(7) All reportable accidents and hazards must be included in an annual safety program summary report to the department per WAC 468-550-100.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-080 Notifying of and applying financial penalties. (((~~(1) The due dates for documentation required herein are specified in (a) through (e) of this subsection. The department shall provide a RFGS a written notification of the required due date no later than one month before the applicable due date.~~

~~(a) System safety program plan and security and emergency preparedness plan within three months prior to beginning operations;~~

~~(b) Internal safety and security audit schedule for the next year by February 1;~~

~~(c) Annual report for the internal safety and security audits performed during the preceding year by February 1;~~

~~(d) Annual summary report to the department covering all reportable occurrences by February 1;~~

~~(e) Written investigation reports and findings within forty-five calendar days after a reportable accident occurred, or unacceptable hazardous condition was discovered.~~

~~(2) If any RFGS notified by the department fails to deliver the required documentation by the due date specified in subsection (1) of this section, the department shall schedule a meeting with the director responsible for the RFGS's operations and maintenance to discuss the RFGS's progress in completing the documentation and the potential consequences of further delay. In scheduling this meeting, the department shall notify the RFGS's chief executive officer of the purpose of the meeting and its time and location. The department shall attempt to schedule the meeting within one week of the specified due date.~~

~~(a) The department may cancel this meeting if the department receives the required documentation prior to the scheduled meeting.~~

~~(b) The department may defer scheduling the meeting in the event of a catastrophic event affecting the RFGS and its ability to conduct routine business.~~

~~(c) The department shall document the results of the meeting in writing to the director responsible for the RFGS's operations and maintenance and the RFGS's chief executive officer within one week of the meeting.~~

~~(d) Should the department determine that there is no reasonable cause for any further delay by the RFGS for submission of its required documentation, the department shall notify the RFGS's chief executive officer of the applicable financial penalty, as defined in subsection (5) of this section.~~

~~(e) If the department receives no further communication from the RFGS within ten calendar days of the notification made in accord with (d) of this subsection, the department shall proceed to notify FTA of the RFGS's failure to supply the required documentation and to apply the appropriate financial penalty in accord with subsection (5) of this section.~~

~~(3) If any RFGS delivers incomplete documentation by the required due date, the department shall notify the RFGS of any deficiency within one week. The RFGS shall supplement its required documentation within one week after receiving the department's notification. If the RFGS fails to supplement its documentation adequately, the department shall proceed to schedule a meeting and follow the procedures in subsection (2) of this section.~~

~~(4) If any RFGS fails to implement a corrective action plan, according to the implementation schedule developed pursuant to WAC 468-550-070(4), to prevent a recurrence of an accident or to mitigate an unacceptable hazardous condition, the department shall schedule a meeting with the director responsible for the RFGS's operations and maintenance to discuss the RFGS's progress in completing the corrective action plan and the potential consequences of further delay.~~

~~(a) The department may cancel this meeting if the department receives the required documentation prior to the scheduled meeting.~~

~~(b) The department may defer scheduling the meeting in the event of a catastrophic event affecting the RFGS and its ability to conduct routine business.~~

~~(c) The department shall document the results of the meeting in writing to the director responsible for the RFGS's operations and maintenance within one week of the meeting.~~

~~(d) Should the department determine that there is no reasonable cause for a RFGS's failure to implement the corrective action plan, the department shall notify the RFGS's chief executive officer that the department intends to notify FTA of the RFGS's noncompliance.~~

~~(e) If the department receives no further communication from the RFGS within ten calendar days of the notification made in accord with (d) of this subsection, the department shall notify FTA of the RFGS's failure to implement a corrective action plan action.~~

~~(f) This subsection shall apply also to a corrective action plan upon which the department and the RFGS disagree. In this situation, the department shall use the corrective action plan and implementation schedule proposed by the RFGS.~~

~~(5) Any RFGS that fails to comply with the timelines as set forth in this chapter shall be assessed the financial penalties following:~~

~~(a) One thousand five hundred dollars for each calendar month two months prior to beginning operations, for failure to deliver to the department an acceptable system safety and security program plan;~~

~~(b) Five hundred dollars for each calendar month, beginning with February, for failure to deliver to the department an acceptable:~~

~~(i) Internal safety and security audit schedule for the next year;~~

~~(ii) Annual report for the internal safety and security audits performed during the preceding year; or~~

~~(iii) Annual summary report to the department covering all reportable occurrences; and~~

~~(c) One thousand dollars applied each thirty-day period, beginning the 90th day after a reportable accident occurred, or after an unacceptable hazardous condition was discovered for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule.~~

~~(6) If FTA notifies the department that it will impose a financial penalty on the state of Washington as a consequence of a RFGS's failure to take appropriate action in a safety or security situation, the department shall:~~

~~(a) Notify that RFGS's chief executive officer that the department will impose all FTA financial penalties to that RFGS if the RFGS fails to take adequate action to bring itself into compliance to FTA's satisfaction. Said notice shall include a copy of FTA's written communication and an estimate of FTA's financial penalty.~~

~~(b) Recommend steps to the RFGS' chief executive officer that the RFGS should take to bring it into compliance with FTA requirements.~~

~~(7) Any RFGS notified by the department of its failure to take appropriate action in a safety or security situation shall take immediate and adequate action to bring itself into compliance to FTA's satisfaction and provide adequate documentation to the department of its corrective measures. The department shall provide that documentation to FTA.~~

~~(8) If any RFGS notified by the department of its failure to take appropriate action in a safety or security situation also fails to respond to the department and FTA imposes a financial penalty on the state of Washington as a consequence, the department shall apply the full amount of the financial penalty on the RFGS.~~

~~(9) In applying any financial penalty, the department shall take the following steps:~~

~~(a) Invoice the RFGS for the amount of financial penalty; the invoice shall identify:~~

~~(i) The documentation not received by the specified due date;~~

~~(ii) The number of calendar months or, for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule, thirty-day periods past the specified due date;~~

~~(iii) The applicable financial penalty rate per calendar month or, for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule, thirty-day periods; and~~

~~(iv) Where payment should be made.~~

~~(b) If a RFGS fails to remit the full amount of the imposed financial penalty within sixty days of when due, the department may seek judicial enforcement to recover full payment. Venue for any action hereunder shall be Thurston County.~~)) (1) If any RFGPTS fails to comply with any of the requirements or due dates specified in the Washington state rail safety oversight program standard, the department shall notify the RFGPTS in writing of such a violation. These violations will be designated by the department to be one or more findings of noncompliance.

(2) The RFGPTS will have fifteen calendar days to respond to this notification with:

(a) Documentation and records of corrective actions taken, for department review, that fully address the violations and findings of noncompliance; or

(b) Justification for its failure to comply or to provide the required records. The justification must include records of all supporting documentation, corrective actions taken, and all other mitigation plans proposed, planned or implemented with intent to address the violation.

(3) Within thirty days of receipt of the RFGPTS response, the department will review and issue one of the following determinations:

(a) Determination of compliance - Where the department determines that violations have been fully addressed and noncompliance findings can be closed.

(b) Determination of noncompliance with exception - Where the department determines that the RFGPTS has taken action to address violations and has a corrective action plan, acceptable in scope and schedule, in place to come into compliance.

(c) The department may establish a new deadline by which the corrective action plan addressing violations must be fully implemented. Failure by the RFGPTS to meet this new deadline may result in the issuance of a determination of noncompliance.

(d) Determination of noncompliance - Where the department determines that violations have not been adequately addressed by the RFGPTS and there is an absence of acceptable corrective actions taken and/or of acceptable scope and schedule of corrective actions to be taken.

(4) Where, the department issues a determination of noncompliance, the department may issue a second and final notification in writing that states a new deadline by which a financial penalty will be imposed if noncompliance findings cannot be addressed. The amount of the financial penalty will be stated in the written notification. If more than one finding of noncompliance exists, more than one financial penalty may be imposed. Financial penalties will be as follows:

(a) The department may issue a financial penalty of ten thousand dollars for each determination of noncompliance.

(b) Thirty days following the issuance of a financial penalty, the department will determine if the status of the violation remains in noncompliance status. This determination will be based on a review of all additional submittals and actions taken by the RFGPTS. If the status has not been changed to determination of compliance or determination of

noncompliance with exception, the department may impose an additional financial penalty of ten thousand dollars per finding of noncompliance.

(c) Following each subsequent thirty-day period, the department will review all additional submittals and actions and impose an additional financial penalty of ten thousand dollars until the determination is reduced to either a finding of noncompliance with exception or a finding of compliance.

(d) If a RFGPTS fails to remit the full amount of the imposed financial penalty within sixty days of when due, the department may seek judicial enforcement to recover full payment. Venue for any action hereunder shall be Thurston County.

(5) Additionally, following any issuance by the department of a determination of noncompliance or of inadequate progress in addressing it, the department may require a meeting with the director responsible for the RFGPTS's operations and maintenance, or with the agency's chief executive, to discuss the RFGPTS's progress in completing the documentation and the potential consequences of delay.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-090 ((~~Reimbursement for costs associated with the management of the rail safety oversight program.~~)) Suspension of service, modification of service, or the removal of equipment due to failure to mitigate to hazardous conditions. (((~~(1) Owners of rail fixed guideway systems shall reimburse WSDOT for costs incurred for its management of the Washington state rail safety oversight program. These reimbursable costs can be grouped as follows:~~

~~(a) Costs for conducting triennial safety and security audits.~~

~~(b) Costs for WSDOT staff and/or consultants to conduct investigations of incidents or unacceptable hazards, as necessary.~~

~~(c) Labor, administrative, and travel costs incurred by WSDOT for its administration of the Washington state rail safety oversight program. These include but are not limited to:~~

~~(i) Staff hours dedicated to the oversight of system safety program plan and security and emergency preparedness plan development and implementation.~~

~~(ii) Office support and supplies necessary to carry out this oversight.~~

~~(iii) Travel and labor costs associated with WSDOT's administration of the program including for the attendance at federal and state safety, security, and emergency preparedness conferences, workshops, meetings, and trainings which enhance WSDOT oversight of system safety program plan and security and emergency preparedness plan development and implementation.~~

~~(2) Triennial safety and security audits. Within ninety days after receipt of an invoice, each RFGS shall reimburse the reasonable expenses of the department in carrying out its responsibilities pursuant to WAC 468-550-060. The department shall notify the RFGS of the estimated expenses at least six months in advance of when the department audits the system.~~

~~(3) Investigations of incidents or unacceptable hazards. WSDOT at its discretion may choose to conduct an independent investigation of unacceptable hazards or incidents given that they meet the incident reporting thresholds established in the Washington state safety program standard. Costs associated with these investigations are to be reimbursed in full by the owners of the rail fixed guideway systems being investigated. This includes the cost of hiring consultants to conduct investigations, if determined necessary by WSDOT.~~

~~(4) Administrative costs. All other reimbursable costs of the Washington state rail safety oversight program are allocated to each rail fixed guideway system owner based on a formula. This formula allocates the total of all reimbursable costs for the management of the program to each rail fixed guideway system. The owners of the rail fixed guideway systems are responsible for the reimbursement of costs allocated to each rail fixed guideway system for which they own. The allocation of such reimbursable costs is determined as follows:~~

~~(a) Fifty percent of all reimbursable costs, except those for investigations of unacceptable hazards or incidents, are allocated in equal share among rail fixed guideway systems. This allocation of reimbursable costs is equal among rail fixed guideway systems, regardless of the number of passengers they carry or the length of their system. The amount of all such reimbursable costs is arrived at by dividing all such reimbursable costs by the number of RFGS, and then multiplying that result by fifty percent or (reimbursable costs/number of RFGS) x fifty percent.~~

~~(b) Fifty percent of all reimbursable costs, excluding those for investigations of unacceptable hazards or incidents, are allocated based on route mileage that is funded, obligated, and/or operational. These reimbursable costs are allocated to rail fixed guideway systems based on their share of the total directional route miles falling under the oversight of the Washington state rail safety oversight program. The owners of the rail fixed guideway systems are responsible for the reimbursement costs allocated to each rail fixed guideway system for which they own. The amount of all such reimbursable costs is arrived at by dividing the RFGS's route miles by total route miles, and then multiplying that result by the product of reimbursable costs multiplied by fifty percent or (RFGS route miles/total route miles) x (reimbursable costs x fifty percent).~~

~~(c) The total allocation of reimbursable costs to owners of rail fixed guideway systems is the total of the fifty percent of costs allocated based on an equal share allocation, and the fifty percent allocated based on directional route miles.~~

~~(d) WSDOT will provide monthly invoices to owners of rail fixed guideway systems for the reimbursement of costs described above.~~)) When a known unacceptable hazardous condition is not mitigated to an acceptable level by RFGPTS owners or operators, the department may require the suspension or modification of service or the suspended use or removal of equipment. The department may impose sanctions per WAC 468-550-080 upon owners or operators of RFGPTS for failure to meet deadlines of submissions of required reports and audits.

NEW SECTION

WAC 468-550-100 Safety program annual report. (1) Per the requirements of the Washington state rail safety oversight program standard, the RFGPTS will prepare and submit to the department a safety program annual report which summarizes the agency's safety program activities during the most recent calendar year, including a summary of accidents, incidents, hazards, and internal safety program audits.

(2) The annual safety program annual report must be submitted to the department on or before February 15th of each year.

NEW SECTION

WAC 468-550-110 Special provisions for rail fixed guideway public transportation systems crossing state lines and operating in both Washington and a bordering state. (1) When a RFGPTS crosses state lines and is operating in Washington and a bordering state, the department will comply with the requirements set forth in 49 C.F.R. Part 674.15 for the designation of an oversight agency for a multistate system. The department will coordinate with the neighboring state SSOA and either ensure that both Washington's SSOA and the bordering state's SSOA are implementing uniform safety standards and requirements upon the RFGPTS (674.15a) or that a single SSOA is designated as the SSOA (674.15b).

(2) Where a bordering state agency is serving as the single entity SSOA, the bordering state's program standard and other safety standards and procedures will be used for oversight of the RFGPTS, unless otherwise stated through agreement or law. The Washington state rail safety oversight program standard will continue to apply to all other RFGPTS within Washington not subject to the special provisions of this section.

(3) An agreement will be established with the bordering state to set coordination of oversight duties and reporting for the RFGPTS subject to the program standard of a bordering state. The agreement must address the allocation of costs between the two states.

WSR 18-06-081
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 18-31—Filed March 6, 2018, 10:07 a.m., effective March 7, 2018, 6:00 p.m.]

Effective Date of Rule: March 7, 2018, 6:00 p.m.

Purpose: Amend commercial crab regulations in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000E and 220-340-45500H; and amending WAC 220-340-420 and 220-340-455.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to close Crab Management Region 1. The state is projected to reach the current allocation for this area March 7, 2018. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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 2, Amended 0, Repealed 2.

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: March 6, 2018.

Joe Stohr
Acting Director

NEW SECTION

WAC 220-340-42000F Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420:

(1) Effective at 6:00 pm, March 7, 2018, until further notice, ALL of Crab Management Region 1 is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B.

(2) Effective immediately, until further notice, ALL of Crab Management Region 2 West is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D and 26A West.

(3) Effective immediately, until further notice, ALL of Crab Management Region 2 East is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(4) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-1, Region 3-2, Region 3-3 East or 3-3 West. These regions include Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 23D, 25A, 25E and 29.

(5) All remaining buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

(6) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light true south to the shore of Dungeness Bay.

NEW SECTION

WAC 220-340-45500I Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455:

Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light true south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

REPEALER

The following sections of the Washington Administrative code are repealed at 6:00 pm, March 7, 2018:

WAC 220-340-42000E	Commercial crab fishery—Unlawful acts. (18-12)
WAC 220-340-45500H	Commercial crab fishery—Seasons and areas—Puget Sound. (18-12)