

## WSR 23-22-005

## PERMANENT RULES

## RENTON TECHNICAL COLLEGE

[Filed October 18, 2023, 4:32 p.m., effective October 19, 2023]

Effective Date of Rule: October 19, 2023.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The date of effect must be October 19, 2023, to ensure that the college's rules remain in compliance with HB [2SHB] 1751. The rule is currently in effect per an emergency rule filing on June 21, 2023, and set to expire on October 19, 2023.

Purpose: To incorporate the requirements from HB [2SHB] 1751, hazing prevention legislation, as codified in RCW 28B.10.900 - [28B.10.]907, into the student conduct code and hearing procedures. The updated rules incorporate new prohibited student conduct, statement of jurisdiction, definitions, and hazing prohibited sanctions.

Citation of Rules Affected by this Order: New WAC 495E-110-045; and amending WAC 495E-110-030, 495E-110-050, and 495E-110-060.

Statutory Authority for Adoption: 2SHB 1751, section 4(1) (requiring colleges to issue reports of violations of actual findings of violations college's "code of conduct, antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault"); RCW 28B.50.140.

Adopted under notice filed as WSR 23-11-121 on May 22, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: October 18, 2023.

Jacob Jackson  
Vice President of Administration and Finance

### OTS-4286.1

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-030 Prohibited student conduct.** The college may impose disciplinary sanctions against a student or student group, who commits (~~((or attempts to commit), or)~~), attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each faculty course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this section, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a

computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group;

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, or sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug including, anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff. There are designated smoking areas on campus.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. (Supplemental Title IX student conduct procedures.)

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including, unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.

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

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

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

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

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of (~~eighteen~~) 18.

(iv) Statutory rape. Consensual intercourse between a person who is (~~eighteen~~) 18 years of age or older, and a person who is under the age of (~~sixteen~~) 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

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

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for

any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

**WAC 495E-110-045 Hazing prohibited, sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 495E-110-030(9).

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

(3) Washington state law provides that:

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

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

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

(d) Student groups found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-050 Statement of jurisdiction.** (1) The student conduct code shall apply to (~~student~~) conduct by students and student groups that occurs:

(a) On college premises;

(b) At or in connection with college-sponsored activities; or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from (~~the time of application for admission~~) notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The (~~college~~) student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-060 Definitions.** The following definitions shall apply for purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) A "complainant" is an alleged victim of sexual misconduct.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(6) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of (~~ten~~) 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:



(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) "Respondent" is the student against whom disciplinary action is initiated.

(9) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(10) "Sexual misconduct" has the meaning ascribed to this term in WAC 495E-110-030(13).

(11) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(12) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code.

(13) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(14) "The president" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

**WSR 23-22-011  
PERMANENT RULES**

**BELLINGHAM TECHNICAL COLLEGE**

[Filed October 19, 2023, 10:43 a.m., effective November 19, 2023]

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

Purpose: General revisions to update language and locations. Repeal sections that are no longer relevant.

Citation of Rules Affected by this Order: Repealing chapters 495B-131, 495B-310 and 495B-132 WAC; and amending chapters 495B-104, 495B-108, 495B-122, 495B-130, 495B-133, 495B-134, and 495B-280 WAC.

Statutory Authority for Adoption: Chapters 28B.10, 34.05 RCW; RCW 28B.50.140(13); 20 U.S.C. § 1092(f).

Other Authority: Chapter 28B.10 RCW.

Adopted under notice filed as WSR 23-17-107 on August 17, 2023.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 7.

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: October 19, 2023.

Ronda Laughlin  
Executive Assistant to the President

**OTS-4774.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-104-010 Time and place of board meetings.** The board of trustees shall hold one regular meeting on the third Thursday of each month at 9:00 a.m. and such special meetings as may be requested by the (~~chairman~~) chair of the board or by a majority of the members of the board and announced in accordance with law. All board meeting dates may be found in the *Washington State Register* and at the college website (btc.edu).

All regular and special meetings of the board of trustees shall be held at Bellingham Technical College, (~~Building G~~) College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225, unless scheduled elsewhere, and are open to the general public, except for lawful executive sessions.

No official business may be conducted by the board of trustees except during a regular or special meeting.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-104-020 Request for items to be placed on board agenda.**

Anyone, other than a board member or a representative of the president's office wishing an item placed on the agenda of a board meeting, must have a written request in the office of the president (~~(no later than twelve o'clock noon five business days before)~~) at least two weeks in advance of the next scheduled meeting of the board. The president will relate the request to the (~~(chairman)~~) chair of the board as soon as feasible. The (~~(chairman)~~) chair will determine whether the item is to be placed on the agenda. The (~~(chairman)~~) chair or a designee will notify the individual initiating the request as to whether or not the item will be placed on the agenda.

**OTS-4877.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-108-020 Appointment of presiding officers.** The president or president's designee shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington State Bar Association, a panel of individuals, the president or (~~(his or her)~~) their designee, or any combination of the above. Where more than one individual is designated to be the presiding officer, the president or president's designee shall designate one person to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-108-040 Application for adjudicative proceeding.** An application for adjudicative proceeding (~~(shall be in writing)~~) must specify the issue to be decided in the proceeding and be signed by the applicant or the applicant's representative. Application forms are available at the following address: 3028 Lindbergh Avenue, Bellingham, WA 98225.

Written application for an adjudicative proceeding (~~(should)~~) must be submitted to the above address within (~~(twenty)~~) 21 days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-108-050 Brief adjudicative procedures.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are adopted by reference. Brief adjudicative procedures shall be used in all matters related to:

- ~~(1) ((Residency determinations;~~
- ~~(2) Challenges to contents of education records;~~
- ~~(3) Student conduct proceedings;~~
- ~~(4) Parking violations;~~
- ~~(5) Outstanding debts owed by students or employees;~~
- ~~(6) Loss of eligibility for participation in college-sponsored events.))~~ Appeals from residency classifications made pursuant to RCW 28B.15.013;
- (2) Challenges to the contents of educational records pursuant to 34 C.F.R. § 99.21;
- (3) Appeals from actions from student conduct or disciplinary proceedings;
- (4) Appeals from actions due to parking and traffic infractions;
- (5) Appeals from actions due to outstanding debts of college employees or students;
- (6) Appeals from actions regarding loss of eligibility to participate in college-sponsored events;
- (7) Appeals from actions regarding mandatory tuition and fee waivers;
- (8) Appeals pursuant to any other formal rule adopted by Bellingham Technical College which specifically provides for a brief adjudicative procedure.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter. Adjudicative proceedings shall be open to the public, except as may be provided otherwise by law. A brief written statement of the reasons for the decision must be entered within 10 business days after the proceeding.

#### OTS-4878.1

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-122-010 Policy.** If any person, including any faculty, staff, student, or former student, is indebted to the institution for an outstanding overdue debt, the college need not provide any further services of any kind to such individual ~~((τ))~~ including, but not limited to, transmitting files, records, ~~((transcripts))~~ or other services which have been requested by such person. Official transcripts and registration privileges may not be withheld, regardless of debt, except as outlined in RCW 28B.10.293 (3) through (5).

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-122-020 Notification.** (1) Upon receiving a request for services where there is an outstanding debt due to the college from the requesting person, the college shall notify the person by first-class mail that the services will not be provided since there is an outstanding debt due. The person shall be told that until the debt is satisfied, requested services will not be provided.

(2) The letter of notification shall also state that the person has a right to a brief adjudicative proceeding (~~((before a person designated by the president of the college. The proceeding must be requested within twenty days of the date of mailing notification of refusal to provide services))~~) pursuant to chapter 495B-108 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495B-122-030 Procedure for brief adjudicative proceeding.

**OTS-4775.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-130-010 Location of schedules.** Detailed information and specific amounts to be charged for each category of students (~~((will))~~) can be found on the college website (btc.edu), with information on how to access current tuition rates in the college catalog, and in the following locations on the Bellingham Technical College campus:

- (1) The office of admissions;
- (2) The registration and records office;
- (3) The business office;
- (4) Student services office;
- (5) Financial aid office.

**OTS-4776.1**

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-133-020 Organization—Operation—Information.** (1) Organization. Bellingham Technical College is established in Title 28B

RCW as a public institution of higher education. The college is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the college. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

Bellingham Technical College  
3028 Lindbergh Avenue  
Bellingham, WA 98225

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following addresses:

~~((Commercial Fishing  
Harbor Mall No. 17  
Bellingham, WA 98225~~

~~Fisheries Technology  
1800)) 1600 C Street  
Bellingham, WA 98225~~

(3) Information. Additional and detailed information concerning the educational offerings of the college may be obtained on the college website (btc.edu) or from the catalog, copies of which are available at the following address:

Bellingham Technical College  
3028 Lindbergh Avenue  
Bellingham, WA 98225

#### OTS-4777.1

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-134-010 Rules coordinator.** The rules coordinator for Bellingham Technical College as designated by the president is the ~~((administrative))~~ executive assistant to the president.

#### OTS-4879.3

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-015 Definitions.** For the purposes of this policy, the following definitions of terms apply:

(1) "Student" means any individual who is or has been in attendance at Bellingham Technical College and for whom the college maintains education records.

(2) "Education records" are defined as those records, files and documents (in handwriting, print, tapes, film, microfiche or other medium) maintained by Bellingham Technical College which contain information directly related to the individual student. Education records include only the following:

(a) Records pertaining to admission, advisement, registration, grading, and progress toward a degree or certificate that are maintained by the registrar.

(b) Testing information used for advisement purposes by the counseling center.

(c) Information concerning payment of fees as maintained by the registrar.

(d) Financial aid information as collected by the financial aid office.

(e) Information regarding students participating in student government that is maintained by the student programs office.

(3) "Directory information" means the student's name, (~~address, telephone number, date and place of birth,~~) major field of study, (~~eligibility for and participation in officially recognized activities, organizations,~~) dates of attendance, (~~honor roll, degrees, certificates, and awards received, and the most recent previous educational agency or institution attended by the student~~) degree or certificate earned, term degree or certificate awarded, or honors. Directory information may be disclosed at the discretion of the college and without the consent of the student unless (~~he or she elects~~) they elect to prevent disclosure as provided for in WAC 495B-280-070.

(4) "Written consent" means a written authorization for disclosure of student education records which is:

(a) Signed by the student, or the legal custodian of the student if the student is a minor;

(b) Dated;

(c) Which specifies the records to be disclosed; and

(d) Which specifies to whom disclosure is authorized.

(5) "Personally identifiable" means data or information which includes: The name of the student, the student's parent(s), legal custodian, or other family members; a personal identifier such as the student's Social Security number or student number; or a list of personal characteristics which would make the student's identity easily traceable.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-030 Procedure to inspect education records.** (1)

Students may inspect and review their education records upon request to the appropriate college official as designated in WAC 495B-280-110.

(2) Students must submit to the appropriate college official a written request which identifies as precisely as possible the record or records (~~he or she wishes~~) they wish to inspect.

(3) The appropriate college official will make the needed arrangements for access as promptly as possible and notify the student of the time and place where the records may be inspected. Access must be given in (~~forty-five~~) 45 days or less from the receipt of the request.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-050 Limits on rights to review and inspect and obtain copies of education records.** (1) When a record contains information about more than one student, the student may inspect and review only the records which relate to ~~((him or her))~~ them.

(2) Bellingham Technical College reserves the right to refuse to permit a student to inspect the following records:

(a) The financial statement of the student's parents or legal custodian;

(b) Letters and statements of recommendation for which the student has waived ~~((his or her))~~ their right of access, or which were placed in file before January 1, 1975;

(c) Records connected with an application to attend Bellingham Technical College if that application was denied; and

(d) Those records which are excluded from the Federal Rights and Privacy Act definition of education records.

(3) Bellingham Technical College reserves the right to deny transcripts or copies of records not required to be made available by the Federal Educational Rights and Privacy Act in any of the following situations:

(a) The student has an unpaid financial obligation to the college;

(b) There is an unresolved disciplinary action against the student.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-080 Requests for corrections, hearings, adding statements to education records.** Students have the right to request to have records corrected that they believe are inaccurate, misleading, or in violation of their privacy rights. Following are the procedures for the correction of records:

(1) A student must submit a written request to amend ~~((his or her))~~ their education record to the appropriate college official responsible for the custody of the record as designated in WAC 495B-280-110. The request must identify the part of the record ~~((he/she wants))~~ they want changed and specify why the record is believed to be inaccurate, misleading or in violation of ~~((his or her))~~ their privacy or other rights.

(2) A student whose request for amendment of ~~((his or her))~~ their education record has been denied may request a hearing by submitting a written request to the ~~((dean))~~ vice president of student services within ~~((ten))~~ 10 days following the denial. The written request must be signed by the student and shall indicate the reasons why the records should be amended. The ~~((dean))~~ vice president of student services or designee shall notify the student of the hearing within ~~((thirty))~~ 30 days after receipt of a properly filed request. In no case will the notification be less than ~~((ten))~~ 10 days in advance of the date, time and place of the hearing.

(3) The hearing shall be a brief adjudicative proceeding as provided in RCW 34.05.482 and 34.05.485 through 34.05.494 and shall be conducted by the student services or other appropriate committee (the



chair of the committee shall be an official of the college who does not have a direct interest in the outcome of the hearing). At the hearing, the student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The student may be assisted by one or more individuals, including an attorney.

(4) The student services or other appropriate committee will prepare a written decision, within (~~(thirty)~~) 30 days after the conclusion of the hearing, based solely on the evidence presented at the hearing. The rules of evidence need not be applied at the hearing. The decision will include a summary of the evidence presented and the reasons for the decision. A copy of the decision shall be made available to the student.

(5) If the student services or other appropriate committee decides the information is inaccurate, misleading, or in violation of the student's right of privacy, the custodian of the record will amend the record and notify the student, in writing, that the record has been amended.

(6) If the student services or other appropriate committee decides that the challenged information is not inaccurate, misleading, or in violation of the student's right of privacy, the committee will notify the student in writing that the student has a right to place in the record a rebuttal statement commenting on the challenged information and/or a statement setting forth reasons for disagreeing with the decision.

(7) The student's rebuttal statement will be maintained as part of the student's education records as long as the contested portion is maintained. If the contested portion of the education record is disclosed, the statement will also be disclosed.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

**WAC 495B-280-100 Waiver.** A student may waive any of (~~(his or her)~~) their rights under this chapter by submitting a written, signed, and dated waiver to the office of the registrar. Such a waiver shall be specific as to the records and persons or institutions covered. A waiver continues in effect according to its terms unless revoked in writing which is signed and dated.

#### **OTS-4784.1**

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495B-131-010 Scholarships.

**OTS-4783.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495B-132-010 Financial aid.

**OTS-4880.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495B-310-010 Preamble.  
WAC 495B-310-020 Informal procedure.  
WAC 495B-310-030 Formal procedure.  
WAC 495B-310-040 Other remedies.

**WSR 23-22-019**  
**PERMANENT RULES**  
**BELLEVUE COLLEGE**

[Filed October 20, 2023, 8:02 a.m., effective November 20, 2023]

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

Purpose: Bellevue College proposes updates to the current library media center (LMC) policy 3550 and related WAC regarding fines. Changes are proposed to comply with SSHB [2SHB] 2513 (this bill prohibits colleges from withholding a student's official transcript for debt collection), remove and/or update outdated information, and clarify rules.

Citation of Rules Affected by this Order: Amending chapter 132H-136 WAC.

Statutory Authority for Adoption: RCW 28B.50.140(13); chapter 34.05 RCW.

Adopted under notice filed as WSR 23-10-005 on April 20, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, 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 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: October 20, 2023.

Loreen M. Keller  
Associate Director Policies and Special Projects

**OTS-4451.3**

**Chapter 132H-136 WAC**  
**LIBRARY MEDIA CENTER ((CODE))**

AMENDATORY SECTION (Amending WSR 05-17-013, filed 8/4/05, effective 9/4/05)

**WAC 132H-136-010 Title.** WAC 132H-136-010 through ((132H-136-040)) 132H-136-030 will be known as the library media center policy of Community College District VIII.

AMENDATORY SECTION (Amending WSR 05-17-013, filed 8/4/05, effective 9/4/05)

**WAC 132H-136-015 Purpose.** The library media center (LMC) provides ~~((the))~~ information resources ~~((needed by students, faculty, staff and the community to encourage learning, innovation, intellectual integrity and civic responsibility. The LMC resources and services support the college's mission to provide accessible services and meet the changing educational needs of our diverse community))~~ to accomplish Bellevue College's mission and goals by being student-centered and committed to teaching excellence. In order to advance the lifelong educational development of students, the LMC continually strengthens its collections and services in breadth and depth, supporting increased curricular offerings and varied instructional modes of delivery. This policy applies to all ~~((BCC))~~ BC employees, students, and library users who use any of the ~~((library media center))~~ LMC resources and facilities.

AMENDATORY SECTION (Amending WSR 05-17-013, filed 8/4/05, effective 9/4/05)

**WAC 132H-136-025 Services.** The ~~((library media center))~~ LMC maintains a website ~~((and publishes a brochure))~~ summarizing information about the LMC, including:

- Hours of service ~~((7))~~;
- Circulation of collections ~~((including print and nonprint materials), and))~~;
- Services and resources available ~~((including media, equipment, and facilities))~~.

AMENDATORY SECTION (Amending WSR 05-17-013, filed 8/4/05, effective 9/4/05)

**WAC 132H-136-030 Fines.** ~~((Charges are levied for overdue, lost, damaged materials and equipment.~~

(1) ~~Replacement charges will include cost of replacement plus a processing fee. Replacement costs for items that are no longer in print or not available for purchase will be based upon the cost of a similar item plus a processing fee.~~

(2) ~~Charges for overdue materials will be according to a fee schedule that is posted in the circulation desk area and the LMC website and brochure. Students may appeal charges by following the library fines appeal procedure as detailed in the LMC manual of policies and procedures, a copy of which is available in the reserve collection.~~

(3) ~~When materials are not returned, or charges not paid, holds are placed on the transcript records of those involved only as a sanction to cause the ultimate return of library media material in order to protect the integrity of the library collection.~~

(4) ~~In extreme cases, when expensive or valuable items are involved, the provisions of RCW 27.12.340 may be invoked.)~~ Fines are not charged for overdue materials, except for reserve materials and

equipment. A fine schedule is posted at the circulation desk area and the LMC website. Charges are levied for lost or damaged materials and equipment. Replacement charges for different types of items vary.

Students, employees, and other library users may appeal the imposition of a library charge, fine, or penalty by filing a written notice of appeal with the director of LMC or their designee within 21 days of receiving notice of the charge, fine, or penalty. An individual who fails to file a timely notice of appeal will be deemed to have waived their right to appeal.

The appeal will be heard as a brief adjudicative proceeding, pursuant to chapter 132H-108 WAC. Before issuing a decision, the director of LMC or their designee will conduct an informal hearing and provide both the person challenging the charge, fine, or penalty and a representative from the LMC (collectively, "the parties") an opportunity to present their views on the matter. The director of LMC or their designee will serve the parties with their initial decision within 10 business days of the informal hearing. The initial decision will briefly set forth the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 21 days of service of the initial decision, the initial decision will be deemed the final decision.

An initial decision is subject to review by the dean or their designee, provided the impacted student, employee, or other library user files a written request for review with the dean's office within 21 days of receiving the initial decision. During the review, the dean shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to determine whether the findings or sanctions should be modified. The decision on review will briefly set forth the reasons for the decision and will typically be served to the parties within 21 days of receiving all responsive documentation from the parties. The decision on review will contain a notice that judicial review may be available.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132H-136-020      Loans.

## WSR 23-22-022

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed October 20, 2023, 10:33 a.m., effective November 20, 2023]

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

Purpose: Clarifying standard specialty plate design guidelines by requiring new plate designs to show the jurisdiction at the top of the plate.

Citation of Rules Affected by this Order: Amending WAC 308-96A-560 Special license plates—Criteria for creation or continued issuance.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and 46.18.200 Department approved plate types.

Adopted under notice filed as WSR 23-18-093 on September 6, 2023.

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

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

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

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

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

Date Adopted: October 20, 2023.

Ellis Starrett  
Rules and Policy Manager

**OTS-4894.1**

AMENDATORY SECTION (Amending WSR 11-01-118, filed 12/20/10, effective 1/20/11)

**WAC 308-96A-560 Special license plates—Criteria for creation or continued issuance.** (1) **What is a special license plate series?** For the purpose of this rule a special license plate series is one license plate design with a range of numbers and letter combinations to be determined by the department.

(2) **What is required for an organization to apply to create a new plate through the department?** The organization must submit a completed application packet, signature sheet and supporting documentation as required by law. Signature sheets must reflect that they are collected within three years of submission.

~~((If an organization started collecting signature sheets before the moratorium was put into place that ends on July 1, 2009, they are exempt from the three-year time frame. However, organizations collecting signatures during the moratorium must submit their completed application packet and signature sheets to the department within ninety~~

~~days after the moratorium is lifted. If an organization does not submit the signature sheets to the department within ninety days after the moratorium, the signature sheets are no longer valid.)~~)

**(3) What are the design criteria for a special license plate series?**

(a) The jurisdiction must be located at the top of the license plate;

(b) The plate dimensions, bolt hole placement, and other features must comply with the *Department's Specialty Plate Design Guide*;

(c) Plate color usage must be readable by state tolling facilities or law enforcement plate readers, consistent with the department's published guidance; and

(d) Other criteria as established by the department.

**(4) What criteria are used to discontinue issuing special license plates?** A special license plate series may be canceled if:

(a) The department determines that fewer than ~~((five hundred))~~ 500 special license plates are purchased annually and fewer than ~~((one thousand five hundred))~~ 1,500 special license plates are purchased in any continuous three-year period. (Except those license plates issued under RCW 46.16.301, 46.16.305, and 46.16.324); or

(b) If the sponsoring organization does not submit an annual financial statement required by RCW 46.16.765 and certified by an accountant; or

(c) The legislature concurs with a recommendation from the department to discontinue a plate series created after January 1, 2003; or

(d) The state legislature changes the law allowing that plate series.

~~((4))~~ **(5) What information must be contained in the annual financial report?** The annual financial report must include all expenditures related to programs, fund-raising, marketing, and administrative expenses related to their special license plate(s). The report must include:

(a) The stated purpose of the organization receiving the special plate revenue;

(b) A message from the chair or director of the organization;

(c) Program highlights with a detailed list of how the funds were expended for those programs;

(d) List of special events the organization held to market their special plate for the current reporting year;

(e) A summary of financial information:

(i) Previous revenue received during current reporting year;

(ii) Total revenue received during current reporting year;

(iii) Summary of administrative expenses.

If an organization is disbursing funds through a grant program or to another nonprofit organization supporting Washington citizens, a list including the program and the organizations must be submitted which includes their name and amount received.

~~((5))~~ **(6) What steps are taken by the department if the annual financial report is not submitted as required or the special plate revenue is expended for purposes other than allowed by law?** The department will follow the guidelines as established in the organization's contractual agreement with the department:

(a) Send a written notice of the violations to the organization;

(b) The organization is given ~~((thirty))~~ 30 days to correct the violation;

(c) If the violation is not corrected, the department may immediately terminate the contract.

~~((+6+))~~ (7) **Can an organization have more than one special plate series?** No. Organizations cannot have more than one special license plate series except those issued before January 1, 2006. Those organizations that already have multiple special plate series may not have more.

An updated design of the current special license plates does not constitute more than one special plate series. The newest design supersedes the prior design. The assigned number and letter combination cannot be changed when a new plate design is created.

(8) **Are tribal license plates established pursuant to RCW 46.16A.230 subject to the requirements of this section?** No. Tribal license plates enacted through the compacting process described in RCW 46.16A.230 are exempt from the special license plate requirements established in this section.



## WSR 23-22-033

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed October 23, 2023, 12:56 p.m., effective November 23, 2023]

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

Purpose: Moving this rule to chapter 308-56A WAC to better align the section's subject with the subject of the rule chapter.

Citation of Rules Affected by this Order: New WAC 308-56A-170 Retail sales and use tax exemption criteria for clean alternative fuel vehicles; and repealing WAC 308-04-030 Retail sales and use tax exemption criteria for clean alternative fuel vehicles.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, 82.08.809 Exemptions—Vehicles using clean alternative fuels and electric vehicles, exceptions—Quarterly transfers, and 82.12.809 Exemptions—Vehicles using clean alternative fuels and electric vehicles, exceptions—Quarterly transfers.

Adopted under notice filed as WSR 23-18-094 on September 6, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 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 1, Amended 0, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 23, 2023.

Ellis Starrett  
Rules and Policy Manager

**OTS-4909.1**NEW SECTION

**WAC 308-56A-170 Retail sales and use tax exemption criteria for clean alternative fuel vehicles.** For the purposes of RCW 82.08.809 and 82.12.809:

(1) The lowest manufacturer's retail price for a base model vehicle is the one provided by a vendor selected by the department;

(2) The department publishes and periodically updates a list of all vehicle models qualifying for the sales and use tax exemptions under those sections; and

(3) The list of qualifying vehicle models is available on the department's website.

As used in this section, "base model" means the least expensive and least optioned model of a qualifying vehicle identified in RCW 82.08.809 (1)(a) and 82.12.809 (1)(a).

OTS-4908.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-04-030	Retail sales and use tax exemption criteria for clean alternative fuel vehicles.
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**WSR 23-22-036**  
**PERMANENT RULES**  
**BOARD OF REGISTRATION**  
**FOR PROFESSIONAL ENGINEERS**  
**AND LAND SURVEYORS**

[Filed October 23, 2023, 3:07 p.m., effective November 23, 2023]

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

Purpose: WAC 196-09-015 Complaint processing approach, was amended to clarify the complaint process staff and the board member use when reviewing complaint documentation. Language was added regarding complainant requests to reopen closed complaints and/or investigations.

Citation of Rules Affected by this Order: Amending WAC 196-09-015.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 23-14-089 on June 30, 2023.

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

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

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

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

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

Date Adopted: October 19, 2023.

Ken Fuller  
 Director

**OTS-4680.1**

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

**WAC 196-09-015 Complaint processing approach.** The board processes complaints as follows:

(1) Anyone may submit a complaint against a licensed or unlicensed person alleging unprofessional conduct, unlicensed practice, or any other violations of chapter 18.43, 18.235, or 18.210 RCW. Complaints must be sworn to in writing and should include documentation of the alleged conduct.

(2) Upon receipt of the complaint, board staff will send an acknowledgment of the complaint to the complainant. If the subject of the complaint ("respondent") is a licensee, the board will notify the licensee respondent that a complaint was filed against them and include a copy of the complaint documents.

(3) Board staff will conduct an initial review of the complaint to determine whether the complaint raises a potential violation that

would fall within the jurisdiction ~~((and purview of a potential board action.~~

~~(a) If board staff determines there are no violations))~~ of the board's regulatory powers. If the complaint does not raise a potential violation of law within the board's jurisdiction, the complaint is administratively closed after recommendation to the board, and the parties are notified of the closure.

~~((b) If board staff determines))~~ (4) If there is a potential violation, a ((formal investigation)) case is opened, a case file is created, and an investigator and case manager are assigned. The respondent is notified, and a response to the allegations in the complaint is requested.

~~((4))~~ (5) The investigator will conduct a formal investigation which may include requests for documentation and interviews of the complainant, respondent, and other associated parties. All records gathered during the investigation will be placed in the case file.

(6) When the investigation is complete, the case manager will review and evaluate ((all documentation or comments received (the investigation file),)) the case file with the investigator, and may ask additional questions of any party, or call for further investigation. When the case manager completes their review ((of the documentation)), they will draft a written report, which will ((result in either)) include facts, possible violations and recommendation on the disposition of the case which may be case closure, case closure with remedial counseling, ((expedited resolution),) or issuance of ((statement of)) charges.

~~((5))~~ (7) The board may resolve a complaint or investigation at any time during this process.

(8) If a complainant requests reopening of a closed complaint or investigation, the board may only do so upon receipt of additional evidence or information in support of the original complaint that is relevant to the allegations. Submission of additional documentation does not guarantee the complaint or investigation will be reopened.

**WSR 23-22-037**  
**PERMANENT RULES**  
**BOARD OF REGISTRATION**  
**FOR PROFESSIONAL ENGINEERS**  
**AND LAND SURVEYORS**

[Filed October 23, 2023, 3:16 p.m., effective November 23, 2023]

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

Purpose: Changes to chapter 196-12 WAC, Registered professional engineers, are needed to implement changes to RCW 18.43.110 in 2023 and to clarify recently amended language regarding processes and requirements for licensure as a professional engineer in Washington. This rule change will impact all applicants applying for licensure as a professional engineer or structural engineer in Washington, but they will have no additional costs to implement and comply. The amendments include language necessary to implement a fundamental exam waiver for out-of-state applicants that are currently licensed in another jurisdiction, clarify education as experience, and repeal duplicate language.

Citation of Rules Affected by this Order: Repealing WAC 196-12-045; and amending WAC 196-12-010, 196-12-014, 196-12-020, and 196-12-021.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 23-14-091 on June 30, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, 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 4, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 1.

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 4, Repealed 1.

Date Adopted: October 19, 2023.

Ken Fuller  
Director

**OTS-4650.1**

AMENDATORY SECTION (Amending WSR 22-17-121, filed 8/23/22, effective 9/23/22)

**WAC 196-12-010 Licensure requirements for all applicants—Initial licensure and licensed in another jurisdiction.** To become licensed as a professional engineer in the state of Washington, whether you are applying for an initial license or you possess a license in another jurisdiction, you must meet the requirements for experience and examinations described below, which need not be completed within the state of Washington:

(1) **Experience:** Have eight years of experience in engineering work of a character satisfactory to the board:

(a) The eight years may be a combination of education and practical work experience.

(b) The eight years of experience must be broad based and progressive to include gaining knowledge and comprehension of engineering subjects and applying engineering principles.

(2) **Examination requirements:** An applicant must have received passing scores on two stages of examination(s). One must test the fundamentals of engineering and the other must test the principles and practice of engineering. Exam results must be independently verified by a NCEES member board, or a board approved foreign jurisdiction.

(a)(i) **Fundamentals of engineering examination** must meet the following requirements:

(ii) The examination must be either:

(A) The National Council of Examiners for Engineering and Surveying (NCEES) fundamentals-of-engineering (FE) examination; or

(B) An equivalent examination as determined by the board which tests the applicant's knowledge of appropriate fundamentals of engineering subjects including mathematics and the basic sciences as defined in RCW 18.43.040 (1)(b)(i) and was administered by a board approved foreign jurisdiction.

(b) Fundamentals of engineering examination waiver shall be granted to an applicant licensed in another jurisdiction provided that:

(i) The professional engineering license is currently active and is in good standing.

(ii) The license is in a branch of engineering currently recognized by the board.

(iii) The applicant has been actively licensed in a board recognized licensing jurisdiction for a minimum of 10 years since receiving their initial professional engineering license.

(c) **Principles and practice of engineering examination:** The principles and practice of engineering (PE) examination must be the examination administered by NCEES.

(3) **Additional licensure requirements:** An applicant must meet the following additional requirements for licensure:

(a) Receive a passing score on the Washington engineer law review exam;

(b) Fully complete the application form to the satisfaction of the board; and

(c) Pay all applicable fees.

AMENDATORY SECTION (Amending WSR 22-17-121, filed 8/23/22, effective 9/23/22)

**WAC 196-12-014 PE licensure application form.** The board has a single application form for PE licensure in the state of Washington. This application form must be used by all applicants including those applying for the PE exam and licensure concurrently, those who have already taken the PE examination in another jurisdiction but have not obtained their initial license, and those who are already licensed in another jurisdiction and are seeking a license in Washington state.

(1) **Current PE examination and licensure applications:** Applicants who have not taken the PE examination will apply for both the PE examination and licensure on the application form. In order to be ap-

proved by the board to take the PE examination, the applicant must complete all sections of the form, except the date and location of taking the PE exam and must otherwise meet all of the qualifications for licensure. Upon passing the PE examination, the applicant is also qualified for licensure.

Applications for PE examination and licensure must be received at the board's address with the applicable fee by the date posted on the board's website.

(2) **All other applicants for PE licensure in Washington state.**

All other applicants applying for licensure in the state of Washington, including those who are licensed in another jurisdiction or have passed the Principles & Practices of engineering examination but have not obtained their initial license, must complete all sections of the application form provided by the board.

~~((a))~~ (3) All applicants must provide information on the application form that demonstrates they meet all requirements for licensure. This includes work experience requirements, education requirements, and examination requirements as detailed in WAC 196-12-010, 196-12-020, and 196-12-021; and RCW 18.43.040.

~~((b))~~ (4) All applicants must provide the following documents to verify ~~((these))~~ the work experience, education, and examination requirements:

(a) A completed NCEES record transmitted to the Washington board;  
or

(b) Provide all the following documents:

(i) Education experience records - Official transcripts or the equivalent, showing all grades and degrees.

(ii) Work experience records - Completed form titled "Professional Engineering Experience Verification" which includes not only work experience information and details but also verifications of work experience by supervisors or other verifiers, per RCW 18.43.050.

(iii) Verification of licensing in any other jurisdiction(s), if any.

(iv) Verification of passing the FE examination or its equivalent (if any) or verification of FE waiver and verification of passing the PE examination.

AMENDATORY SECTION (Amending WSR 22-17-121, filed 8/23/22, effective 9/23/22)

**WAC 196-12-020 Work experience records.** The following criteria will be used in evaluating an applicant's experience record:

(1) Work experience will be approved based on a demonstration of competency and progressive responsibility in the analysis, synthesis and evaluation of engineering concepts and data, under the direct supervision of a person authorized by chapter 18.43 RCW or other applicable statute to practice engineering. Under the general guidance and direct supervision of an authorized professional, the applicant must be in a position of making independent judgments and decisions in the following experience areas:

- (a) Formulating conclusions and recommendations;
- (b) Identifying design and/or project objectives;
- (c) Identifying possible alternative methods and concepts;
- (d) Defining performance specifications and functional requirements;

(e) Solving engineering problems;  
(f) Interacting with allied professionals;  
(g) Effectively communicating recommendations and conclusions;  
(h) Demonstrating an understanding and concern for energy/environmental considerations, socioeconomic impact, and sustainability of resources.

(2) Engineering teaching may be considered satisfactory experience up to a maximum of two years at the discretion of the board.

(3) Applied research is considered satisfactory experience when it meets the following conditions:

(a) The research must be conducted under the guidance or supervision of a professional engineer. For the purposes of this subsection, guidance or supervision means being cognizant of all applicable aspects of the work and a reviewer of all applicable reporting documentation.

(b) The principal result(s) of the research are in a published report or a recognized engineering journal article in which the applicant is the primary author or the work is adequately documented and available to the board upon request.

(4) For military engineering experience to be considered acceptable, it should be similar to engineering experience that would be gained in a nonmilitary environment as defined in subsection (1) of this section, and such experience must be verified.

(5) Experience credit for an undergraduate degree cannot be earned concurrently with work experience credit. No more than one year of experience will be granted for one calendar year.

(6) Work experience gained while enrolled in a postgraduate engineering program may be considered satisfactory experience at the discretion of the board. No more than one year of experience will be granted for one calendar year.

(7) All work experience gained must be under the direct supervision of a professional engineer authorized to practice under chapter 18.43 RCW or an individual authorized by another statute to practice engineering.

AMENDATORY SECTION (Amending WSR 22-17-121, filed 8/23/22, effective 9/23/22)

**WAC 196-12-021 Education as experience ((records)).** Education may be counted towards the eight years of experience requirement specified in WAC 196-12-010. Official transcripts must be sent to the board's office for review and approval.

(1) A baccalaureate degree in engineering in a program accredited by the accreditation board for engineering and technology (ABET) is equivalent to four years of required experience. Satisfactory completion of each year of such an approved program is equivalent to one year of experience.

(2) A degree in engineering from a non-ABET accredited engineering program may be given four years at the discretion of the board. The board will determine if the degree is satisfactory in awarding years of experience.

(3) No more than one year may be granted for postgraduate engineering courses.

(4) A baccalaureate degree in a nonengineering program will be given a maximum of two years of experience.



(5) An associate degree in engineering from an approved program may be equivalent for up to two years of experience.

(6) Sporadic engineering related education may be considered as experience by the board at its discretion. For example, one or two engineering classes taken at a time, often at different schools; and/or classes taken through industry or the military may count as experience. In evaluating this type of education, the board will compare the courses taken to college coursework in a baccalaureate of engineering degree program.

(a) A number of foreign degree programs are included in mutual recognition agreements entered into by ABET with other accrediting authorities. Applicants with a degree from one of these programs will be evaluated by the board.

(b) Applicants having engineering degrees from programs in countries that are not ABET accredited will be required to have their transcripts evaluated by a transcript evaluation service approved by the board. This evaluation will be performed at the applicant's expense, and the applicant will be responsible for submitting all necessary information to the evaluation service. The board will use the evaluation to determine if the foreign degree is satisfactory to the board to award years of experience.

(c) An applicant with an undergraduate degree from a foreign program that is not ABET accredited, ~~((can waive the requirement for a degree evaluation))~~ is not required to have their undergraduate degree evaluated if they have a graduate degree in engineering from a school that has an ABET accredited undergraduate engineering degree program in the same discipline as the graduate degree. Years of experience will be determined at the discretion of the board.

For maximum experience credit the applicant must have their non-ABET accredited undergraduate degree from a foreign program evaluated by a transcript evaluation service approved by the board.

(7) Any other education may be taken into account and evaluated on its merits by the board.

~~((8) Work experience gained between semesters or quarters or during summers while enrolled in an approved curriculum may be counted as experience at the discretion of the board.))~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-12-045	Registration of applicants licensed in other jurisdictions.
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**WSR 23-22-038**  
**PERMANENT RULES**  
**BOARD OF REGISTRATION**  
**FOR PROFESSIONAL ENGINEERS**  
**AND LAND SURVEYORS**

[Filed October 23, 2023, 3:23 p.m., effective November 23, 2023]

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

Purpose: Chapter 196-33 WAC was amended to include language regarding the everyday usage of the stamp/seal by on-site designers (WAC 196-33-500) and to make the language regarding direct supervision (WAC 196-33-300) mirror the direct supervision language for professional engineers and land surveyors. Amendments will make it easier for the licensees to understand their responsibilities. Other housekeeping amendments were made.

Citation of Rules Affected by this Order: Amending WAC 196-33-100, 196-33-200, 196-33-300, and 196-33-500.

Statutory Authority for Adoption: RCW 18.43.035, 18.210.050.

Other Authority: RCW 18.210.060.

Adopted under notice filed as WSR 23-14-088 on June 30, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, 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 4, Repealed 0.

Date Adopted: October 19, 2023.

Ken Fuller  
Director

**OTS-4681.2**

AMENDATORY SECTION (Amending WSR 01-11-102, filed 5/21/01, effective 6/21/01)

**WAC 196-33-100 Purpose and definitions.** (1) The purpose of chapter 196-33 WAC is to provide further guidance to licensees with respect to the accepted professional conduct and standard of practice, as indicated in chapter 18.210 RCW, and generally expected of those practicing professional on-site wastewater treatment system designing. These standards shall apply to all persons authorized to practice on-site wastewater treatment system design services, whether licensed professional designers under chapter 18.210 RCW, or licensed professional engineers under chapter 18.43 RCW. The board recognizes the need to establish standards with which to measure the performance of practitioners. The board further recognizes, as a minimum standard,

those standards for the design of on-site wastewater treatment systems required by chapter ((246-272)) 246-272A WAC, promulgated by the state board of health in accordance with their authority granted in RCW 43.20.050. It is the intent of the board to introduce guidance and direction through these rules, together with recommended standards and guidance documents.

(2) The word "licensee" in these rules of professional practice shall mean any person holding a license issued in accordance with chapter 18.210 RCW, or chapter 18.43 RCW, issued by this board.

(3) All licensees are charged with having knowledge of and practicing in accordance with the provisions of these rules of professional practice.

(4) Should there be any conflict in the guidance provided in this chapter and the intent of the language of chapter 18.210 RCW, the intent of the language in chapter 18.210 RCW prevails.

(5) Terms used in this chapter shall have the same definition as provided in chapter 18.210 RCW.

AMENDATORY SECTION (Amending WSR 07-10-127, filed 5/2/07, effective 6/2/07)

**WAC 196-33-200 ((Fundamental[s])) Fundamental canons and guidelines for professional practice and conduct.** The specialized and complex knowledge required for on-site wastewater treatment system design makes it imperative that licensees exercise a standard of care that holds paramount the protection of the health, safety, environment, property, and welfare of the public.

(1) Licensees are expected to apply the skill, diligence and judgment required by the professional standard of care, to achieve the goals and objectives agreed with the client or employer, and are expected to promptly inform the client or employer of progress and changes in conditions that may affect the appropriateness or achievability of some or all of the goals and objectives of the client or employer. Licensees are obliged to:

(a) Be honest and fair in their dealings, and to conform to the relevant laws and codes of the jurisdiction in which they practice.

(b) Be able to demonstrate that their final products and work plans adequately consider the primary importance of protecting the safety, health, property, and welfare of the general public.

(c) Approve or seal only documents prepared by them or under their direct supervision.

(d) Inform their clients or employers of the possible consequences, when an overruling or disregarding of the licensee's professional judgment may threaten the safety or health of the public. If in the judgment of the licensee an imminently dangerous situation persists, they shall promptly inform appropriate authorities.

(e) Inform the board in writing, citing specific facts to which the licensee has direct knowledge, if they have knowledge or reason to believe that another person or firm may be in violation of any of the provisions of chapter 18.210 RCW or these rules of professional conduct, and cooperate with the board in furnishing such further information or assistance as may be required.

(2) Licensees shall be competent in the technology, and knowledgeable of the codes, regulations, and guidelines applicable to the services they perform.

(3) Licensees shall be qualified by education and/or experience in the technical area of on-site wastewater treatment system design applicable to services performed and the technologies utilized.

(4) Licensees may accept primary contractual responsibility requiring education and/or experience outside their own area of competence, provided their services are restricted to those phases of the project in which they are qualified.

(5) Licensees shall not affix their signatures or seals to any plan or document dealing with subject matter in which they lack competence by virtue of education and/or experience.

(6) Licensees shall act in professional matters for each employer or client as faithful agents or trustees.

(7) Licensees shall be objective and truthful in professional documents, reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony. They shall not knowingly falsify, misrepresent or conceal a material fact in offering or providing services to a client or employer.

(8) Licensees shall avoid all known or potential conflicts of interest with their employers or clients and shall promptly inform their employers or clients of any business association, interest, or circumstances, which could influence their judgment, or the quality of their services.

(9) Licensees shall only accept compensation from one party for services on a project, unless the circumstances are fully disclosed to and agreed to, by all interested parties.

(10) Licensees shall not solicit or, accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

(11) Licensees shall advise their employers or clients when, as a result of their studies, they believe a project will not achieve the goals established with the client.

(12) Licensees shall not use confidential information coming to them in the course of their assignments as a means of making personal profit if such action is adverse to the interests of their clients, employers or the public.

(13) Licensees employed full-time shall not accept professional employment outside of their regular work or interest without the knowledge and consent of their employers.

(14) Licensees shall offer their professional services in a truthful, objective, and professional manner that results in public trust in the integrity of the on-site design profession.

(15) Licensees shall not request, propose or accept professional commissions on a contingent basis under circumstances in which their professional judgments may be compromised.

(16) Licensees shall not offer or accept money, goods or other favors as inducement to receive favorable consideration for a professional assignment or as an inducement to approve, authorize or influence the granting of a professional assignment. This shall not preclude the securing of salaried positions through employment agencies.

(17) Licensees shall negotiate contracts for professional services fairly and on the basis of demonstrated competence and qualifications for the type of professional service required.

(18) Licensees shall not falsify or permit misrepresentation of their academic or professional qualifications or experience.

(19) Licensees shall not advertise professional services in a way that is false or misleading as to the qualification, experience, or capability of the licensee.

(20) Public statements by licensees regarding the practice of on-site wastewater treatment systems design shall be objective and truthful.

(21) Licensees should endeavor to extend the public knowledge of on-site wastewater treatment system design and shall not participate in the dissemination of untrue, unfair, or exaggerated statements regarding the profession.

(22) Professional reports, statements, or testimony made to the public or public entities shall include all relevant and pertinent information to support conclusions or opinions expressed.

(23) Licensees when serving as an expert witness shall express an on-site design opinion only when it is founded upon adequate knowledge of the facts, upon a background of technical competence, and upon honest conviction.

(24) Licensees shall issue no statements, criticisms, or arguments regarding on-site design matters, which are inspired or paid for by interested parties, unless they indicate on whose behalf the statements, are made.

(25) Licensees shall continue their professional development throughout their careers, and shall provide opportunities for the professional development of those individuals under their supervision.

(26) Licensees shall respond to any legal request for information by the board and/or appear before the board in the time frame established by the board or their staff designee.

(27) In addition to the requirements of RCW 18.210.020 and this chapter, the following acts are contrary to the standard of practice for individuals authorized to practice under this chapter and constitute unprofessional conduct in the practice of on-site wastewater treatment system designing:

(a) Duplicating, copying, removing or attempting to remove materials from the custody and control of the board that are exempt from inspection or copying under chapter 42.17 RCW when such duplication, copying or removal was not expressly authorized by the board.

(b) Failure to notify a client or employer that a project could not be completed or was not completed.

(c) Failure to respond to client inquiries under conditions which endanger the health, safety, or welfare of the public or the client or the client's property.

(d) Failure to respond to inquiries from other on-site practitioners or governmental agencies regarding differences in your respective work products, under conditions which endanger the public health, safety, or welfare or the health, safety, or welfare of the client or the client's property.

(e) Any act, statement or behavior that harasses, intimidates or retaliates against anyone who has provided information, assistance or testimony in connection with any board inquiry, investigation, hearing or other proceeding.

(f) Disorderly, discriminatory or abusive behavior or statements which are significantly disruptive to the normal activities of a place of business or public view, where such behavior would give anyone witnessing the act a reasonable belief to be concerned for their safety or well-being.

AMENDATORY SECTION (Amending WSR 01-11-102, filed 5/21/01, effective 6/21/01)

**WAC 196-33-300 Providing direct supervision. Direct supervision** ~~((is a combination of activities by which))~~ by a licensee ~~((main-~~  
~~tains))~~ is described as follows:

(1) Maintaining control over those decisions that are the basis for the findings, conclusions, ~~((analysis))~~ analyses, rationale, details, and judgments that are embodied in the development and preparation of on-site plans, specifications, reports, and related activities. ~~((Direct supervision explains the relationship between the licensee and those persons who are performing the work controlled by the licensee. Direct supervision))~~

(2) Requires providing personal direction, oversight, inspection, observation, and supervision of the work being certified.

~~((Communications between the licensee and those persons who are performing the work))~~ (3) These actions may include, but are not limited to ~~((, use of any of the following ways))~~: Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or communication through other current technology ~~((: Provided, that the licensee retains, maintains, and asserts continuing control and judgment.~~

~~Nothing in this section shall be construed to relieve the licensee from the responsibility of final decision making and plan stamping)).~~

(4) Contractual or employment relations must be in place between the licensee and unlicensed preparer to qualify as direct supervision.

(5) Mentoring is not direct supervision. Reviewing documents as defined by WAC 196-33-500, after preparation without involvement in the design and development process as described above cannot be accepted as direct supervision.

AMENDATORY SECTION (Amending WSR 01-11-102, filed 5/21/01, effective 6/21/01)

**WAC 196-33-500 Seal and stamp usage.** The use of the seal/stamp shall be in accordance with chapters 18.43 and 18.210 RCW, or as otherwise described herein:

(1) Final documents are those documents that are prepared and distributed for use for construction, final agency approvals, use by clients, and record drawings or as-builts for filing with public officials where such record drawings or as-builts are required to be prepared by the licensee. Any final document must contain the seal/stamp, ~~((license expiration date and))~~ signature, and date of signature of the licensee who prepared or directly supervised the work. For the purpose of this section, "document" is defined as plans, designs, specifications ((and)), reports, and as-built documents prepared by the licensee.

(2) Preliminary documents are those documents not considered final as defined herein ~~((,))~~ but are released or distributed by the licensee. Preliminary documents must be clearly identified as "PRELIMINARY" or contain such wording so it may be differentiated from a final document. Preliminary documents ~~((shall))~~ must be stamped ~~((and dated)),~~ but need not be signed or dated by the licensee.

(3) Plan sets: Every page of a plan set must contain the seal/stamp and signature of the licensee(s) who prepared or who had direct supervision over the preparation of the work, and date of signature.

(a) Plans/designs containing work prepared by or under the direct supervision of more than one licensee shall be sealed/stamped, signed, and dated by each licensee and shall clearly note the extent of each licensee's responsibility.

~~(b) ((As provided for in subsections (1) and (2) of this section, each page of a plan set must contain the seal/stamp of the licensee who prepared or who had direct supervision over the preparation of the work and may contain the signature of the licensee depending on whether the plan set is final or preliminary.~~

~~(e))~~ Plan/design sheets containing and/or depicting background and/or supporting information that is duplicated from other plans need only be sealed/stamped by the licensee(s) who prepared or was in direct supervision of the design ~~((on that plan sheet. Whenever possible,)).~~ The origin of the background information ~~((should))~~ shall be noted on the plan sheet.

~~((d))~~ (c) All design revisions to final plan/design sheets shall ~~((be performed by qualified licensees and shall be done in accordance with the provisions of RCW 18.210. The revised plan/design sheets shall))~~ clearly identify on each sheet ~~((+))~~ the revisions made and shall contain the name and seal of the licensee, and signature of licensee with the date the ~~((revision))~~ sheet was ~~((made))~~ sealed.

(4) Specifications: Specifications that are prepared by or under the direct supervision of a licensee shall contain the seal/stamp ~~((and)),~~ signature of the licensee, and date of the signature. If the specifications prepared by a licensee are a portion of a bound specification document that contains specifications other than that of an on-site design nature, the licensee need only seal/stamp that portion or portions of the documents for which the licensee is responsible. Nothing herein should be construed to require that each page of ~~((a))~~ an on-site design specification be sealed/stamped by the licensee.

(5) Document review: When a licensee is required to review work prepared by another licensed on-site designer, the reviewing licensee shall fully review those documents ~~((and)).~~ If required, the licensee shall prepare a report that discusses the findings of the review with any supporting calculations and sketches. The reviewing licensee would then seal/stamp ((and)), sign, and date the report. The report would make reference to and/or be attached to the subject document(s) reviewed.

(6) Nothing in this section requires the stamping of plans/designs by employees of local health districts acting in ~~((their))~~ that capacity as on-site inspectors/reviewers, whether or not licensed under chapter 18.210 RCW.

**WSR 23-22-041**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 22-16—Filed October 24, 2023, 8:04 a.m., effective November 24, 2023]

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

Purpose: The department of ecology (ecology) is adopting amendments to chapter 173-360A WAC, Underground storage tank (UST) regulations. The regulations govern the installation, operation, maintenance, and closure of UST systems containing petroleum or other regulated substances. The regulations also govern the detection of, responses to, and financial responsibility for release from those systems. This rule making is limited to the financial responsibility requirements for UST releases in Part 10 of chapter 173-360A WAC.

Ecology is adopting amendments to chapter 173-360A WAC, UST regulations, to allow use of a state fund or other state assurance program to demonstrate financial responsibility for cleaning up UST releases and compensating third parties for bodily injury and property damage caused by the releases.

Citation of Rules Affected by this Order: Amending chapter 173-360A WAC, Part 10, Underground storage tanks.

Statutory Authority for Adoption: Chapter 70A.355 RCW, Underground storage tanks; chapter 170, Laws of 2023.

Adopted under notice filed as WSR 23-14-086 on June 30, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 7, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 7, 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: October 24, 2023.

Laura Watson  
Director

**OTS-4520.2**

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

**WAC 173-360A-1005 Definition of terms.** For the purposes of this part, the following definitions apply unless the context clearly indicates otherwise.

(1) **"Accidental release"** means any sudden or nonsudden release of regulated substances arising from operating an underground storage tank that results in a need for remedial action and/or compensation



for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(2) "**Bodily injury**" has the meaning given to this term by applicable state law; however, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(3) "**Chief financial officer**," in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(4) "**Controlling interest**" means direct ownership of at least (~~(fifty)~~) 50 percent of the voting stock of another entity.

(5) "**Financial reporting year**" means the latest consecutive (~~(twelve)~~) 12-month period for which any of the following reports used to support a financial test is prepared: (a) A 10-K report submitted to the U.S. Securities and Exchange Commission; (b) an annual report of tangible net worth submitted to Dun and Bradstreet; or (c) annual reports submitted to the Energy Information Administration or the Rural Utilities Service. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(6) "**Legal defense cost**" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(a) By the U.S. Environmental Protection Agency or a state to require remedial action or to recover the costs of remedial action;

(b) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) By any person to enforce the terms of a financial assurance mechanism.

(7) "**Local government**" has the meaning given to this term by applicable state law and includes Indian tribes. The term is generally intended to include:

(a) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and

(b) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

(8) "**Occurrence**" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. This definition is intended to assist in the understanding of this part and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

(9) "**Owner or operator**," means, for the purposes of this part, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.

(10) "**Petroleum marketing facilities**" means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(11) "**Property damage**" has the meaning given to this term by applicable state law. This term does not include those liabilities

which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage do not include remedial action associated with releases from underground storage tanks which are covered by the policy.

(12) **"Provider of financial assurance"** means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in WAC 173-360A-1060 through 173-360A-1073, including a guarantor, insurer, risk retention group, surety, ~~(( $\oplus$ ))~~ issuer of a letter of credit, or a state.

(13) **"Substantial business relationship"** means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(14) **"Substantial governmental relationship"** means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an underground storage tank release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(15) **"Tangible net worth"** means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(16) **"Termination"** under WAC 173-360A-1082 and 173-360A-1083 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

**WAC 173-360A-1020 Allowable mechanisms and combinations of mechanisms.** (1) **For all owners or operators.** Subject to the limitation of subsection (3) of this section, an owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in WAC 173-360A-1060 through ~~((173-360A-1066))~~ 173-360A-1067 to demonstrate financial responsibility under this part for one or more underground storage tanks.

(2) **For only local governments owners or operators.** Subject to the limitation of subsection (3) of this section, a local government owner or operator may also use any one or combination of the mechanisms listed in WAC 173-360A-1070 through 173-360A-1073 to demonstrate financial responsibility under this part for one or more underground storage tanks.

(3) **Limitation on combining self-insurance and guarantee.** An owner or operator may use self-insurance in combination with a guarantee

only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

**WAC 173-360A-1030 Termination of mechanisms by providers. (1)**

**Authority.** Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

**(2) Date of termination.**

(a) **Guarantee, surety bond, or letter of credit.** Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until (~~(one hundred twenty)~~) 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) **Insurance (~~(or)~~), risk retention group coverage, or state-funded assurance.** Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured, or state-funded assurance may not occur until (~~(sixty)~~) 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of (~~(ten)~~) 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

**(3) Obtaining alternate coverage.**

(a) **If provider incapacitated.** If a provider of financial assurance cancels or fails to renew for reasons of incapacity of the provider, then the owner or operator must obtain alternate coverage as specified in WAC 173-360A-1035.

(b) **If provider not incapacitated.** If a provider of financial assurance cancels or fails to renew for reasons other than incapacity of the provider, then the owner or operator must obtain alternate coverage as specified in this section within (~~(sixty)~~) 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within (~~(sixty)~~) 60 days after receipt of the notice of termination, then by that date the owner or operator must notify the department of the failure and submit:

- (i) The name and address of the provider of financial assurance;
- (ii) The effective date of termination; and
- (iii) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with WAC 173-360A-1040(2).

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

**WAC 173-360A-1035 Responsibilities upon bankruptcy or other incapacity of owner or operator or provider of financial assurance. (1)**  
**Notifying department upon bankruptcy of owners or operators.** Within (~~(ten)~~) 10 days after commencement of a voluntary or involuntary pro-

ceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the department by certified mail of such commencement and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).

(2) **Notifying owners or operators upon bankruptcy of guarantor.** Within (~~ten~~) 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360A-1061.

(3) **Notifying department upon bankruptcy of local government owner or operator.** Within (~~ten~~) 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the department by certified mail of such commencement and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).

(4) **Notifying owners or operators upon bankruptcy of guarantor providing local government assurance.** Within (~~ten~~) 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360A-1072.

(5) **Obtaining alternate financial assurance upon bankruptcy or incapacity of provider.** An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this part within (~~thirty~~) 30 days after receiving notice of such an event. If the owner or operator fails to obtain alternate coverage within (~~thirty~~) 30 days after such notification, then by that date the owner or operator must notify the department of the failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).

(6) Obtaining alternate financial assurance upon incapacity of state fund or other state assurance. Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured remedial action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

**WAC 173-360A-1040 Recordkeeping by owners and operators.** (1) **Requirement to maintain evidence.** Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this part for an underground storage tank

until released from the requirements of this part under WAC 173-360A-1010. Owners or operators must make records readily available upon request by the department.

(2) **Types of evidence required.** An owner or operator must maintain the following types of evidence of financial responsibility:

(a) **Certification of financial responsibility.** An owner or operator using an assurance mechanism specified in WAC 173-360A-1060 through 173-360A-1073 must maintain an updated copy of a certification of financial responsibility worded as set forth in WAC 173-360A-1096, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(b) **Assurance mechanism instrument.** An owner or operator using an assurance mechanism specified in WAC 173-360A-1060 through 173-360A-1065 or 173-360A-1070 through 173-360A-1073 must maintain a copy of the instrument worded as specified.

(c) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than (~~one hundred twenty~~) 120 days after the close of the financial reporting year.

(d) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(e) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(f) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the state under WAC 173-360A-1067.

(g) A local government owner or operator using the local government bond rating test under WAC 173-360A-1070 must maintain a copy of its bond rating published within the last (~~twelve~~) 12 months by Moody's or Standard & Poor's.

(~~(g)~~) (h) A local government owner or operator using the local government financial test under WAC 173-360A-1071 or the local government guarantee under WAC 173-360A-1072 supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than (~~one hundred twenty~~) 120 days after the close of the financial reporting year.

(~~(h)~~) (i) A local government owner or operator using the local government guarantee under WAC 173-360A-1072 supported by the local government bond rating test under WAC 173-360A-1070 must maintain a copy of the guarantor's bond rating published within the last (~~twelve~~) 12 months by Moody's or Standard & Poor's.

(~~(i)~~) (j) A local government owner or operator using the local government guarantee under WAC 173-360A-1072 (4) (a) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(~~(j)~~) (k) An owner or operator using a local government fund under WAC 173-360A-1073 must maintain the following documents:

(i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund; and

(ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under WAC 173-360A-1073 (3)(c) using incremental funding backed by bonding authority, then the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

~~((k))~~ (l) An owner or operator using a local government fund established under WAC 173-360A-1073 (3)(c) using incremental funding backed by bonding authority must also maintain documentation of the required bonding authority, including either:

(i) The results of a voter referendum under WAC 173-360A-1073 (3)(c)(i); or

(ii) Attestation by the state attorney general as specified under WAC 173-360A-1073 (3)(c)(ii).

#### NEW SECTION

**WAC 173-360A-1067 Mechanism—State fund or other state assurance.** (1) **Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-1015 by obtaining coverage from a state fund or other state assurance program.

(2) **Evidence of coverage.** The state must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the state must include, or have attached to it, the following information: The facility's name and address and the amount of funds for remedial action and/or for compensating third parties that is assured by the state. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with WAC 173-360A-1040 (2)(f).

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

**WAC 173-360A-1082 Appendix C—Endorsement.**

Name: [name of each covered location]  
 Address: [address of each covered location]  
 Policy Number:  
 Period of Coverage: [current policy period]  
 Policy Retroactive Date:  
 Name of [Insurer or Risk Retention Group]:  
 Address of [Insurer or Risk Retention Group]:  
 Name of Insured:  
 Address of Insured:

*Endorsement:*

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.]

for [insert: "taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental release"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured does not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of remedial action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in WAC 173-360A-1060 through 173-360A-1065, 173-360A-1067, and 173-360A-1070 through 173-360A-1073.

c. Whenever requested by the Washington State Department of Ecology, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which

arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360A-1082 and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of Authorized Representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

Endorsement Holder:

Business Licensing Service

P.O. Box 9034

Olympia, WA 98507-9034

**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 18-15-083, filed 7/18/18, effective 10/1/18)

**WAC 173-360A-1083 Appendix D—Certificate of insurance.**

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Policy Retroactive Date:

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

*Certification:*

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.]

for [insert: "Taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if cov-



erage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured does not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of remedial action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in WAC 173-360A-1060 through 173-360A-1065, 173-360A-1067, and 173-360A-1070 through 173-360A-1073.

c. Whenever requested by the Washington State Department of Ecology, the ["Insurer" or "Group"] agrees to furnish the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360A-1083 and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of Authorized Representative of Insurer]  
[Type name]

[Title], Authorized Representative of [name of Insurer or Risk  
Retention Group]  
[Address of Representative]

Certificate Holder:

Business Licensing Service  
P.O. Box 9034  
Olympia, WA 98507-9034

**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.

**WSR 23-22-042**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed October 24, 2023, 1:05 p.m., effective November 24, 2023]

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

Purpose: To permanently amend WAC 480-93-240, amended by emergency rule making under WSR 23-15-057, effective July 14, 2023, and the matching provision in WAC 480-75-240 to allow the commission to continue to fund the pipeline safety program through accurate calculation of pipeline safety program fees.

Citation of Rules Affected by this Order: WAC 480-93-240 and 480-75-240.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160, and 80.24.020.

Adopted under notice filed as WSR 23-17-163 on August 23, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 24, 2023.

Kathy Hunter  
Acting Executive Director and Secretary

**OTS-4859.1**

AMENDATORY SECTION (Amending WSR 08-12-045, filed 5/30/08, effective 6/30/08)

**WAC 480-75-240 Annual pipeline safety fee methodology.** (1) This rule sets forth the commission's regulatory fee methodology for hazardous liquid pipelines as that term is defined in RCW 81.88.010, and gas pipelines, as that term is defined in RCW 81.88.010. For purposes of this section, these pipelines are called "company" or "companies" and the "commission's pipeline safety program" means the pipeline safety program that includes each program.

(2) Each company will pay an annual pipeline safety fee as established in the methodology set forth in subsection (3) of this section.

(3) The fee will be set by general order of the commission entered before September 1 of each year and will be collected in four equal installments payable on the first day of each quarter as listed below:

1st quarter fee installment due September 1;

2nd quarter fee installment due December 1;

3rd quarter fee installment due March 1;

4th quarter fee installment due June 1.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations for the commission's pipeline safety program, less the amount received in total base grants through the Federal Department of Transportation (~~and less any amount received from penalties collected under RCW 19.122.050~~). Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against pipeline company safety fees, nor will the work supported by grants be considered a cost for purposes of calculating fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each company's share of the total of all pipeline miles within Washington as reported by companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fees will be allocated among companies in proportion to each company's share of the commission pipeline safety program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to each company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) For fee-setting purposes, any program hours related to a commission investigation of an incident found to be attributed to third-party damage that results in penalties collected under RCW 19.122.055 will not be directly attributed to the owner of the damaged pipeline.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations set forth in (b) of this subsection.

(4) By August 1 of each year the commission will mail an invoice to each company.

(5) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For each gas pipeline company subject to RCW 81.24.010, its portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(6) Any company wishing to contest the amount of the fee imposed under this section must pay the fee when due and, within six months after the due date of the fee, file a written petition with the commission requesting a refund. The petition shall state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; all reasons why the commission should not impose the fee in that amount; and a calculation and explanation of the fee amount the petitioner con-

tends is appropriate, if any. The commission may grant the petition administratively or may set the petition for adjudication.

### OTS-4768.1

AMENDATORY SECTION (Amending WSR 08-12-046, filed 5/30/08, effective 6/30/08)

**WAC 480-93-240 Annual pipeline safety fee methodology.** (1) This rule sets forth the commission's fee methodology for the annual regulatory fee paid by a gas pipeline company as that term is defined in RCW 81.88.010. For the purposes of this section, a gas pipeline company is called "company" or "companies" and the "commission's pipeline safety program" means the pipeline safety program that includes each company.

(2) Each company will pay an annual pipeline safety fee as established in the methodology set forth in subsection (3) of this section.

(3) The fee will be set by general order of the commission entered before September 1 of each year and will be collected in four equal installments payable on the first day of each quarter as listed below:

1st quarter fee installment due September 1;

2nd quarter fee installment due December 1;

3rd quarter fee installment due March 1;

4th quarter fee installment due June 1.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations for the commission's pipeline safety program, less the amount received in total base grants through the Federal Department of Transportation (~~and less any amount received from penalties collected under RCW 19.122.050~~). Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against company pipeline safety fees, nor will the work supported by grants be considered a cost for purposes of calculating such fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each gas pipeline company's share of the total of all pipeline miles within Washington as reported by companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fee commission's annual pipeline safety program allotment will be allocated among companies in proportion to each company's share of the program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to the company during the two preceding calendar years (as

reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) For fee setting purposes, any program hours related to a commission investigation of an incident attributed to third-party damage that results in penalties collected under RCW 19.122.055 will not be directly attributed to the owner of the damaged gas pipeline.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations set forth in (b) of this subsection.

(4) By August 1 of each year the commission staff will mail an invoice to each company .

(5) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For each gas pipeline company subject to RCW 80.24.010, their portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(6) Any company wishing to contest the amount of the fee imposed under this section must pay the fee when due and, within 6 months after the due date of the fee, file a petition in writing with the commission requesting a refund. The petition must state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; all reasons why the commission may not impose the fee in that amount; and a calculation and explanation of the fee amount the petitioner contends is appropriate, if any. The commission may grant the petition administratively or may set the petition for adjudication or for brief adjudication.

## WSR 23-22-047

## PERMANENT RULES

## BOARD OF ACCOUNTANCY

[Filed October 25, 2023, 8:16 a.m., effective November 25, 2023]

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

Purpose: Rule making is needed to establish licensee name use parameters.

Citation of Rules Affected by this Order: Amending WAC 4-30-056.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 23-16-121 on August 1, 2023.

Changes Other than Editing from Proposed to Adopted Version: During the rules hearing, the board made a minor change to add the sentence "Subsection (5) also includes licensees in an inactive status" at the end of subsection (6).

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

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

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

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

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

Date Adopted: October 25, 2023.

Michael J. Paquette, CPA  
Executive Director

**OTS-4802.2**

AMENDATORY SECTION (Amending WSR 23-04-088, filed 1/31/23, effective 3/3/23)

**WAC 4-30-056 Form of organization and name.** (1) A licensee may practice public accounting only in a form of organization permitted by law or regulation.

(2) A firm name that does not consist of the name(s) of one or more present or former owners must be approved in advance by the board as not being deceptive or misleading.

(3) Misleading or deceptive firm names are prohibited. The following are examples of misleading firm names. The board does not intend this listing to be all inclusive. The firm name:

(a) Implies it is a legal entity when it is not such an entity (as by the use of the designations "P.C.," "P.S.," "Inc. P.S.," or "L.L.C.");

(b) Implies the existence of a partnership when one does not exist;

(c) Includes the name of a person who is neither a present nor a past owner of the firm;

(d) Implies educational or professional attainments, specialty designations, or licensing recognition not supported in fact; or

(e) Includes the terms "& Company", "& Associate", or "Group," but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other unnamed partner, shareholder, owner, member, or staff employee.

(4) Licensed firms and unlicensed firms.

(a) No licensed firm may operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the board.

(b) A firm not required to be licensed may not operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the secretary of state and/or the department of revenue.

(5) A licensee may not operate under an alias or title that differs from the name that is registered with the board.

(6) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195. Subsection (5) of this section also includes licensees in an inactive status.



## WSR 23-22-048

## PERMANENT RULES

## BOARD OF ACCOUNTANCY

[Filed October 25, 2023, 8:18 a.m., effective November 25, 2023]

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

Purpose: Rule making is needed to: (1) Extend the time period (testing window) in which all sections of the certified public accountant examination must be passed from 18 months to 36 months; and (2) eliminate outdated subsections which no longer apply after the implementation of continuous testing.

Citation of Rules Affected by this Order: Amending WAC 4-30-062.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 23-18-032 on August 29, 2023.

Changes Other than Editing from Proposed to Adopted Version: During the rules hearing, the board made a minor change to add "within a 36-month rolling period" to subsection (5)(d).

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

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

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

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

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

Date Adopted: October 25, 2023.

Michael J. Paquette, CPA  
Executive Director

### OTS-4803.3

AMENDATORY SECTION (Amending WSR 21-23-003, filed 11/3/21, effective 12/4/21)

**WAC 4-30-062 Applying to take the CPA examination.** (1) **Application process and due dates:** Your application to take the CPA examination must be submitted to the board's examination administrator. Applicants must submit all required information, documents, and fees to complete their application within 60 days of the date their application is submitted to the board's examination administrator. Your application is not considered complete until all ((of)) the following are provided:

- Complete application information and requested documents;
- Fee(s).

(2) **Fee refund and forfeiture:** Upon submission of your application to the examination administrator, no portion of the board's administrative fee is refundable. Upon the examination administrator's authorization to test, no portion of the total exam fee (both adminis-

trative fee and section fee(s)) is refundable. If you fail to meet the board's scheduling or admission requirements, you forfeit all ((of)) the exam fee(s) and you must reapply to take the section(s) of the exam.

(3) **Notice of admittance to the examination or denial of your application:** You must contact the approved test provider to schedule the time and location for your examination. The notice of eligibility to take the examination is called a Notice to Schedule (NTS) ((7)). The NTS will be valid for one taking of the examination section(s) within the six months following the date of the NTS.

Notice of a denial of your application((7)) or notice of your eligibility to take the examination will be sent to you by the examination administrator.

(4) **Examination content ((and grading)):** The CPA examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. ((The board may accept the advisory grading services of the American Institute of Certified Public Accountants.))

(5) **Examination process:**

(a) ~~((Conditions for examinations held prior to January 1, 2004: Contact a customer service representative at customerservice@acb.wa.gov or by phone at 360-753-2586.~~

~~(b) For examinations taken after December 31, 2003:))~~ The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants.

~~((i)) (b) To satisfy the examination requirement for a license you must have achieved a score of 75 on all sections of the examination within a rolling ((18)) 36-month period.~~

~~((ii)) (c) You may take the required sections ((individually and)) in any order. ((Credit for any section(s) taken and passed after December 31, 2003, will be valid for 18 months from the actual date you successfully passed any particular section of the examination.~~

~~(iii)) (d) You must pass all sections of the examination within a ((rolling 18-month)) 36-month rolling period, which begins on the date that the first section(s) is passed. A section is considered passed on the date that your grade is released.~~

~~((iv) You may not retake a failed section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the examination is refreshed).~~

~~(v) If the board determines that the examination system changes necessary to eliminate the test window limitations have been implemented, (iv) of this subsection will no longer be effective, and a candidate) (e) You can retake a test section ((once their)) after the grade for any previous attempt of that same section has been released.~~

~~((vi)) (f) In the event you do not pass all sections of the examination within the rolling ((18)) 36-month period, credit for any section(s) passed prior to the ((18)) 36-month period will expire and you must retake any expired section.~~

## WSR 23-22-050

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed October 25, 2023, 8:46 a.m., effective November 25, 2023]

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

Purpose: The agency is amending medical assistance definitions to add a person's resources to the reasonable compatibility processes for eligibility renewals.

Citation of Rules Affected by this Order: Amending WAC 182-500-0010, 182-500-0095, and 182-500-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-19-052 on September 14, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, 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 3, 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 3, Repealed 0.

Date Adopted: October 25, 2023.

Wendy Barcus  
Rules Coordinator

## OTS-4895.1

AMENDATORY SECTION (Amending WSR 22-21-086, filed 10/14/22, effective 11/14/22)

**WAC 182-500-0010 Medical assistance definitions—A. "Administrative renewal"** means the agency uses electronically available income and resources data sources to verify and recertify a person's Washington apple health benefits for a subsequent certification period. A case is administratively renewed when the person's self-attested income ((is)) and resources are reasonably compatible (as defined in WAC 182-500-0095) with the information available to the agency from the electronic data sources and the person meets citizenship, immigration, Social Security number, and age requirements.

**"After-pregnancy coverage (APC)"** means full-scope Washington apple health (medicaid) health care coverage for people up to 12 months after the month their pregnancy ends under WAC 182-505-0115.

**"Agency" or "medicaid agency"** means the Washington state health care authority (HCA).

**"Agency's designee"** means any entity expressly designated by the agency to act on its behalf.

**"Allowable costs"** are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients or not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

**"Alternative benefits plan"** means the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

**"Ancillary services"** means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

**"Apple health for kids"** is the umbrella term for health care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs, Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. Apple health for kids programs are included in the array of health care programs available through Washington apple health (WAH).

**"Attested income" or "attested resources"** means a self-declared statement of a person's income or resources made under penalty of perjury to be true. (See also "~~(self-attested income)~~ self-attestation.")

**"Authorization"** means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

**"Authorized representative"** is defined under WAC 182-503-0130.

AMENDATORY SECTION (Amending WSR 16-06-053, filed 2/24/16, effective 4/1/16)

**WAC 182-500-0095 Medical assistance definitions—R. "Reasonably compatible"** means the amount of a person's self-attested income or resources (as defined in WAC 182-500-0100) and the amount of a person's income or resources verified via electronic data sources are either both above or both below the applicable income or resources standard for Washington apple health (WAH). When self-attested income or resources is less than the standard for WAH, but income or resources from available data sources is more than the WAH standard, or when the self-attested income or resources cannot be verified via electronic data sources, the self-attested income (~~is~~) or resources are considered not reasonably compatible.

**"Retroactive period"** means approval of medical coverage for any or all of the retroactive period. A client may be eligible only in the

retroactive period or may have both current eligibility and a separate retroactive period of eligibility approved.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-500-0100 Medical assistance definitions—S. "Self-attestation"** means a person's written, verbal, or electronic declaration of ~~((his or her))~~ the person's income ~~((and/or))~~, resources, or circumstances made under penalty of perjury, confirming a statement to be true. (See also "attested income(~~(-)~~)" or "attested resources.")

**"Spendedown"** is a term used in the medically needy (MN) program and means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the agency. See WAC 182-519-0110.

**"Spouse"** means a person who is legally married to another person. Washington state recognizes other states' determinations of legal and common-law marriages between two persons.

(1) **"Community spouse"** means a person who:

(a) Does not reside in a medical institution; and

(b) Is legally married to a client who resides in a medical institution or receives services from a home and community-based waiver program. A person is considered married if not divorced, even when physically or legally separated from ~~((his or her))~~ the person's spouse.

(2) **"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and is also eligible for SSI.

(3) **"Essential spouse"** means a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) for a client in December 1973, who continues to live in the home and remains married to the client.

(4) **"Ineligible spouse"** means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and who has not applied or is not eligible to receive SSI.

(5) **"Institutionalized spouse"** means a legally married person who has attained institutional status as described in chapter 182-513 WAC, and receives services in a medical institution or from a home or community-based waiver program described in chapter 182-515 WAC. A person is considered married if not divorced, even when physically or legally separated from ~~((his or her))~~ the person's spouse.

(6) **"Nonapplying spouse"** means an SSI-related person's husband or wife, who has not applied for medical assistance.

**"SSI-related"** means an aged, blind or disabled person not receiving an SSI cash grant.

**"State supplemental payment (SSP)"** is a state-funded cash benefit for certain individuals who are either recipients of the Title XVI supplemental security income (SSI) program or who are clients of the division of developmental disabilities. The SSP allotment for Washington state is a fixed amount of ~~((twenty-eight million nine hundred thousand dollars))~~ \$28,900,000 and must be shared between all individuals who fall into one of the groups listed below. The amount of the

SSP may vary each year depending on the number of individuals who qualify. The following groups are eligible for an SSP:

(1) Mandatory SSP group—SSP made to a mandatory income level client (MIL) who was grandfathered into the SSI program. To be eligible in this group, an individual must have been receiving cash assistance in December 1973 under the department of social and health services former old age assistance program or aid to the blind and disability assistance. Individuals in this group receive an SSP to bring their income to the level they received prior to the implementation of the SSI program in 1973.

(2) Optional SSP group—SSP made to any of the following:

(a) An individual who receives SSI and has an ineligible spouse.

(b) An individual who receives SSI based on meeting the age criteria of (~~sixty-five~~) 65 or older.

(c) An individual who receives SSI based on blindness.

(d) An individual who has been determined eligible for SSP by the division of developmental disabilities.

(e) An individual who is eligible for SSI as a foster child as described in WAC 388-474-0012.

**"Supplemental security income (SSI) program (Title XVI)"** is the federal grant program for aged, blind, and disabled persons, established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

## WSR 23-22-066

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed October 25, 2023, 11:22 a.m., effective November 25, 2023]

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

Purpose: Health equity continuing education (CE) for optometrists. The board of optometry (board) adopted WAC 246-851-225, a new section requiring two hours of health equity CE every four years for licensed optometrists. Health equity CE programs must meet the standards created in the department of health (department) model rules in WAC 246-12-800 through 246-12-830. The adopted rule does not add to the total CE hours required to renew the license.

The adopted rule implements the requirements of ESSB 5229 (chapter 276, Laws of 2021). Codified in RCW 43.70.613, the statute directed the rule-making authority for each health profession licensed under Title 18 RCW and subject to CE to adopt rules requiring a minimum of two hours of health equity CE every four years. The statute also directed the department to create the model rules establishing minimum standards for health equity CE programs, which were filed on November 23, 2022, under WSR 22-23-167.

Citation of Rules Affected by this Order: New WAC 246-851-225.

Statutory Authority for Adoption: RCW 18.54.070, 43.70.040, 43.70.613, and 18.130.040.

Adopted under notice filed as WSR 23-16-120 on August 1, 2023.

A final cost-benefit analysis is available by contacting Kristina Bell, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4841, fax 360-236-2901, TTY 711, email kristina.bell@doh.wa.gov, website www.doh.wa.gov.

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

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

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

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

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

Date Adopted: September 8, 2023.

Keren Yang, Optometrist, Vice Chair  
Board of Optometry

**OTS-4448.1**NEW SECTION

**WAC 246-851-225 Optometrist health equity continuing education training requirements.** (1) Optometrists must complete a minimum of

two hours in health equity continuing education training every four years by complying with WAC 246-12-800 through 246-12-830.

(2) This training must be completed by the end of the second full continuing education reporting period after January 1, 2024, or the second full continuing education reporting period after initial licensure, whichever is later.

(3) The hours spent completing health equity continuing education under this section count toward meeting applicable continuing education requirements for optometrist license renewal.

(4) The board may randomly audit up to 25 percent of licensed optometrists every two years for compliance after the license is renewed as allowed by WAC 246-12-190.



## WSR 23-22-067

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed October 25, 2023, 11:30 a.m., effective November 25, 2023]

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

Purpose: Substance use monitoring program language updates for optometrists. The board of optometry (board) amended WAC 246-851-440 through 246-851-470 to align with technical changes made by SSB 5496 (chapter 43, Laws of 2022). Changes align the rules with currently accepted language for substance use disorders and related monitoring programs, and include technical clarifications as needed without changing the rule's effect.

Citation of Rules Affected by this Order: Amending WAC 246-851-440, 246-851-450, 246-851-460, and 246-851-470.

Statutory Authority for Adoption: RCW 18.54.070, 18.130.050, 18.130.175, and 18.130.186.

Other Authority: RCW 18.54.070, 18.130.050, 18.130.175, and 18.130.186.

Adopted under notice filed as WSR 23-16-072 on July 27, 2023.

A final cost-benefit analysis is available by contacting Kristina Bell, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4841, fax 360-236-2901, TTY 711, email Kristina.bell@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: September 8, 2023.

Keren Yang, Optometrist, Vice Chair  
Board of Optometry

## OTS-4449.1

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

**WAC 246-851-440 Philosophy governing voluntary substance ((abuse)) use disorder monitoring programs.** The board recognizes the need to establish a means of proactively providing early recognition and treatment options for optometrists whose competency may be impaired due to ~~((the abuse of drugs or alcohol))~~ substance use disorder. The board intends that such optometrists be treated, and their

treatment monitored so that they can return to or continue to practice their profession in a way which safeguards the public. To accomplish this the board shall approve voluntary substance ((abuse)) use disorder monitoring programs and shall refer optometrists impaired by substance ((abuse)) use disorder to approved programs as an alternative to instituting disciplinary proceedings as defined in RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

**WAC 246-851-450** (~~(Terms used in WAC 246-851-440 through 246-851-470.)~~) **Definitions.** The definitions in this section apply in WAC 246-851-440 through 246-851-470 unless the context clearly requires otherwise.

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

(2) "Approved substance ((abuse)) use disorder monitoring program" or "approved monitoring program" ((is)) means a program the board has determined meets the requirements of the law and the criteria established by the board in WAC 246-851-460 which enters into a contract with optometrists who have substance ((abuse)) use disorder problems regarding the required components of the optometrist's recovery activity and oversees the optometrist's compliance with these requirements. Substance ((abuse)) use disorder monitoring programs do not provide evaluation or treatment to participating optometrists.

~~((2))~~ (3) "Approved treatment facility" means a facility recognized as such according to RCW 18.130.175(1).

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

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

~~((4))~~ (5) "Health care professional" means an individual who is licensed, certified, or registered in Washington to engage in the delivery of health care to patients.

(6) "Impaired" or "impairment" means the inability to practice optometry with reasonable skill and safety to patients by reason of a health condition.

(7) "Random drug screens" means laboratory tests to detect the presence related to a substance use disorder in body fluids which are performed at irregular intervals not known in advance by the person being tested.

(8) "Substance ((abuse)) use disorder" means the impairment, as determined by the board, of an optometrist's professional services by

any addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

~~((5) "Aftercare" is that period of time after intensive treatment that provides the optometrist and the optometrist's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.~~

~~(6))~~ (9) "Support group" (~~is~~) means a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which optometrists may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

~~((7))~~ (10) "Twelve step groups" (~~are~~) means groups such as alcoholics anonymous, narcotics anonymous and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.

~~((8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person being tested.~~

~~(9) "Health care professional" is an individual who is licensed, certified, or registered in Washington to engage in the delivery of health care to patients.)~~

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

**WAC 246-851-460 Approval of ~~((substance abuse))~~ monitoring programs.** The board shall approve the monitoring program(~~(-s)~~) which shall participate in the board's substance (~~(abuse)~~) use disorder monitoring program. A monitoring program approved by the board may be contracted with an entity outside the department but within the state, out-of-state, or a separate structure within the department.

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

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

- (a) Clinical laboratories;
- (b) Laboratory results;
- (c) Providers of substance (~~(abuse)~~) use disorder treatment, both individuals and facilities;
- (d) Support groups;
- (e) The optometry work environment; and
- (f) The ability of the optometrist to practice with reasonable skill and safety.

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

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

(5) The approved monitoring program staff shall determine, on an individual basis, whether an optometrist will be prohibited from en-

gaging in the practice of optometry for a period of time and what restrictions, if any, are placed on the optometrist's practice.

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

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

(8) The approved monitoring program shall report to the board any optometrist who fails to comply with the requirement of the monitoring program.

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

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

**WAC 246-851-470 Participation in approved ((substance abuse)) monitoring program.** (1) In lieu of disciplinary action, the optometrist may accept board referral into the approved ((substance abuse)) monitoring program or voluntary substance use disorder monitoring program.

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

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

(i) The optometrist shall undergo intensive substance ((abuse)) use disorder treatment in an approved treatment facility.

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

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

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

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

(vi) The optometrist shall attend support groups facilitated by a health care professional ((and/or twelve)) or 12 step group meetings as specified by the contract.

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

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

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

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

(2) An optometrist who is not being investigated by the board or subject to current disciplinary action or currently being monitored by the board for substance ~~((abuse))~~ use disorder may voluntarily participate in the approved substance ~~((abuse))~~ use disorder monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 for their substance ~~((abuse))~~ use disorder, and shall not have their participation made known to the board if they meet the requirements of the approved monitoring program:

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

(b) The optometrist shall enter into a contract with the approved substance ~~((abuse))~~ use disorder monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The optometrist shall undergo intensive substance ~~((abuse))~~ use disorder treatment in an approved treatment facility.

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

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

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

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

(vi) The optometrist shall attend support groups facilitated by a health care professional ~~((and/or twelve))~~ or 12 step group meetings as specified by the contract.

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

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

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

(3) ~~((The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in subsections (1) and (2))~~

~~of this section. Records held by the board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.)~~ Treatment and pretreatment records shall be confidential as provided by law in chapters 42.56 and 42.17A RCW.

## WSR 23-22-068

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed October 25, 2023, 11:34 a.m., effective November 25, 2023]

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

Purpose: Optometrist continuing education (CE) requirements. The board of optometry (board) adopted changes to WAC 246-851-090 and 246-851-125 through 246-851-230 related to CE requirements for licensed optometrists. Adopted amendments include online CE, new definitions, limits on types and categories of CE hours, reference to other required trainings, CE documentation requirements, clarifying self-study requirements, and certain allowances during a declared state of emergency.

Citation of Rules Affected by this Order: Amending WAC 246-851-090, 246-851-125, 246-851-140, 246-851-150, 246-851-155, 246-851-170, and 246-851-230.

Statutory Authority for Adoption: RCW 18.54.070(2), 18.130.050, 18.130.175, and 18.130.186.

Other Authority: RCW 18.54.070(2), 18.130.050, 18.130.175, and 18.130.186.

Adopted under notice filed as WSR 23-16-109 on July 31, 2023.

A final cost-benefit analysis is available by contacting Kristina Bell, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4841, fax 360-236-2901, TTY 711, email Kristina.bell@doh.wa.gov, website www.doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, 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 7, Repealed 0.

Date Adopted: September 8, 2023.

Keren Yang, Vice Chair  
Board of Optometry

**OTS-4445.5**

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

**WAC 246-851-090 Continuing education requirement.** (1) The definitions in this subsection apply throughout this section:

(a) "Asynchronous" means the course instructor and learner are not together at the same time, have no real-time communications, and the content is learner-paced.

(b) "Synchronous in-person" means the instructor is in the same room and face-to-face with the learner, even if other formats are used as audiovisual aids for teaching the course.

(c) "Synchronous virtual" means the course instructor is not physically present but is meeting with learners in real time and can provide immediate feedback.

(2) A licensed optometrist must complete and document ((fifty)) 50 total hours of continuing education every two years ((and comply with chapter 246-12 WAC, Part 7)) in compliance with WAC 246-12-170 through 246-12-235. Of the 50 total credit hours:

(a) A minimum of 10 credit hours must be completed through synchronous in-person learning;

(b) A maximum of 25 credit hours may be completed through asynchronous learning;

(c) The remaining credit hours may be completed through any combination of synchronous virtual learning and asynchronous learning; and

(d) In the event of a declaration of emergency for the state of Washington or federal declaration of emergency affecting the state of Washington, all credit hours may be completed through synchronous virtual or asynchronous learning for the duration of the declared emergency.

(3) Documentation of continuing education credit hours is a certificate of completion, letter, or other document which must:

(a) Verify or confirm attendance or completion of continuing education hours, with the exception of hours earned under WAC 246-851-170 category 5;

(b) Be provided by the organization providing the education activity; and

(c) Contain at least the following information:

(i) Date of attendance or completion;

(ii) Hours earned; and

(iii) Course title or subject.

((2)) (4) A licensed optometrist ((must)) may alternatively meet the continuing education requirements ((by:

(a) Completing fifty hours of education that complies with WAC 246-851-125 through 246-851-230; or

(b) Alternatively meeting the requirements of this subsection) of this section by providing proof that ((he or she:

(i) Holds a current Optometric Recognition Award from the American Optometric Association;

(ii)) the licensee:

(a) Holds a current certification by the American Board of Optometry or other certification program deemed substantially equivalent to American Board of Medical Specialties' programs; or

((iii)) (b) Is practicing solely outside of Washington state and meets the continuing education requirements of the state or territory in which ((he or she)) the licensee practices.

(5) Nothing in this section exempts a licensed optometrist from the education and training requirements for:

(a) Suicide prevention in WAC 246-851-245; or

(b) Health equity in WAC 246-851-225.



AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

**WAC 246-851-125 Category 1—Credit for education from optometry-specific organizations.** (1) A minimum of ~~((twenty-five))~~ 25 credit hours in category 1 ~~((credit hours))~~ must be earned in any two-year reporting period.

(2) ~~((Up to ten category 1 credit hours may be earned for live courses attended remotely, provided that attendees have the documented opportunity to question the instructor and hear the questions of other attendees in real time.~~

~~(3))~~ Credits may be obtained for ~~((in-person live-attended))~~ education offered by the following optometry-specific course and program sources:

(a) The American Optometric Association (AOA) and its state affiliates;

(b) Educational institutions accredited by the Association of Schools and Colleges of Optometry (ASCO);

(c) The Association of Regulatory Boards of ~~((Optometry))~~ Optometry's (ARBO) ~~((and its state agency members))~~ Council on Optometric Practitioner Education (COPE)—Accredited education;

(d) ARBO member boards;

(e) Nationally recognized academic and scholarly optometric organizations including, but not limited to, the American Academy of Optometry, the Optometric Extension Program, and the College of Optometrists in Vision Development; and

~~((e))~~ (f) Ophthalmic referral centers, secondary and tertiary ophthalmic specialty providers.

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

**WAC 246-851-140 Category 2—Credit for education from nonoptometric organizations.** (1) A maximum ~~((of twenty))~~ 20 credit hours in category 2 ~~((credit hours))~~ may be earned in any two-year reporting period.

(2) Credits may be obtained for ~~((in-person live-attended))~~ education offered by the following nonoptometry-specific course and program sources:

(a) ~~((Category 1 and category 2))~~ Continuing medical education courses in category 1 and category 2 as approved by the ~~((medical quality assurance commission))~~ American Medical Association or their affiliates;

(b) First aid, ~~((CPR))~~ cardiopulmonary resuscitation, and other emergency-related courses; and

(c) Industry-sponsored scientific courses that enhance the knowledge of ocular conditions and diseases, and their treatments.

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

**WAC 246-851-150 Category 3—Credit for teaching.** (1) A maximum of ~~((ten))~~ 10 credit hours in category 3 ~~((credit hours))~~ may be earned in any two-year reporting period.

(2) Credits may be obtained for formal and informal optometric instruction.

(a) Three credit hours will be granted for each course hour taught.

(b) Credit will be granted for only the first time a course is taught.

(c) Qualifying courses must be presented to ~~((optometrists))~~ practitioners or allied health professionals.

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

**WAC 246-851-155 Category 4—Credit for publishing and exhibiting.** (1) A maximum of ~~((ten))~~ 10 credit hours in category 4 ~~((credit hours))~~ may be earned in any two-year reporting period.

(2) Five credits may be obtained for each paper, exhibit, publication, or for each chapter of a book that is authored and published.

(a) A paper must be published in a recognized optometric, scientific, or medical journal.

(b) A qualifying paper or exhibit must be presented to ~~((optometrists))~~ practitioners or allied health professionals.

(c) Credit may be claimed only once for the scientific materials published or exhibited.

(d) Credit will be assigned as of the date materials were presented or published.

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

**WAC 246-851-170 Category 5—Credit for ~~((self-directed study))~~ self-study.** ~~((1))~~ A maximum of ~~twenty-five~~ category 5 credit hours may be earned in any two-year reporting period.

~~(2) Credits may be obtained for nonsupervised individual continuing educational activities.~~

~~(a) Subject matter must be from professional optometric or medical literature or multimedia material;~~

~~(b) Course material may be presented in any form of printed or electronic media;~~

~~(c) Courses must be approved by a category 1 organization listed in WAC 246-851-125; and~~

~~(d) Successful completion of an examination or other assessment tool is required for qualifying credit. Up to ten category 5 credit hours may be earned by submitting in lieu of an assessment tool a non-handwritten report which includes a copy of the article, publication source and date, and at least ten descriptive statements from the ar-~~

~~title.)~~) (1) A maximum of 10 credit hours may be earned through self-study without an instructor physically present.

(2) A licensed optometrist shall receive two credit hours for each self-study completed. Each self-study must include:

(a) A copy of the article, and its publication source and date;  
and

(b) A two-page typewritten and dated synopsis of what has been learned by the licensed optometrist.

(3) Self-study material must be from professional optometrist or medical literature, and includes reading a book, study clubs, research materials or other publications that contribute to the professional knowledge and development of the licensed optometrist, or enhance services provided to patients.

AMENDATORY SECTION (Amending WSR 15-24-119, filed 12/1/15, effective 1/1/16)

**WAC 246-851-230 Credits for practice management courses.** A maximum of (~~ten~~) 10 credit hours may be granted in any two-year reporting period for practice management courses or programs.

## WSR 23-22-076

## PERMANENT RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed October 26, 2023, 3:04 p.m., effective November 26, 2023]

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

Purpose: This rule making will incorporate changes made by HB 1684 (2023), which amended RCW 50.12.070 and allows, but does not require, federally recognized tribes to report to the employment security department (ESD) standard occupational classifications (SOC codes) and job titles for its employees in its wage reports.

Citation of Rules Affected by this Order: Amending WAC 192-310-010 and 192-310-050.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.12.070, as amended by HB 1684 (2023), provides authority for ESD to adopt rules implementing HB 1684.

Adopted under notice filed as WSR 23-17-057 on August 11, 2023.

A final cost-benefit analysis is available by contacting Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/standard-occupational-code-reporting-federally-recognized-tribes>.

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 2, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: October 26, 2023.

Joy E. Adams, Acting Director  
Employment Security Policy and Integrity Division

**OTS-4764.1**

AMENDATORY SECTION (Amending WSR 22-21-094, filed 10/17/22, effective 11/17/22)

**WAC 192-310-010 What reports are required from an employer? (1) Business license application.** Every person or unit with one or more individuals performing services for it in the state of Washington must file a business license application with the department of revenue.

(2) **Employer registration:**

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers,

and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than (~~ten~~) 10 percent, or (~~ten~~) 10 percent or more, and the family relationship of corporate officers to other corporate officers who own (~~ten~~) 10 percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) An employer who omits required information when registering with the department, or fails to provide the department with the required information within (~~thirty~~) 30 days of registration, must pay a penalty of (~~twenty-five dollars~~) \$25 for each violation unless the penalty is waived by the department.

(d) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

**(3) Quarterly tax and wage reports:**

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, standard occupational classification code or job title, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, the individual must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for

the employer. The individual must give the employer a document showing the individual has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for their records;

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030);

(v) For the purposes of this section, if an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of employees' wages; ~~((and))~~

(vi) An Indian tribe, as defined in 26 U.S.C. § 3306, may, but is not required to, report the standard occupational classifications codes or job titles of workers; and

(vii) The United States Bureau of Labor Statistics Standard Occupational Classification system is used by federal agencies to classify workers into standard occupational categories for the purpose of collecting, calculating or disseminating data. These standard occupational categories are identified by a six-digit numerical code.

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using programs or services authorized by the department; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup> of each year. So, reports are due by April 30<sup>th</sup>, July 31<sup>st</sup>, October 31<sup>st</sup>, and January 31<sup>st</sup>, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

AMENDATORY SECTION (Amending WSR 22-21-094, filed 10/17/22, effective 11/17/22)

**WAC 192-310-050 What records must every employer keep? (RCW 50.12.070.)** The commissioner requires every employer to keep true and

accurate business, financial, and employment records which are deemed necessary for the effective administration of chapter 50.12 RCW.

(1) **Employment records.** Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

(a) The name of each worker;

(b) The Social Security number of each worker;

(c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;

(d) The basis upon which wages and/or remuneration are paid to each worker;

(e) The standard occupational classification code or job title associated with the worker's job duties. An Indian tribe, as defined in 26 U.S.C. § 3306, may elect to report the standard occupational classifications or job titles of workers. If an Indian tribe elects to report standard occupational classifications or job titles, it retains the option to opt out of reporting at any time for any reason it deems necessary;

(f) The location where such services were performed;

(g) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each day;

(h) The workers' total gross pay period earnings;

(i) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and

(j) The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

(2) **Business, financial records, and record retention.** Every employer shall make, keep, and preserve business and financial records containing the following information for four calendar years following the calendar year in which employment occurred:

(a) Payroll and accounting records, including payroll ledgers, all check registers and canceled checks covering both payroll and general disbursements, general and subsidiary ledgers, disbursement and petty cash records, and profit and loss statements or financial statements;

(b) Quarterly and annual tax reports, including W-2, W-3, 1099, 1096, and FUTA (940) forms;

(c) Quarterly reports to the employment security department and the department of labor and industries;

(d) For independent contractors and subcontractors, business license numbers and registration numbers and copies of contract agreements and invoices; and

(e) For years prior to 2009 for corporations that did not voluntarily elect to cover corporate officers for unemployment insurance, copies of written notifications to corporate officers that they were ineligible for unemployment insurance benefits.

(3) Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(4) Penalties for failure to keep and preserve records shall be determined under RCW 50.12.070(3).

(5) For assistance with determining the appropriate standard occupational codes for their workers' job titles, employers can refer to the department's website or contact the employer call center.



WSR 23-22-077
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed October 26, 2023, 4:13 p.m., effective December 1, 2023]

Effective Date of Rule: December 1, 2023.

Purpose: The proposed amendments to Puget Sound Clean Air Agency (PSCAA) Regulation I, Section 7.09 would remove the requirement that reports submitted electronically also be submitted in paper form for record purposes.

Citation of Rules Affected by this Order: Amending Regulation I, Section 7.09.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 23-17-037 on August 9, 2023.

Changes Other than Editing from Proposed to Adopted Version: The CR-102 form filed with the code reviser in August 2023 included proposed revisions to both Sections 5.05 and 7.09 of PSCAA Regulation I. At the PSCAA board meeting on September 28, 2023, the board instructed PSCAA staff to leave the options for registered sources the same; therefore, PSCAA is proceeding only with the changes to Section 7.09 and leaving Section 5.05 unchanged.

Date Adopted: October 26, 2023.

Christine S. Cooley
Executive Director

REGULATION I ARTICLE 7

AMENDATORY SECTION

SECTION 7.09 GENERAL REPORTING REQUIREMENTS FOR OPERATING PERMITS

(a) Emission Reporting. An emission report shall be required from each owner or operator of an operating permit source, listing those air contaminants emitted during the previous calendar year that equal or exceed the following (tons/year):

carbon monoxide (CO) emissions. . . . . 25
facility combined total of all toxic air contaminant (TAC) emissions. . . . . 6
any single toxic air contaminant (TAC) emissions (excluding lead, but including lead compounds). . . . . 2
nitrogen oxide (NOx) emissions. . . . . 25
particulate matter (PM10) emissions. . . . . 25
particulate matter (PM2.5) emissions. . . . . 25
sulfur oxide (SOx) emissions. . . . . 25
volatile organic compounds (VOC) emissions. . . . . 25
lead. . . . . 0.5

Annual emission rates shall be reported to the nearest whole tons per year for only those air contaminants that equal or exceed the thresholds above, except lead which must be reported to the nearest tenth of a ton. The owner or operator of a source requiring a Title V operating permit under this Article shall maintain records of information necessary to document any reported emissions or to demonstrate that the emissions were less than the above amounts.

(b) Operation and Maintenance Plan. Owners or operators of air contaminant sources subject to Article 7 of this regulation shall de-

velop and implement an operation and maintenance plan to assure continuous compliance with Regulations I, II, and III. A copy of the plan shall be filed with the Control Officer upon request. The plan shall reflect good industrial practice and shall include, but not be limited to, the following:

- (1) Periodic inspection of all equipment and control equipment;
- (2) Monitoring and recording of equipment and control equipment performance;
- (3) Prompt repair of any defective equipment or control equipment;
- (4) Procedures for start up, shut down, and normal operation;
- (5) The control measures to be employed to assure compliance with Section 9.15 of this regulation; and
- (6) A record of all actions required by the plan.

The plan shall be reviewed by the source owner or operator at least annually and updated to reflect any changes in good industrial practice.

(c) **Compliance Reports.** (~~(After June 30, 2009, owners)~~) Owners or operators of air contaminant sources subject to Article 7 of this regulation shall submit complete copies of all required compliance reports to this Agency in electronic format as an attachment to an e-mail message. The date the (~~document~~) report is received by the Agency e-mail system shall be considered the submitted date of the report. An email message to the Agency with a link to a file-sharing or folder-sharing site requiring a document download by the Agency will not meet the requirement in this section. (~~(Original written documents shall also be submitted for record purposes.)~~) Nothing in this section waives or modifies any requirements established under other applicable regulations.

**WSR 23-22-080**  
**PERMANENT RULES**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed October 27, 2023, 10:06 a.m., effective November 27, 2023]

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

Purpose: General updates to chapter 352-40 WAC, Public records.

Citation of Rules Affected by this Order: Amending WAC 352-40-030  
When and where can I access state parks' public records? and  
352-40-060 Who do I contact to request state parks' public records?

Statutory Authority for Adoption: Chapter 79A.05 RCW, Parks and recreation commission.

Adopted under notice filed as WSR 19-15-137 [23-16-009] on July 23, 2019 [July 19, 2023].

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: October 27, 2023.

Valeria Veasley  
Management Analyst

**OTS-4034.3**

AMENDATORY SECTION (Amending WSR 19-15-137, filed 7/23/19, effective 8/23/19)

**WAC 352-40-030 When and where can I access state parks' public records?** Most public records of the commission and the agency are located at the state parks' headquarters office in Tumwater. Appropriate parks staff will determine where physical records can be inspected. Requests for such inspections can be made by contacting the agency's public records officer.

Mailing address:  
P.O. Box 42650  
Olympia, WA 98504-2650

Physical address:  
1111 Israel Road S.W.  
Tumwater, WA 98501  
Email: public.disclosure@parks.wa.gov  
Phone: 360-902-8514

The communications office is available to assist with media inquiries and general public information requests.

(~~Phone: 360-902-8562~~)

Email: (~~washington.state.parks@parks.wa.gov~~) [media@parks.wa.gov](mailto:media@parks.wa.gov)

AMENDATORY SECTION (Amending WSR 19-15-137, filed 7/23/19, effective 8/23/19)

**WAC 352-40-060 Who do I contact to request state parks' public records?** The agency public records officer, located at headquarters, is responsible for:

- (1) Receiving and reviewing requests for public records.
- (2) Coordinating agency records management to ensure protection of, and prompt access to, public records.
- (3) Implementing and ensuring compliance by the commissioners and staff with the public records disclosure requirements of chapter 42.56 RCW.

Mailing address:

P.O. Box 42650  
Olympia, WA 98504-2650

Physical address:

1111 Israel Road S.W.  
Tumwater, WA 98501  
Email: [public.disclosure@parks.wa.gov](mailto:public.disclosure@parks.wa.gov)  
Phone: 360-902-8514

- (4) Contact information and general information regarding public records requests, a current fee schedule, and access to our public records form is available on our website (~~(www.parks.wa.us)~~) [www.parks.wa.gov](http://www.parks.wa.gov)).

WSR 23-22-095

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 30, 2023, 2:25 p.m., effective November 30, 2023]

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

Purpose: Radiation machine facility fees, WAC 246-254-053. The department of health (department) is adopting an increase in fees to cover the costs of operating the radiation machine facility program. The department is also adopting changes to machine categories within the fee schedule to allow the department to better track and manage X-ray machines across Washington. This will allow the department to be more efficient in regulatory and inspection processes.

Citation of Rules Affected by this Order: Amending WAC 246-254-053.

Statutory Authority for Adoption: RCW 70A.388.050 and 43.70.250.

Adopted under notice filed as WSR 23-17-128 on August 21, 2023.

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

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

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

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

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

Date Adopted: October 30, 2023.

Todd Mountin, PMP  
Deputy Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

OTS-4744.1

AMENDATORY SECTION (Amending WSR 19-05-074, filed 2/19/19, effective 3/22/19)

**WAC 246-254-053 Radiation machine facility fees.** (1) A registrant shall comply with chapter 246-224 WAC when registering radiation machine facilities. A registrant shall pay the following applicable radiation machine facility registration fees and radiation machine tube fees for each radiation machine facility and tube annually as identified in Table A and B of this section.

Table A

<b>((Radiation Machine Facility Registration Fees</b>	
<b>Type of Radiation Machine Facility</b>	<b>Registration Fee per Facility</b>
(a) Dental, podiatric, veterinary uses	\$107

<b>((Radiation Machine Facility Registration Fees</b>		
<b>Type of Radiation Machine Facility</b>		<b>Registration Fee per Facility</b>
(b)	Hospital, medical, chiropractic uses	\$207
(e)	Industrial, research, educational, security, or other facilities	\$107
(d)	Mammography only	\$89
(e)	Bone densitometry only	\$89
(f)	Electron microscopes only	\$89
(g)	Bomb squad only	(\$89))
<b>Radiation Machine Facility Registration Fee</b>		<b>\$195</b>

Table B

<b>((Radiation Machine Tube Fees</b>		
<b>Type of Tube</b>		<b>Fee per Tube</b>
(a)	Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)	\$27
(b)	Veterinary (radiographic, fluoroscopic, portable, mobile)	\$46
(e)	Podiatric uses (radiographic, fluoroscopic)	\$46
(d)	Mammography	N/A
(e)	Bone densitometry	N/A
(f)	Electron microscope	N/A
(g)	Bomb squad	N/A
(h)	Medical radiographic (includes R/F combinations, fixed, portable, mobile)	\$131
(i)	Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)	\$131
(j)	Therapy (Grenz Ray, Orthovoltage, nonaccelerator)	\$131
(k)	Accelerators (therapy, other medical uses)	\$131
(l)	Computer tomography (CT, CAT scanner)	\$131
(m)	Stereotactic (mammography)	\$107
(n)	Industrial radiographic	\$46
(o)	Analytical, X-ray fluorescence	\$46
(p)	Industrial accelerators	\$46
(q)	Airport baggage	\$27
(r)	Cabinet (industrial, security, mail, other)	\$27
(s)	Other industrial uses (includes industrial fluoroscopic uses)	(\$27))

<b>Radiation Machine Tube Fees</b>		
<b>Category</b>	<b>Machine Type</b>	<b>Fee</b>
<b>Dental</b>	<u>Intraoral</u>	<u>\$58</u>
	<u>Handheld</u>	<u>\$58</u>
	<u>Panoramic/Cephalometric</u>	<u>\$58</u>
	<u>Cone Beam CT</u>	<u>\$58</u>
	<u>Educational</u>	<u>\$58</u>
	<u>Radiographic/Other</u>	<u>\$58</u>

<b><u>Radiation Machine Tube Fees</u></b>		
<b><u>Category</u></b>	<b><u>Machine Type</u></b>	<b><u>Fee</u></b>
<b><u>Veterinary</u></b>	<u>Radiographic</u>	<u>\$77</u>
	<u>Portable</u>	<u>\$77</u>
	<u>Dental</u>	<u>\$77</u>
	<u>Cone Beam CT</u>	<u>\$77</u>
	<u>Fluoroscopic</u>	<u>\$112</u>
	<u>Computed Tomography</u>	<u>\$191</u>
<b><u>Podiatry</u></b>	<u>Radiographic</u>	<u>\$86</u>
	<u>Cone Beam CT</u>	<u>\$86</u>
	<u>Educational</u>	<u>\$86</u>
	<u>Handheld</u>	<u>\$86</u>
	<u>Fluoroscopic</u>	<u>\$231</u>
<b><u>Medical Radiographic</u></b>	<u>Fixed</u>	<u>\$246</u>
	<u>Mobile</u>	<u>\$246</u>
	<u>Portable</u>	<u>\$246</u>
	<u>Cone Beam CT</u>	<u>\$246</u>
	<u>Educational</u>	<u>\$246</u>
<b><u>Fluoroscopic</u></b>	<u>C-arm</u>	<u>\$231</u>
	<u>Micro Amperage (Mini) C-arm</u>	<u>\$231</u>
	<u>O-arm</u>	<u>\$231</u>
	<u>Specialty Rooms</u>	<u>\$231</u>
	<u>Under Table</u>	<u>\$231</u>
	<u>Educational</u>	<u>\$231</u>
	<u>Other</u>	<u>\$231</u>
<b><u>Therapy</u></b>	<u>Accelerator (Linear)</u>	<u>\$334</u>
	<u>Nonaccelerator</u>	<u>\$334</u>
	<u>Superficial Radiation Therapy (Dermatology)</u>	<u>\$334</u>
	<u>Educational</u>	<u>\$334</u>
	<u>Other</u>	<u>\$334</u>
<b><u>Computed Tomography</u></b>	<u>Diagnostic</u>	<u>\$783</u>
	<u>Simulation</u>	<u>\$490</u>
	<u>Attenuation Correction (PET/SPECT)</u>	<u>\$490</u>
	<u>Portable</u>	<u>\$783</u>
	<u>Mobile</u>	<u>\$783</u>
	<u>Educational</u>	<u>\$783</u>
<b><u>Mammography</u></b>	<u>Standard (including tomography)</u>	<u>\$0</u>
	<u>Stereotactic Mammography</u>	<u>\$55</u>
<b><u>Bone Densitometer</u></b>	<u>Standard</u>	<u>\$84</u>
	<u>Body Composition Scanner</u>	<u>\$84</u>

<b><u>Radiation Machine Tube Fees</u></b>		
<b><u>Category</u></b>	<b><u>Machine Type</u></b>	<b><u>Fee</u></b>
<b><u>Industrial</u></b>	<u>Cabinet X-Ray</u>	<u>\$133</u>
	<u>Blood Irradiator</u>	<u>\$133</u>
	<u>Specimen Analyzer</u>	<u>\$133</u>
	<u>Medical Examiner</u>	<u>\$133</u>
	<u>Vault (less than 1MeV)</u>	<u>\$167</u>
	<u>Vault (greater than 1MeV)</u>	<u>\$331</u>
	<u>Open Beam Radiography</u>	<u>\$133</u>
	<u>Particle Accelerator</u>	<u>\$331</u>
<b><u>Security</u></b>	<u>Body Scanner</u>	<u>\$133</u>
	<u>Baggage Scanner</u>	<u>\$133</u>
	<u>Bomb Squad</u>	<u>\$133</u>
	<u>Back Scatter</u>	<u>\$133</u>
<b><u>Analytical</u></b>	<u>Cabinet XRF</u>	<u>\$133</u>
	<u>Handheld XRF</u>	<u>\$133</u>
	<u>X-Ray Diffraction</u>	<u>\$133</u>
<b><u>Electron Microscopes</u></b>	<u>Electron Microscopes</u>	<u>\$0</u>

(2) Radiation shielding plan review fees. Radiation machine facilities regulated under the shielding plan requirements of WAC 246-225-030, 246-226-030, or 246-227-150 are subject to a (~~three hundred forty-four dollar~~) \$778 radiation shielding review fee for each X-ray room plan submitted:

(a) A registrant may request an expedited plan review for (~~one thousand dollars~~) \$2,339 for each X-ray room plan. An expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

(b) If a radiation machine facility regulated under WAC 246-225-030, 246-226-030, or 246-227-150 operates without submittal and departmental review of radiation shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of (~~six hundred fifty-six dollars~~) \$1,561 in addition to the \$778 radiation shielding review fee.

(3) Inspection fees.

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under fees as described in subsection (1) of this section.

(b) Radiation machine facilities requiring follow-up inspections due to uncorrected noncompliance events must pay an inspection follow-up fee of (~~one hundred eighteen dollars~~) \$1,281 for each reinspection required.

(4) The annual radiation machine facility registration fees and radiation machine tube fees are not transferable to another geographical location or registrant.



## WSR 23-22-097

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed October 30, 2023, 2:36 p.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: Health equity continuing education (CE) rules for the athletic trainer profession. The department of health (department) is adopting an amendment to WAC 246-916-060 to implement ESSB 5229 (chapter 276, Laws of 2021), codified as RCW 43.70.613. The department is adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for the athletic trainer profession to comply with the statute.

RCW 43.70.613 (3) (b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the athletic trainer must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The adopted rule amendments add one hour of health equity education to be completed as part of the current CE requirements every two years. This meets the two hours of health equity education to be completed every four years as required in the model rules. The health equity CE requirement can be counted under existing CE requirements for the profession. No additional topics are being added to the model rules requirements.

Citation of Rules Affected by this Order: Amending WAC 246-916-060.

Statutory Authority for Adoption: RCW 18.130.040, 18.250.020, 43.70.040, and 43.70.613.

Adopted under notice filed as WSR 23-17-150 on August 22, 2023.

A final cost-benefit analysis is available by contacting Allyson McIver, P.O. Box 47877, Olympia, WA 98504-7877, phone 360-236-2878, fax 360-236-2901, TTY 711, email allyson.mciver@doh.wa.gov, website doh.wa.gov.

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

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

Date Adopted: October 30, 2023.

Todd Mountin, PMP  
Deputy Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

OTS-4750.3

AMENDATORY SECTION (Amending WSR 16-11-053, filed 5/13/16, effective 6/13/16)

**WAC 246-916-060 Continuing education.** The goal of continuing education is to promote continued competence, development of current knowledge and skills, and enhancement of professional skills and judgment. Continuing education activities must focus on increasing knowledge, skills, and abilities related to the practice of athletic training.

(1) A licensed athletic trainer shall complete a minimum of ~~((fifty))~~ 50 hours of continuing education every two years. At least ~~((ten))~~ 10 of those hours must include evidence-based practice as outlined in subsection ~~((+3))~~ (4) of this section. The remaining hours may be in categories listed in subsection ~~((+4))~~ (5) of this section.

(2) A licensed athletic trainer must complete one hour of health equity continuing education every two years. The goal of health equity continuing education is to equip health care workers with the skills to recognize and address health inequities in their daily work.

The minimum standards include instruction on skills to address the structural factors, such as bias, racism, and poverty, that manifest as health inequities. These skills include individual level and system-level intervention, and self-reflection to assess how the licensee's social position can influence their relationship with patients and their communities. These skills enable a health care professional to care effectively for patients from diverse cultures, groups, and communities, varying in race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity.

(a) This training must be completed by the end of the first full continuing education reporting period after January 1, 2024, or during the first full continuing education reporting period after initial licensure, whichever is later.

(b) Training must include content as listed in WAC 246-12-830 and RCW 43.70.613.

(c) The hours spent completing the training in health equity under this section will count toward meeting applicable continuing education requirements for athletic trainer license renewal.

(3) A licensed athletic trainer may alternatively meet the requirement of ~~((fifty))~~ 50 hours of continuing education if they hold a current certification from the board of certification for the athletic trainer (BOC). The required documentation is proof of certification during the two-year period.

~~((+3))~~ (4) At least ~~((ten))~~ 10 hours of evidence-based practice must be obtained during the two-year reporting period through any of the following activities:

(a) Complete BOC approved workshops, seminars, conferences, webinars, or home study courses. The required documentation for this activity is a certificate of completion.

(b) Graduate from a Commission on Accreditation of Athletic Training Education (CAATE) accredited post-professional athletic training graduate program. A maximum of ~~((ten))~~ 10 hours may be applied in the two-year period. The required documentation for this activity is an official transcript indicating graduation within the two-year period.

(c) Graduate from a PhD, EdD, DSc program if dissertation has a narrow focus of athletic training. A maximum of (~~ten~~) 10 hours may be applied in the two-year period. The required documentation for this activity is an official transcript indicating graduation within the reporting period and a copy of the dissertation.

(d) Present a BOC approved evidence-based practice program. A maximum of (~~ten~~) 10 hours per evidence-based practice topic may be applied in the two-year period. The required documentation for this activity is a letter of acknowledgment that includes the date, title, and intended audience from the conference coordinator.

(e) Complete a CAATE accredited athletic trainer residency or fellowship. A maximum of (~~twenty~~) 20 hours per year may be applied in the two-year period. The required documentation for this activity is a letter from the residency or fellowship director.

(f) Any other evidence-based practice activity as approved by the secretary.

(~~(4)~~) (5) Remaining hours may be obtained through any of the following activities:

(a) BOC approved workshops, seminars, conferences, webinars, or home study courses. The required documentation for this activity is a certificate of completion.

(b) Professional activities.

(i) Speaker at a conference or seminar for health care providers. A maximum of (~~ten~~) 10 hours may be applied per topic in the two-year period. The required documentation for this activity is a letter of acknowledgment that includes the date, title, and intended audience from the conference coordinator.

(ii) Panelist at a conference or seminar for health care providers. A maximum of five hours may be applied per topic in the two-year period. The required documentation for this activity is a letter of acknowledgment that includes the date, title, and intended audience from the conference coordinator.

(iii) Primary author of an article in a nonrefereed journal. A maximum of five hours may be applied per article in the two-year period. The required documentation for this activity is a copy of the article.

(iv) Author of an article in a refereed journal. A maximum of (~~fifteen~~) 15 hours may be applied per article in the two-year period for primary authors. A maximum of (~~ten~~) 10 hours may be applied per article in the two-year period for secondary authors. The required documentation for this activity is a copy of the article.

(v) Author of an abstract in a refereed journal. A maximum of (~~ten~~) 10 hours may be applied per abstract in the two-year period for primary authors. A maximum of five hours may be applied per abstract in the two-year period for secondary authors. The required documentation for this activity is a copy of the abstract.

(vi) Author of a published textbook. A maximum of (~~forty~~) 40 hours may be applied per book in the two-year reporting period for primary authors. A maximum of (~~twenty~~) 20 hours may be applied per book in the two-year reporting period for secondary authors. The required documentation for this activity is a copy of the title page with the publication date.

(vii) Contributing author of a published textbook. A maximum of (~~ten~~) 10 hours may be applied per book in the two-year period. The required documentation for this activity is a copy of the title page with the publication date and list of contributors.

(viii) Author of a peer-reviewed or refereed poster presentation. A maximum of ~~((ten))~~ 10 hours may be applied per presentation in the two-year period for primary authors. A maximum of five hours may be applied per presentation in the two-year period for secondary authors. The required documentation for this activity is a letter of acknowledgment that includes the date and title of the presentation from the conference coordinator.

(ix) Primary author of published multimedia material, including CD, audio, or video. A maximum of ~~((ten))~~ 10 hours may be applied per publication in the two-year period. The required documentation for this activity is a copy of the publication.

(x) Participating member of clinical research study team. A maximum of ~~((ten))~~ 10 hours may be applied in the two-year period. The required documentation for this activity is a letter from the principal investigator or a copy of the institutional review board approval with investigators listed.

(xi) Primary author of a home study course. A maximum of ~~((ten))~~ 10 hours may be applied per course in the two-year reporting period. The required documentation for this activity is a letter of approval.

(xii) Reviewer of a refereed publication. A maximum of five hours may be applied per review, with a limit of ~~((twenty))~~ 20 hours applied per two-year period. The required documentation for this activity is a disposition letter.

(xiii) Exam item writer for BOC exam or other health care professional exams. A maximum of five hours may be applied per year of active item writing. The required documentation for this activity is a letter of acknowledgment from the exam company.

(c) Post certification college or university course work. A maximum of ~~((ten))~~ 10 continuing education hours per credit hour may be applied during the two-year period. The required documentation for this activity is an official transcript from an accredited college or university.

(d) Activities by non-BOC approved providers.

(i) Workshops, seminars, conferences, webinars that are directly related to athletic training. The required documentation for this activity is verification of attendance.

(ii) Videos, DVDs, audiotapes, multimedia, webinars, home study courses. Each activity must have an examination. The required documentation for this activity is documentation verifying completion.

~~((5))~~ (6) A licensed athletic trainer shall comply with the requirements of ~~((chapter 246-12 WAC, Part 7))~~ WAC 246-12-170 through 246-12-240.

## WSR 23-22-102

## PERMANENT RULES

## DEPARTMENT OF ECOLOGY

[Order 21-09—Filed October 31, 2023, 7:46 a.m., effective December 1, 2023]

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

Purpose: The Washington state department of ecology (ecology) adopted new chapter 173-925 WAC, Post-consumer recycled content in plastic containers. The new rule implements the requirements in chapter 70A.245 RCW, Recycling, waste, and litter reduction, to establish a post-consumer recycled content (PCRC) program for covered products. Producers of covered products must meet the PCRC requirements as well as annually register, pay agency fees, and report.

The law requires ecology to:

- Prepare an annual workload analysis identifying the agency cost to implement, administer, and enforce the law, and offer the analysis for public comment.
- Adopt rules that establish a PCRC program for producers of covered products and require them to annually register, pay agency fees, and report.

The adopted rule:

- Defines terms and clarifies intent of the law.
- Establishes equitable producer fees required to fund ecology's administration and oversight of the PCRC program.
- Specifies the information producers are required to provide at registration and in annual reports.
- Establishes the process ecology will follow for:
  - o Conducting audits and investigations of producers' annual reports.
  - o Measuring the amount and methods for assessing PCRC.
  - o Reviewing and adjusting PCRC rates.
  - o Excluding certain plastic containers or elements of containers from PCRC requirements.
  - o Determining technical feasibility of meeting PCRC rates.
  - o Establishing corrective action requirements for producers out of compliance.
  - o Determining conditions that merit a penalty reduction.
  - o Determining process for ecology to conduct audits.

Citation of Rules Affected by this Order: New chapter 173-925 WAC, Post-consumer recycled content in plastic containers.

Statutory Authority for Adoption: Chapter 70A.245 RCW, Recycling, waste, and litter reduction.

Adopted under notice filed as WSR 23-10-062 on May 2, 2023.

Changes Other than Editing from Proposed to Adopted Version: **WAC 173-925-030 Definitions.**

Change (1):

- Changed text in definition of "Beverage" in consideration of public comments suggesting greater clarity.
- Change: WAC 173-925-030 (1)(b)(i) "Beverage" does not include: (i) Liquid in a concentrated form that must be reconstituted with water or another liquid to be consumed, or is added to another beverage for flavoring or sweetening.

Change (2):

- Changed text to be consistent with revised "producer" definition (see Change 4), and to remove the implication that the brand owner is the sole producer.
- Change: WAC 173-925-030(3) "Brand" means a name, symbol, word, logo, or mark that identifies a product and attributes the product to the brand owner as the producer.

Change (3):

- Changed "entity" to "person" to be consistent with revised "producer" definition (see Change 4).
- Change was made in WAC 173-925-030 (6) (a), (6) (b), and (14).

Change (4):

- Changed "producer" definition to mirror the definition of "producer" in RCW 70A.245.010 (19) (a). Change was made in response to numerous comments expressing concern with the proposed definition.

(22) (a) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(iii) If there is no person described in (a) (i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

(22) "Producer" means the entity responsible for compliance with all requirements of this chapter for covered products sold, offered for sale, or distributed in or into Washington state.

(a) The producer of a covered product is the entity that affixes its brand, or specifies that its brand be affixed, to the covered product container or retail packaging, except as follows:

(i) If an entity is a "brand licensor," meaning it has licensed its brand to be used on a covered product that is to be sold by the licensee, then the licensee is the producer.

(ii) If the covered product lacks identification of a brand, the entity that specified the material composition of the covered product packaging is the producer.

(iii) If there is no identifiable person described above, the entity who imports or distributes the covered product in or into the state, including through online sales, is the producer.

#### **WAC 173-925-040 Annual registration and address reporting requirements.**

Change (5):

- Changed language about resin data requirements in response to comments suggesting greater clarity.

- Change: WAC 173-925-040 (2) (b) Plastic resin data for each covered product category in WAC 173-925-060(1) sold or offered for sale in or into Washington state in the prior calendar year, including total pounds of virgin resin (by resin type) and total pounds of PCRC (by resin type) in each covered product category. Plastic resin data for each covered product category in WAC 173-925-060(1) sold or offered for sale in or into Washington state in the prior calendar year, including total pounds of plastic resin within each covered product category.
- Change was made in WAC 173-925-040 (1) (d) to reflect the revised definition of "entity" to "person."

**WAC 173-925-060 PCRC product requirements.**

Change (6):

- Changed language in WAC 173-925-060 (2) (b) in response to comments suggesting greater clarity.
- Change: WAC 173-925-060 (2) (b) Plastic sold or marketed for use as fuel feedstock may not be included in as contributing to required PCRC reports to the department.

**WAC 173-925-070 Exclusions or adjustments to PCRC requirements.**

Change (7):

- Changed language in WAC 173-925-070 (1) (b) to clarify the timeline in which ecology will respond to requests for temporary exclusions from PCRC minimum requirements.
- WAC 173-925-070 (1) (b) In order for the department to respond to all requests within 120 days, producers must annually submit their temporary exclusion request from PCRC minimum percentage requirements for the coming calendar year to the department by September 1st of the prior calendar year.
- In order for the department to consider and grant temporary exclusions from PCRC minimum percentage requirements producers must annually submit their temporary exclusion request for the coming calendar year to the department by September 1st in order to have a decision from the department by December 31st.

Change (8):

- Changed WAC 173-925-070 (2) (b) to remove April 1st deadline for producers to submit requests for temporary adjustments to the annual PCRC minimum percentages. This is to ensure that requests can be submitted at any time and may be initiated by either producers or by ecology.
- Change: WAC 173-925-070 (2) (b), by April 1st producers or PCRC product industry representatives may annually submit requests for consideration by the department to temporarily adjust the annual PCRC minimum percentages for the following year. These requests must provide the following information:

Change (9):

- Changed WAC 173-925-070 (2) (b) (iv) to remove "transportation barriers" from the list of factors producers may provide as supporting documentation to justify a request to adjust the annual PCRC minimum requirement. This change was made in response to a comment that this factor was not in the RCW language and should not be included, unless under the "and/or other relevant factors" clause.

- Change: WAC 173-925-070 (2)(b)(iv) Supporting documentation including changes in market conditions, recycling collection rates, product quality or shelf life issues, production line issues, capacity of recycling and processing infrastructure, domestic and global PCRC resin bale availability, transportation barriers, public health emergencies, work stoppages, catastrophic events, and/or other relevant factors;

Change (10):

- Changed WAC 173-925-070 (2)(e) in response to comments requesting greater clarity.
- Change: WAC 173-925-070 (2)(e) For all PCRC product categories, any annual adjustments made by the department may not increase PCRC requirements beyond the minimum requirement for the current reporting year. For all PCRC product categories, annual adjustments may not exceed the minimum requirement for the current reporting year.

A final cost-benefit analysis is available by contacting Shannon Jones, Department of Ecology, Solid Waste Management Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-742-9874, Washington relay service or TTY call 711 or 877-833-6341, email recycledcontent@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/SummaryPages/2307054.html>.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, 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: October 31, 2023.

Laura J. Watson  
Director

OTS-4533.3

**Chapter 173-925 WAC  
POST-CONSUMER RECYCLED CONTENT IN PLASTIC CONTAINERS**

**PART A**



**GENERAL REQUIREMENTS**NEW SECTION

**WAC 173-925-010 Purpose.** (1) Washington state law mandates minimum post-consumer recycled content (PCRC) requirements for plastic beverage containers, trash bags, and household cleaning and personal care product containers. This requirement supports new and existing end markets for PCRC material and helps ensure that plastic packaging and other packaging materials are reduced, reused, and recycled.

(2) This chapter implements post-consumer recycled content (PCRC), RCW 70A.245.010 through 70A.245.050 and 70A.245.090 (1), (2), and (4).

NEW SECTION

**WAC 173-925-020 Applicability.** This chapter applies to producers that offer for sale, sell, or distribute in or into Washington state:

- (1) Beverages in plastic containers;
- (2) Plastic trash bags;
- (3) Household cleaning products in plastic containers; or
- (4) Personal care products in plastic containers.

NEW SECTION

**WAC 173-925-030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) (a) **"Beverage"** means liquid products intended for human or animal consumption sold in a quantity more than or equal to two fluid ounces and less than or equal to one gallon. This includes, but is not limited to, any of the following:

- (i) Water and flavored water;
- (ii) Beer or other malt beverages;
- (iii) Distilled spirits;
- (iv) Artificial or nondairy milks and creamers;
- (v) Juices, including those derived from concentrate;
- (vi) Mineral water, soda water, and similar carbonated soft drinks;

(vii) Dairy milk; or

(viii) Wine;

(b) "Beverage" does not include:

(i) Liquid in a concentrated form that must be reconstituted with water or another liquid to be consumed, or is added to another beverage for flavoring or sweetening;

(ii) Syrup;

(iii) Powder concentrates or instant drink powders;

(iv) Infant formula;

(v) Medical food; or

(vi) Fortified oral nutritional supplements used for persons who require supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions.

(2) "**Beverage manufacturing industry**" means an association that represents beverage producers.

(3) "**Biomedical waste**" means, and is limited to, the following types of waste:

(a) "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.

(b) "Biosafety level 4 disease waste" is waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the centers for disease control, national institute of health, biosafety in microbiological and biomedical laboratories, current edition.

(c) "Cultures and stocks" are wastes infectious to humans and includes specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes, but is not limited to, culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

(d) "Human blood and blood products" is discarded waste human blood and blood components, and materials containing free-flowing blood and blood products.

(e) "Pathological waste" is waste human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for final disposition.

(f) "Sharps waste" is all hypodermic needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

(4) "**Brand**" means a name, symbol, word, logo, or mark that identifies a product and attributes the product to the brand owner.

(5)(a) "**Covered products**" means all beverages, trash bags, personal care products, and household cleaning products sold in plastic containers that are subject to, or will become subject to (according to the timeline in WAC 173-925-040 (4)(a)), the requirements of this chapter, including registration, reporting, fee payment, and PCRC minimum percentages.

(b) "Covered products" does not include:

(i) Rigid plastic containers or bottles that are used for the containment, protection, delivery, presentation, or distribution of:

(A) Prescription or nonprescription drugs as defined in RCW 18.64.011(14) and regulated by the United States Food and Drug Administration;

(B) Dietary supplements as defined in this section;

(C) Medical devices or medical products required to be sterile, as regulated by the United States Food and Drug Administration under 21 C.F.R., Parts 200, 300 and 800;

(D) Aerosols in plastic containers that are subject to 49 C.F.R. Sec. 178.33b;

(ii) Plastic trash bags used for biomedical waste as defined in this section;

(iii) Products in containers sufficiently durable for multiple rotations of their original or similar purpose, and are intended to function in a system of reuse; or

(iv) Liners, caps, corks, closures, labels, and other items added externally or internally, but otherwise separate from the structure of the bottle or container.

(6) **"Dairy milk"** means a beverage made exclusively or principally from milk obtained from one or more milk-producing animals. Dairy milk includes, but is not limited to:

(a) Whole milk, low-fat milk, skim milk, cream, half-and-half, condensed milk; or

(b) Cultured or acidified milk, kefir, or eggnog.

(7) (a) **"De minimis producer"** means a person that annually sells, offers for sale, distributes, or imports in or into the country for sale in or into Washington state:

(i) Less than one ton in aggregate of a single category of covered product each calendar year; or

(ii) A single category of a covered product that in aggregate generates less than \$1,000,000 each calendar year in gross revenue from sales of covered products into Washington state.

(b) These thresholds are to be calculated at the level of the "person" as defined in subsection (15) of this section.

(c) Meeting the qualifications of de minimis producer in one single category of covered products does not preclude a producer from meeting requirements for other covered product categories for which they are above the de minimis threshold.

(8) **"Department"** means the Washington state department of ecology.

(9) **"Dietary supplement"** as defined by RCW 82.08.0293 means any product, other than tobacco, intended to supplement the diet that:

(a) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(b) Is intended for ingestion in tablet, capsule, powder, soft-gel, gel-cap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(c) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(d) "Dietary supplements" does not include a product labeled with both a "supplement facts" box and a "nutrition facts" box.

(10) (a) **"Household cleaning products"** means products labeled, marketed, or otherwise indicating that the purpose of the product is to clean, freshen, or remove unwanted substances, such as dirt, stains, and other impurities from possessions, objects, surfaces, interior or exterior structures, textiles, and environments associated with a household. These items include:

(i) Liquid soaps, laundry soaps, detergents, softeners, surface polishes, and stain removers;

(ii) Textile cleaners, carpet and pet cleaners, and treatments;  
or

(iii) Other products used to clean or freshen areas associated with a household.

(b) "Household" when used in the term "household cleaning products" denotes products marketed at least in part for residential or individual consumer use, but does not include products marketed solely for use in institutions such as hospitals and schools, or in commercial or industrial settings.

(11) **"Household cleaning and personal care product manufacturing industry"** means an association that represents companies that manufacture household cleaning and personal care products.

(12) **"Infant formula"** means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

(13) **"Medical food"** means a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

(14) **"Oral nutritional supplement"** means a manufactured liquid, powder capable of being reconstituted, or solid product that contains a combination of carbohydrates, proteins, fats, fiber, vitamins, and minerals intended to supplement a portion of a patient's nutrition intake.

(15) **"Person"** means an individual and any form of business enterprise, including all legal entities that are affiliated by common ownership of 50 percent or greater, including parents, subsidiaries, and commonly owned affiliate companies.

(16) **"Personal care product"** means a product intended or marketed for use to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance, including:

(a) Shampoo, conditioner, styling sprays and gels, and other hair care products;

(b) Lotion, moisturizer, facial toner, and other skin care products;

(c) Liquid soap and other body care products; or

(d) Other products used to maintain, improve, alter, or enhance personal care or appearance.

(17) (a) **"Plastic beverage container"** means a factory-sealed bottle or other rigid container that is:

(i) Capable of maintaining its shape when empty;

(ii) Comprised of one or multiple plastic resins; and

(iii) Designed to contain a beverage in a quantity more than or equal to two fluid ounces and less than or equal to one gallon.

(b) Plastic beverage container does not include bladders or pouches that contain a beverage.

(18) **"Plastic household cleaning container and plastic personal care product container"** means a rigid bottle, jug, tube, or other container capable of maintaining its shape when empty and with a neck or mouth narrower than the base of the container, and:

(a) A minimum capacity of eight fluid ounces or its equivalent volume;

(b) A maximum capacity of five fluid gallons or its equivalent volume;

(c) Comprised of one or multiple plastic resins; and

(d) Containing a household cleaning or personal care product.

(19) (a) "**Plastic trash bag**" means a bag that is made of plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials for disposal or recycling. "Plastic trash bag" includes, but is not limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, or compactor bag.

(b) "Plastic trash bag" does not include compostable bags meeting the requirements of chapter 70A.455 RCW and plastic carryout bags meeting the requirements of chapter 70A.530 RCW.

(20) "**Plastic trash bag manufacturing industry**" means an association that represents companies that manufacture plastic trash bags.

(21) (a) "**Post-consumer recycled content (PCRC)**" means the plastic resin incorporated into plastic packaging or bags for a PCRC product, that is derived specifically from recyclable material generated by households or by commercial or institutional facilities in their role as end users of plastic products and packaging which is no longer used for its intended purpose.

(b) "PCRC" includes returns of material from the distribution chain.

(c) "PCRC" does not include plastic that is separated from the waste stream during manufacturing, such as scrap or other materials that are generated and reused during the same process.

(22) "**PCRC products**" means items in the following categories which are actively required to meet and report PCRC minimum requirements in the product packaging for a given year according to the timeline in WAC 173-925-040 (4) (a):

(a) Beverages in plastic beverage containers;

(b) Plastic trash bags; or

(c) Household cleaning products and personal care products in plastic containers.

(23) (a) "**Producer**" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(iii) If there is no person described in (a) (i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

(b) Producer does not include:

(i) Government agencies, municipalities, or other political subdivisions of the state;

(ii) Registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations; or

(iii) De minimis producers as defined in subsection (10) of this section.

(24) **"Resin"** means polymer compounds used to make plastic packaging such as bottles or films.

(25) (a) **"Third-party representative"** means a person acting as agent for a producer for the purpose of registering the producer, submitting reports, and paying the fees required of the producer by this chapter.

(b) Third-party representatives do not assume full responsibility for compliance as a producer.

(26) **"Ton"** means the United States customary short ton, equal to 2,000 pounds.

(27) **"Workload analysis (WLA)"** means a document posted for public comment each year by January 31st, summarizing the department's estimated costs for the forthcoming fiscal year, July 1st to June 30th of the following year, to implement, administer, and enforce the post-consumer recycled content requirements per RCW 70A.245.020(3).

## PART B PRODUCER REGISTRATION AND FEES

### NEW SECTION

#### **WAC 173-925-040 Annual registration and reporting requirements.**

(1) (a) Producers of covered products distributed, imported, sold, or offered for sale in or into Washington state must annually register using the department's registration and reporting system.

(b) Third-party representatives may submit data on behalf of a producer or group of producers, including information required in subsection (2) of this section for each producer, but the producer as defined in WAC 173-925-030(23) is the party responsible for compliance and subject to potential enforcement actions outlined in WAC 173-925-080 through 173-925-100.

(c) De minimis producers are not required to meet annual registration, reporting, PCRC, or fee requirements of covered products, but must annually indicate their de minimis status in the department's on-line registration and reporting system to notify the department that they meet the de minimis threshold.

(d) If a producer's supplier or distributor entities have agreed to report on behalf of a producer for a subset of the products that would otherwise be attributable to the producer, the category is only considered de minimis if it still meets minimum resin weight or revenue threshold after being added to other product category data provided by the person as defined in WAC 173-925-030(15).

(2) Producers must annually submit the following registration information to the department:

(a) General information, including:

- (i) Producer name, mailing address, website, and tax identification number;
  - (ii) Contact person name, email, and telephone number; and
  - (iii) List of all brand and sub-brand names under which the covered products are sold, and, if applicable, any unique tax identification numbers not provided in (a) (i) of this subsection.
- (b) Plastic resin data for each covered product category in WAC 173-925-060(1) sold or offered for sale in or into Washington state in the prior calendar year, including total pounds of virgin resin (by resin type) and total pounds of PCRC (by resin type) in each covered product category.
- (c) Identification and resin weight of PCRC products temporarily excluded from PCRC minimum requirements based on criteria in WAC 173-925-070(1).
- (d) Attestation that all reported data accounts for all covered products sold in or into Washington and confirms that the percentage of PCRC calculated for PCRC products sold in Washington is accurately allocated in accordance with subsection (3) of this section.
- (3) (a) Producers or representatives reporting on behalf of producers may use national or regional covered product resin data for reporting in subsection (2) of this section. The data must be allocated to Washington on a per capita or other accurate basis for calculation, and the producer or reporting representative must demonstrate that the percentage of PCRC for the product category sold into Washington is the same as the PCRC percentage calculated for the nation or region.
- (b) Producers submitting information based on regional or national data in place of Washington state data must account for all products in its calculations and must provide the following to the department:
- (i) Justification for using national or regional data instead of state level data; and
  - (ii) Documentation of the methodology and source data used to prorate the regional or national data.
- (4) (a) Producers must annually report PCRC percentages for PCRC products in addition to the covered product registration requirements in subsection (2) of this section, beginning on the following dates:
- (i) April 1, 2024, for plastic trash bags and plastic beverage containers other than plastic dairy milk containers and 187 milliliter plastic wine containers; and
  - (ii) April 1, 2026, for plastic household cleaner and personal care product containers; and
  - (iii) April 1, 2029, for plastic dairy milk containers and 187 milliliter plastic wine containers.
- (b) PCRC annual reports must include:
- (i) The amount in pounds of virgin plastic and the amount in pounds of PCRC by resin type used within a single PCRC product category sold, offered for sale, or distributed in or into Washington state; and
  - (ii) The total PCRC resin as a percentage of the total weight of plastic reported for a single covered product category.
- (5) For PCRC annual reports, producers must certify that the PCRC percentages for PCRC products sold, offered for sale, or distributed in or into Washington state comply with the requirements of this chapter. The PCRC certification may include one or both of the following:
- (a) Independent third-party certification: Submit to the department the certification from a qualified International Organization for Standardization (ISO) accredited, or other qualified accrediting body

subject to department review, with the results of the PCRC analysis for each category of PCRC products; or

(b) Self-certification: Submit to the department attestation that the information reported by the responsible official is true and accurate to the best knowledge of the producer.

(6) (a) If a producer or third-party representative believes the information provided to the department as required by this chapter is confidential business information (CBI), in whole or in part, they may request that the department treat the information as CBI as provided in RCW 43.21A.160.

(b) The director of the department shall consider requests to treat registration and reporting information as CBI.

(c) A decision by the director of the department to grant protection of CBI will be based upon information provided by the producer sufficient to demonstrate that the release of the information to the public or a competitor may affect adversely the competitive position of the producer.

(d) A decision by the director of the department to grant protection of CBI shall remain effective until a producer is otherwise notified or until additional information is requested by the department.

(7) (a) Registration and reporting as required by the PCRC product category timeline established in subsection (3) (a) of this section is considered delinquent if not completed by April 1st of each calendar year.

(b) Failure to meet the registration and reporting timeline requirements is cause for a notice of noncompliance per WAC 173-925-080 through 173-925-100.

#### NEW SECTION

##### **WAC 173-925-050 Producer annual fee calculation and payment.**

(1) All producers of covered products sold or offered for sale in or into Washington state are required to pay an annual fee calculated by the department based on the department's published workload analysis (WLA) and fee distribution calculations described in this section.

(2) By January 31st of each year, the department will publish for public comment the annual WLA for the next fiscal year (July 1st through June 30th). The WLA provides the department's estimated annual cost in the following two workload categories:

(a) Ecology program administration costs include the department's costs to support producer registration, manage and maintain the registration and reporting system and department website, prepare the annual workload analysis and fee calculation, conduct rule and guideline updates, and implement any requirements that would apply to all producers of covered products, regardless of their PCRC requirements.

(b) Ecology PCRC oversight costs include the department's costs to provide compliance monitoring and technical assistance for producers submitting PCRC product reports required to meet minimum PCRC requirements for the prior calendar year.

(3) (a) Producer fees are calculated based on the producer's reported total pounds of covered product plastic resin data submitted during annual registration or reporting by April 1st, as shown in the calculation formulas below.

(i) Ecology program administration costs are allocated to each producer based on the producer's share of the total pounds of all cov-



ered product resin (virgin and PCRC) sold in or offered for sale in or into Washington during the prior calendar year as illustrated in equation 1(a) below.

**Equation 1(a), Program Administration Fee**

$$\text{Program Administration Fee} = \text{Ecology Program Administration Cost} \times \frac{[(\text{Individual Producer Resins for Covered Products}) / (\text{Washington Resin Totals for Covered Products})]}{1}$$

Program Administration Fee = Fee for all producers registered for covered product categories, excluding de minimis producers.

Ecology Program Administration Cost = Estimated annual workload cost for the department to administer the program as a whole, such as producer registration, management and maintenance of the registration and reporting database and department website, preparation of the annual workload analysis and fee calculation, rule and guideline updates, and any requirements that would apply to all producers of covered products.

Individual Producer Resins for Covered Products = One registered producer's total pounds of all plastic resins (PCRC and virgin) used in all covered products sold or offered for sale in Washington state during the previous calendar year.

Washington Resin Totals for Covered Products = Total pounds of all plastic resins (PCRC and virgin) used in all covered products sold or offered for sale in or into Washington state for the prior calendar year.

(ii) Ecology PCRC product oversight costs are allocated based on each producer's share of the total pounds of all plastic resins (PCR and virgin) used in the PCRC product categories sold in or offered for sale in or into Washington state in the prior calendar year as illustrated in equation 1(b) below.

**Equation 1(b), PCRC Oversight Fee**

$$\text{PCRC Oversight Fee} = \text{Ecology PCRC Oversight Cost} \times \frac{[(\text{Individual Producer Resins for PCRC Products}) / (\text{Washington Resin Totals for PCRC Products})]}{1}$$

PCRC Oversight Fee = Fee for producers submitting PCRC reports for PCRC products.

Ecology PCRC Oversight Cost = Estimated annual workload cost for the department to provide compliance monitoring and technical assistance to producers submitting PCRC reports for PCRC products.

Individual Producer Resins for PCRC Products = One registered and reporting producer's total pounds of all plastic resins (PCRC and virgin) used in all PCRC products sold or offered for sale in or into Washington state during the previous calendar year.

Washington Resin Totals for PCRC Products = Total pounds of all plastic resins (PCRC and virgin) used in all PCRC products sold or offered for sale in or into Washington state for the prior calendar year.

(iii) Each producer will be invoiced a Total Producer Fee, based on the sum of the producer's individual Program Administration Fee and PCRC Oversight Fee, as shown in equation 1(c).

**Equation 1(c) Total Producer Fee**

$$\text{Total Producer Fee} = \text{Program Administration Fee (Equation 1(a))} + \text{PCRC Oversight Fee (Equation 1(b))}$$

Total Producer Fee = Fee for each producer submitting registration and reporting data for covered products. For producers of covered product categories not yet required to submit PCRC reports, the PCRC oversight fee amount is zero, and only the program administration fee amount applies.

(b) De minimis producers are not required to pay annual fees, and resin data submitted by de minimis producers in their annual de minimis notification is not included in the calculations described above.

(4) (a) The department may adjust annual billing for the following reasons:

(i) Difference between actual revenue and costs for the most recent prior closed fiscal year;

(ii) Registration and reporting data submitted by producers after the April 1st deadline; or

(iii) Revised resin weight data.

(b) Any adjustment to billing as described in (a)(i) of this subsection will be distributed among all producers using their proportions of the total fee amounts from the appropriate billing cycle.

(c) For adjustments made under the conditions of (a)(ii) of this subsection, producers who register or report after April 1st will be billed for the adjusted annual fee in the next billing cycle. The invoice for the next billing cycle will include the fee for that year, plus the adjusted fee for the previous year, for which registration or reporting was submitted late. The fees for producers who had registered by April 1st will be adjusted in the following billing cycle with a credit for their proportionate share, based on individual plastic resin weights, of applied changes resulting from the late registration(s) of other producers.

(d) For adjustments made in response to (a)(iii) of this subsection, fees will not be adjusted for revised resin weight data submitted after April 1st until the following annual billing cycle.

(i) Producers will be responsible for paying the fees calculated using the data submitted for that year.

(ii) Producers will be responsible for ensuring that their data is accurate.

(iii) Resin weight data should be reported in pounds and appropriately prorated when derived from national or regional totals.

(e) In the event that a significant error is discovered, the department will notify producers of the estimated impact for the forthcoming billing cycle.

(5) (a) Producer annual fees are due 30 days after the department sends a billing statement.

(b) Annual fees shall be deemed delinquent if they are not received by the first invoice billing due date.

(c) If a producer's annual fee payment is delinquent, the producer will be notified by certified letter and have 30 days to pay the invoice before the department takes further action.

(d) Accounts that remain delinquent will be submitted to a collection agency. The collection agency will charge the producer a service fee, in addition to the delinquent amount due.

**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.

**PART C**  
**POST-CONSUMER RECYCLED CONTENT (PCRC) PRODUCTS**

NEW SECTION

**WAC 173-925-060 PCRC product requirements.** (1) Producers must annually meet no less than the minimum PCRC percentages, on average, for the total weight of PCRC product plastic containers sold, offered for sale, or distributed in or into Washington state in their respective PCRC product categories beginning on the dates below:

(a) Beverages, (except those listed in (d) of this subsection):

- (i) January 1, 2023: 15 percent;
- (ii) January 1, 2026: 25 percent; and
- (iii) January 1, 2031: 50 percent.

(b) Plastic trash bags:

- (i) January 1, 2023: 10 percent;
- (ii) January 1, 2025: 15 percent; and
- (iii) January 1, 2027: 20 percent.

(c) Household cleaning and personal care products:

- (i) January 1, 2025: 15 percent;
- (ii) January 1, 2028: 25 percent; and
- (iii) January 1, 2031: 50 percent.

(d) Dairy milk and wine in 187 milliliter plastic beverage containers:

- (i) January 1, 2028: 15 percent;
- (ii) January 1, 2031: 25 percent; and
- (iii) January 1, 2036: 50 percent.

(2) (a) For the purposes of reporting PCRC, producers may calculate resin weight and PCRC percentage from the following sources:

(i) PCRC derived from mechanical recycling using post-consumer materials;

(ii) PCRC from nonmechanical processing of post-consumer materials calculated using an existing and recognized international or multinational third-party certification system which incorporates chain of custody, and certified mass balance attribution as identified in ISO 22095:2020; or

(iii) Other sources or methods that the producer demonstrates to the department to have a comparable degree of accuracy.

(b) Plastic sold or marketed for use as fuel feedstock may not be included as contributing to required PCRC reports to the department.

NEW SECTION

**WAC 173-925-070 Exclusions or adjustments to PCRC requirements.**

(1) (a) The department must grant a temporary exclusion from the minimum PCRC requirements for the following year when a producer demonstrates it is technically infeasible to meet minimum PCRC requirements for a type of covered product while also complying with federal health and safety standards applicable to the product or its packaging. Those

federal standards include 21 C.F.R., chapter I, subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471-1477, 49 C.F.R. Sec. 178.33b, 49 C.F.R. Sec. 173, 40 C.F.R. Sec. 152.10, 15 U.S.C. Sec. 1261-1278, 49 U.S.C. 5101 et seq., 49 C.F.R. Sec. 178.509, 49 C.F.R. Sec. 179.522, 49 C.F.R. Sec. 178.600-609, or other federal laws.

(b) In order for the department to respond to all requests within 120 days, producers must annually submit their temporary exclusion request from PCRC minimum percentage requirements for the coming calendar year to the department by September 1st of the prior calendar year.

(i) Identifies the applicable health and safety standards that make the achievement of minimum PCRC requirements infeasible for a type of PCRC product; and

(ii) Documents and convincingly supports, with validated testing data or the sworn declaration of a qualified engineer, as appropriate, the producer's claim that it is technically infeasible to meet the minimum PCRC requirements during the following year while still meeting applicable federal health and safety standards.

(c) The producer's annual request must also include:

(i) Producer name, mailing address, and contact information;

(ii) Products and brand names for which the exclusion is requested;

(iii) Total resin weight of PCRC products estimated to be sold, offered for sale, or distributed in or into Washington for which the producer requests temporary exclusion from PCRC requirements.

(d) Federal regulations cited must be specific to the material composition of the packaging or trash bag material.

(e) The weight of any PCRC products that are granted the temporary exclusion according to this subsection must still be included in the producer's reported total pounds of resin.

(2) (a) By January 1st of each year, the department may review and determine temporary adjustments to the annual PCRC minimum percentage required for a type of container, PCRC product, or PCRC product category for the following calendar year.

(b) Producers or PCRC product industry representatives may annually submit requests for consideration by the department to temporarily adjust the annual PCRC minimum percentages for the following year. These requests must provide the following information:

(i) Producer name, mailing address, and contact information;

(ii) Year(s) for which the temporary adjustment is requested;

(iii) A thorough explanation by qualified experts supporting the producer's or PCRC product manufacturing industry's claim that a temporary adjustment to the minimum PCRC percentage for a type of container, PCRC product, or PCRC product category is needed;

(iv) Supporting documentation including changes in market conditions, recycling collection rates, product quality or shelf life issues, production line issues, capacity of recycling and processing infrastructure, domestic and global PCRC resin bale availability, public health emergencies, work stoppages, catastrophic events, and/or other relevant factors;

(v) Progress made by the producers of PCRC products in achieving the requirements of this chapter;

(vi) Estimated time period that the identified factors impacting PCRC minimum feasibility are expected to extend; and

(vii) Any additional information the producer or the department deems necessary and relevant to support the basis for the request.

(c) For household cleaning product and personal care product containers, temporary adjustments may not be lower than 10 percent.

(d) For plastic trash bags the PCRC minimum percentage requirement may not be adjusted below the minimum requirements.

(e) For all PCRC product categories, any annual adjustments made by the department may not increase PCRC requirements beyond the minimum requirement for the current reporting year.

(3) Producers granted a temporary exclusion or adjustment to the PCRC requirements must continue to register, report, and pay fees according to the requirements of covered products in WAC 173-925-040 and 173-925-050.

(4) A producer or the manufacturing industry for a PCRC product may appeal a decision by the department pursuant to this subsection to the pollution control hearings board within 30 days of the department's determination, pursuant to chapter 43.21B RCW.

#### **PART D ENFORCEMENT**

##### NEW SECTION

**WAC 173-925-080 Penalties and audits by the department.** (1) Any producer that does not meet the registration, reporting, or PCRC minimum requirements of this chapter is subject to penalties as specified in WAC 173-925-090 and 173-925-100.

(2) The department may conduct audits and investigations for the purpose of ensuring producer compliance.

(a) In the event of an audit, producers must provide documents to the department within 30 days of the request.

(b) Audit materials the department requests from producers may include documents and records that:

(i) Verify reported PCRC percentage data;

(ii) Confirm reported pounds of plastic resin by product type sold, offered for sale, or distributed in or into Washington state;

(iii) Demonstrate producer de minimis status;

(iv) Verify the national or regional data used to determine reported plastic resin; and

(v) Additional information requested by the department pertinent to verifying compliance with this chapter.

##### NEW SECTION

**WAC 173-925-090 Noncompliance warnings and penalties.** (1) If the department determines that a producer is out of compliance with the registration or reporting requirements of this chapter, the department will notify the producer in writing.

(a) The first written notice of noncompliance to the producer serves as a notice of the violation. That notice will be mailed to the producer by certified mail. The notice will outline the actions required by the producer to come into compliance within 30 days of certified mail receipt of the notice.

(b) Failure of the producer to comply within 30 days of receiving the first notice will result in the department sending a second notice by certified mail.

(c) The department must send two notices prior to assessing a penalty for noncompliance. The department may assess the producer a penalty up to \$1,000 for each day of noncompliance beginning with the first day of noncompliance recorded in the first notice.

(d) Failure to comply with the penalty notice may result in additional action by the department.

(2)(a) Producer PCRC penalty notifications will be mailed to the producer by certified mail.

(b) Penalties may be appealed to the pollution control hearings board within 30 days from the certified mail stamped receipt date to pay the PCRC penalty receipt, pursuant to chapter 43.21B RCW.

#### NEW SECTION

**WAC 173-925-100 Minimum PCRC penalties.** (1) If the department determines that a producer is out of compliance with the minimum PCRC requirements of this chapter, the department will notify the producer in writing.

(a) The department will use the producer's reported PCRC data to determine compliance status and may use information obtained through an audit.

(b) Each PCRC product category's minimum PCRC percentage rates as outlined in WAC 173-925-060(1) apply to the penalty amounts assessed.

(c) The following producer-reported data by covered product category will be used to calculate penalties for noncompliance in accordance with equations in (d) of this subsection:

(i) Total pounds of all plastic resin;

(ii) Total pounds of PCRC plastic resin by type.

(d) Penalties will use the following formulas by PCRC product category:

(i) Equation A - Determine actual PCR rate achieved:

$$\text{Total pounds of PCRC plastic resin} / \text{total pounds of all plastic resin} = \text{Actual PCRC rate achieved}$$

(ii) Equation B - Determine PCRC penalty:

$$[(\text{Total pounds of all plastic resin} \times \text{minimum PCRC rate}) - (\text{Total pounds of all plastic resin} \times \text{actual PCRC rate achieved})] \times 20 \text{ cents} = \text{PCRC penalty}$$

(e) The department will calculate producer PCRC penalties by June of each year based on the PCRC minimum dates outlined in WAC 173-925-060(1).

(f) Producer PCRC penalty notifications will be mailed to the producer by certified mail.

(g) Penalties may be appealed to the pollution control hearings board within 30 days from the certified mail stamped receipt date to pay the PCRC penalty receipt, pursuant to chapter 43.21B RCW.

(2) (a) Producers may request penalty reductions or alternatives to PCRC minimum penalties to be considered by the department based on the information provided in the producer request that describes the following factors:

(i) Documentation of anomalous market conditions, including disruption in, or lack of supply of recycled plastics;

(ii) Date the product was manufactured, showing that the production preceded the PCRC minimum requirements for that PCRC product category;

(iii) Unforeseen circumstances such as a public health emergency, natural disaster, or state of emergency; or

(iv) Other relevant and documented factors that a producer deems has prevented them from meeting the requirements.

(b) Producers may submit a request to the department to implement a corrective action plan in lieu of or in addition to assessing a penalty under this section. The corrective action plan details how the producer will come into compliance with the requirements of this chapter.

(c) Producers may submit a request to the department for a penalty payment plan or extension of the penalty payment deadline.

(3) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

**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.

**WSR 23-22-103**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed October 31, 2023, 8:27 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: This rule making adopts amendments to WAC 296-21-270 Mental health services, by adding master's level therapists (MLTs) to the list of providers for mental health services. The rule making will help address the shortage of mental health providers available to provide appropriate services on accepted mental health conditions. MLTs are qualified licensed independent clinical social workers, licensed marriage and family therapists, and licensed mental health counselors.

The department of labor and industries (L&I) initiated a pilot in January 2020 to help determine how MLTs could best be incorporated into the workers' compensation setting. The pilot showed an increased access to behavioral and mental health services, both in rural and urban areas. L&I anticipates adding MLTs will continue expanding options in care for injured workers.

Citation of Rules Affected by this Order: Amending WAC 296-21-270.

Statutory Authority for Adoption: RCW 34.05.313, 51.04.020, and 51.04.030.

Adopted under notice filed as WSR 23-16-154 on August 2, 2023.

A final cost-benefit analysis is available by contacting Suzy Campbell, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, TTY 360-902-4252, email [suzanne.campbell@lni.wa.gov](mailto:suzanne.campbell@lni.wa.gov).

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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 1, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 31, 2023.

Joel Sacks  
Director

**OTS-4609.1**



AMENDATORY SECTION (Amending WSR 15-19-139, filed 9/22/15, effective 10/23/15)

**WAC 296-21-270 Mental health services.** (1) The following rule supplements information contained in the fee schedules regarding coverage and reimbursement for mental health services.

(2) Treatment of mental conditions to workers is to be goal directed, time limited, intensive, targeted on specific symptoms and functional status and limited to conditions caused or aggravated by the industrial condition. Specific functional goals of treatment must be identified and treatment must have an emphasis on functional, measurable improvement towards the specific goals.

(3) Mental health services to workers are limited to those provided by psychiatrists, doctoral level psychologists (~~(and)~~), psychiatric advanced registered nurse practitioners, licensed independent clinical social workers, licensed marriage and family therapists, licensed mental health counselors, and according to department policy. Psychiatrists and psychiatric advanced registered nurse practitioners may prescribe medications while providing concurrent care. For purposes of this rule, the term "mental health services" refers to treatment by psychologists, psychiatric advanced registered nurse practitioners, (~~(and)~~) psychiatrists, licensed independent clinical social workers, licensed marriage and family therapists, and licensed mental health counselors.

(4) Initial evaluation, and subsequent treatment must be authorized by department staff or the self-insurer, as outlined by department policy. The report of initial evaluation, including test results, and treatment plan is to be sent to the worker's attending provider, as well as to the department or self-insurer. A copy of the (~~(sixty)~~) 60-day narrative reports are to be sent to the department or self-insurer and to the attending provider.

(5) (a) All providers are bound by the medical aid rules in chapter 296-20 WAC. Reporting requirements are defined in chapter 296-20 WAC. In addition, the following are required: Testing results with scores, scales, and profiles; report of raw data sufficient to allow reassessment by a panel or independent medical examiner. Explanation of the numerical scales is required.

(b) Providers must use the edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association designated by the department in the initial evaluation, follow-up evaluations and (~~(sixty)~~) 60-day narrative reports.

(c) A report to the department or self-insurer will contain, at least, the following elements:

- (i) Subjective complaints;
- (ii) Objective observations;
- (iii) Identification and measurement of target symptoms and functional status;
- (iv) Assessment of the worker's condition and goals accomplished in relation to the target symptoms and functional status; and
- (v) Plan of care.

(6) The codes, reimbursement levels, and other policies for mental health services are listed in the fee schedules.

(7) When providing mental health services, providers must track and document the worker's functional status using validated instruments such as the World Health Organization Disability Assessment Schedule (WHODAS) or other substantially equivalent validated instruments recommended by the department. A copy of the completed function-

al assessment instrument must be sent to the attending provider and the department or self-insurer, as required by department policy or treatment guideline.

**WSR 23-22-110**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 2023-10—Filed October 31, 2023, 11:27 a.m., effective December 1, 2023, and January 1, 2024]

Effective Date of Rule: Thirty-one days after filing; except WAC 220-340-420, which goes into effect January 1, 2024.

Purpose: The adoption of the proposed rules will enhance fishery monitoring and clarify existing rules. Overall, these rule amendments will accomplish conservation objectives, advance achieving orderly fisheries, and improve the enforceability of current rules.

**Electronic Monitoring** (WAC 220-340-420 and 220-340-460):

**Installation and Use of Electronic Monitoring** (WAC 220-340-420):

Proposed rule changes would require the installation and use of an electronic monitoring (EM) system on vessels participating in Washington's nontribal coastal commercial Dungeness crab fishery. EM is a tool that enables more accurate and timely fishing information, thereby improving the Washington department of fish and wildlife's (WDFW's) ability to ensure fishing is not occurring within closed areas, confirm that participants are not fishing prior to the opening of the season, confirm adherence to license-based or seasonal pot limits, and gather additional information that may aid in identifying instances of gear tampering.

**Coastal Commercial Crab Logbook—Not Required with Operational EM** (WAC 220-340-460):

Proposed rule changes would eliminate the requirement for an operator in the coastal Dungeness crab fishery to maintain a paper logbook when an EM system is installed and fully operational on the vessel. A paper logbook would only be required when an EM system has failed. The effect of this change is to reduce the reporting burden by vessel operators.

**Gear Marking** (WAC 220-330-020, 220-340-430, 220-340-510, 220-340-520, and 220-360-220):

These regulatory changes enhance compliance with the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Large whales and marine turtles are among those species most affected by fishing gear entanglements, and these animals are federally protected. To address entanglement cases with marine mammals where the entangling gear is visible but cannot be used to confidently confirm the associated fishery, the National Marine Fisheries Service has indicated that lines and buoys marked in a way that is unique to each fishery would aid in achieving compliance with the MMPA and ESA. Marking supports positive attribution of gear to the fishery. Attribution can be improved by prohibiting a fishery from using marks/line colors required in another fishery; other coastal states have implemented or intend to implement a similar rule. These proposed changes clarify requirements for unique line marks or buoy colors for Washington fisheries that use line and buoys as part of the gear configuration. These proposed changes also support reducing the amount of fishing line in the water thereby reducing entanglement risk.

**Line Marking in Coastal Dungeness Crab Fishery** (WAC 220-340-430):

Proposed rule changes would specify line markings must be sufficient to identify it as being exclusive to the coastal Dungeness crab fishery and that the two 12-inch red marks, an existing line marking requirement for coastal Dungeness crab fishery participants, be continuous. These proposed changes standardize line markings in the

coastal Dungeness crab fishery and clarify that the line itself is to be marked for the full extent of the 12-inch span. These changes advance the intended purpose of line marking to increase gear visibility in marine mammal entanglements and thus fishery attribution.

**Prohibit Line Marks or Colors Required in Another Fishery** (WAC 220-330-020, 220-340-430, 220-340-510, 220-340-520, and 220-360-220):

Proposed rule changes would prohibit the use of line marks or color combinations in Washington fixed gear fisheries that are required for other state or federal fisheries. The effect of the proposed rule changes is to disallow fishers that currently do not and are not required to mark fishing line from marking line in a manner that is consistent with another fishery and to further support fishery-specific attribution of line in marine mammal entanglements.

**Crab and Shrimp Buoys** (WAC 220-330-020):

Proposed changes would allow buoys to be submerged by director issued permit in personal use (i.e., recreational) fisheries.

**Limit Line in Shellfish and Hagfish Fisheries to Amount Needed** (WAC 220-330-020, 220-340-430, 220-340-510, and 220-340-520):

Proposed rule changes would allow no more than the amount of line required to compensate for tides, currents, and weather in commercial and recreational fisheries for Dungeness crab and shrimp and commercial hagfish. The change is necessary to standardize and implement best practices consistent with reducing gear entanglements with marine mammals.

**Standardize Crab and Shrimp Pot Buoy Colors** (WAC 220-330-020, 220-340-430, and 220-340-520):

Proposed rule changes would standardize and clarify buoy colors for recreational and commercial crab and shrimp pot gear. Proposed rule changes standardize that buoys in the Puget Sound and coastal commercial crab fisheries may not be both red and white unless at least 30 percent of the buoy is marked in additional color(s). Proposed rule changes clarify that for commercial shrimp fisheries in Puget Sound, buoy color, already required to be orange, must be *solid* orange and for Puget Sound recreational shrimp pots, already required to be yellow, must be *solid* yellow. These proposed changes are consistent with the intent to support attribution of marine mammal entangled gear to a specific fishery.

**Additional Rule-Making Changes** (WAC 220-320-015, 220-320-120, 220-320-140, 220-340-430, 220-340-455, 220-340-520, and 220-340-530):

**Define a New Management Category for Nonspot Shrimp Species** (WAC 220-320-015):

Proposed rule changes would define a new management "non-spot shrimp" or pandalid complex to include shrimp species other than spot shrimp. The purpose for the change is to eliminate the need to list each nonspot shrimp species individually thereby improving rule clarity.

**Require Annual Registration of Commercial Crab Buoy Color Schemes** (WAC 220-340-430):

Proposed rule changes would align Puget Sound and coastal commercial Dungeness crab fishery requirements and specify that crab fishery participants must complete buoy registration annually using the WDFW online registration form. Existing rules require the creation and registration of a unique buoy color scheme for each commercial license but do not specify a frequency.

**Buoy Tags in Commercial Dungeness Crab Fisheries** (WAC 220-340-430):

Proposed rule changes would cap the number of buoy tags issued in the Puget Sound commercial crab fishery, limit the number of potential pots deployed to the current maximum pot limit of 100 per license, with no pot replacement. The proposed rule changes also streamline the reporting of derelict gear and issuance of replacement tags for commercial users, reduce waste, and reduce the possibility of issuing of a buoy tag for the wrong fishery.

**Puget Sound Commercial Pot Shrimp** (WAC 220-340-520):

Proposed rule changes would clarify that the pot limit for commercial shrimp pot fisheries in Puget Sound are based on the fishery and gear type and are not per license limit, would limit fishing depth, and align rule with revised electronic fish ticket rules.

**Puget Sound Commercial Crab and Shrimp Fishery Boundary Designations** (WAC 220-320-120, 220-320-140, 220-340-455, and 220-340-530):

Proposed rule changes would update Puget Sound commercial crab and shrimp fishery boundary designations. The purpose of the changes is to correct outdated boundary designations and add specially designated fishing areas.

**Shellfish Harvest Logs** (WAC 220-340-030):

Proposed rule changes would correct and update logbook reporting requirements for Puget Sound and coastal commercial shellfish fisheries where logs are required by defining some rule elements separately, either by fishery or region (i.e., Puget Sound or coast), and by deleting unnecessary requirements. The changes are needed to clarify rule language and align rule language with the implementation of mandatory electronic fish tickets and electronic monitoring.

**Fish Receiving, Transportation Ticket, and Quick Reporting Revisions** (WAC 220-352-060, 220-352-230, 220-352-340, and 220-340-420):

Proposed rule changes would describe when and where electronic fish tickets must be submitted to the department, including provisions for when access to cellular broadband is not immediately available when the fish ticket is completed. Proposed changes would clarify applicability of transportation ticket requirements by including "shellfish" in the rule, improve transportation ticket information by requiring the WDFW-issued vessel identification number and date of harvest, and clarify transportation ticket requirements for crab removed from the vessel prior to landing in Puget Sound. Proposed rule changes clarify stored crab reporting and time frame and sale reporting for stored crab.

Citation of Rules Affected by this Order: New WAC 220-320-015 Definitions—Shellfish species complexes; and amending WAC 220-330-020 Crab, shrimp, crawfish—Gear and gear-related unlawful acts, 220-340-420 Commercial crab fishery—Unlawful acts, 220-340-430 Commercial crab fishery—Gear requirements, 220-340-460 Commercial crab fishery—Coastal Dungeness crab logbook requirements, 220-340-510 Commercial ocean spot shrimp pot fishery—Coastal waters, 220-340-520 Commercial shrimp pot fishery—Puget Sound, 220-320-120 Puget Sound Crustacean (crab and shrimp) Special Management Areas, 220-320-140 Commercial shrimp geographical management units—Puget Sound, 220-340-030 Shellfish harvest logs, 220-340-455 Commercial crab fishery—Seasons and areas—Puget Sound, 220-340-530 Commercial shrimp trawl fishery—Puget Sound, 220-352-060 Completion, submission, distribution, and retention of copies of nontreaty fish receiving tickets, 220-352-230 Commercial fish and shellfish transportation ticket, 220-352-340 Puget Sound crab—Additional reporting requirements, and 220-360-220 Hagfish pot trial fishery—Season and gear.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 23-16-050 on July 26, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 15, 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: October 27, 2023.

B. Baker  
Commission Chair

#### OTS-4648.1

#### NEW SECTION

**WAC 220-320-015 Definitions—Shellfish species complexes.** "Non-spot shrimp" are defined as a species complex composed of the following species of pandalid shrimp classified in WAC 220-320-010: Dock shrimp (*Pandalus danae*), coonstripe shrimp (*Pandalus hypsinotus*), humpy shrimp (*Pandalus goniurus*), Ocean pink shrimp (*Pandalus jordani*), pink shrimp (*Pandalus eous*), and side stripe shrimp (*Pandalus (Pandalopsis) dispar*).

#### OTS-4646.1

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-320-120 Puget Sound Crustacean (crab and shrimp) Special Management Areas.** The following areas shall be defined as Puget Sound Crustacean (crab and shrimp) Special Management Areas (CSMA):

(1) Discovery Bay:

(a) Crustacean Special Management Area: All waters of Marine Fish-Shellfish Management and Catch Reporting Area 25E - Discovery Bay south of a line from Diamond Point (48.0945°, -122.9152°) to Cape George (48.1034°, -122.8847°).

(b) Shrimp District: All waters of Catch Area 25E and those waters of Catch Area 25A south of a line from McCurdy Point (48.1358°, -122.8374°) on the Quimper Peninsula to the northern tip of Protection

Island (48.1327°, -122.9285°), then to Rocky Point (48.0964°, -122.9754°) on the Miller Peninsula.

(2) Dungeness Bay CSMA: All waters of Dungeness Bay west of the (~~(-123.1010°)~~) -123.1103° (123°06.6') longitude line originating from the New Dungeness Light (48.1818°, -123.1103°) (~~(extending southward to the cul-de-sac at the end of 3 Crabs Road on the mainland (48.1509°, -123.1212°))~~)).

(3) Everett Flats CSMA: That portion of Catch Area 26A-E (see WAC 220-320-110) east of a line from western edge of Howarth Park (47.9619°, -122.2441°) true north to the southern tip of Gedney (Hat) Island (48.0048°, -122.3060°) and that portion of 24B east of a line from the northern tip of Gedney (Hat) Island (48.0215°, -122.3274°) to Camano Head (48.0570°, -122.3580°) and south of a line drawn from Camano Head to Hermosa Point (48.0620°, -122.2935°) on the Tulalip reservation.

(4) Port Angeles Harbor CSMA: That portion of Marine Fish-Shellfish Catch Area 23D west of a line from the Ediz Hook Light (48.1400°, -123.4025°) to the site of the ITT Rayonier Dock (48.1169°, -123.4083°).

(5) Port Townsend Bay CSMA: Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island (48.0853°, -122.7303°), thence to Kala Point (48.0575°, -122.7674°) and thence following the shoreline to the point of origin.

(6) Sequim Bay CSMA: All waters of Sequim Bay south of Travis Spit and a line west from the western tip of Travis Spit (Klapot Point) to the dock at the Pacific Northwest National Laboratory (48.0793°, -123.0452°).

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-320-140 Commercial shrimp geographical management units—Puget Sound.** Puget Sound commercial shrimp harvest management utilizes a hierarchy of geographical management units consisting of region, subregion, Marine Fish-Shellfish Management and Catch Reporting Area (catch area), and subarea. This section defines these units.

(1) **The following areas are defined as Puget Sound Shrimp Management Regions and subregions:**

(a) Region 1 - Trawl fishery: All waters of Catch Areas 20A, 20B, 21A, 21B, 22B, and 22A;

Region 1 - Pot fishery: All waters of Catch Areas 20A, 20B, 21A, 21B, 22B, and Catch Area 22A, except the southwesterly portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary, then south of the shoreline of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point (48.4559°, -122.9355°) on Lopez Island, and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°; see (d) of this subsection—Region 3).

(i) Subregion 1A: All waters of Catch Area 20B west of a line from Point Doughty (48.7117°, -122.9492°) on Orcas Island to the bell buoy (48.7649°, -123.0145°) at the International Boundary and all wa-

ters of Catch Area 22A west of a line projected true north and south from the western tip of Crane Island (48.5975°, -123.0078°), west of a line projected from the number 4 marker (48.5223°, -122.9173°) at the entrance to Fisherman Bay to the southern tip of Shaw Island (48.5466°, -122.9487°), and north of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary.

(ii) Subregion 1B: All waters of Catch Area 20B east of a line from Point Doughty (48.7117°, -122.9492°) on Orcas Island to the bell buoy at the International Boundary (48.7649°, -123.0145°), and waters of Catch Area 22A east of a line projected true north and south from the western tip of Crane Island (48.5975°, -123.0078°), east of a line projected from the number 4 marker (48.5223°, -122.9173°) at the entrance to Fisherman Bay to the southern tip of Shaw Island (48.5466°, -122.9487°), and east of a line projected true south from Point Colville (48.4217°, -122.8131°), and all waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island (48.6097°, -122.6572°) to Carter Point (48.6404°, -122.6088°) at the southern tip of Lummi Island.

(iii) Subregion 1C: All waters of Catch Areas 20A, 21B, 22B, and those waters of Catch Area 21A not included in Subregion 1B.

(b) Region 2-East (2E): All waters of Catch Areas 24A, 24B, 24C, 24D, and Subarea 26A-E (east; subareas defined in subsections (2) and (3) of this section).

(c) Region 2-West (2W): Waters of Catch Areas 25B, 25C, 25D, and Subarea 26A-W (west).

(d) Region 3 - Trawl fishery: All waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, and 29.

Region 3 - Pot fishery: All waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, 29, and the southwesterly portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary, then south of the shoreline of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point (48.4559°, -122.9355°) on Lopez Island, and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°).

(e) Region 4: All waters of Catch Area 26C and 26B, which is divided into Subareas 26B-1 and 26B-2 (subareas defined in subsection (2) of this section).

(f) Region 5: All waters of Catch Areas 27A, 27B, and 27C.

(g) Region 6: All waters of Catch Areas 26D, 28A, 28B, 28C, and 28D.

(2) **The following areas are defined as Puget Sound Commercial Shrimp Subareas, shrimp pot harvest:** For purposes of Puget Sound shrimp pot harvest allocation, fishing season, and catch reporting, catch areas (WAC 220-301-040) are modified as follows:

(a) That portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary, then south of the shores of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point on Lopez Island (48.4559°, -122.9355°), and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°) shall be considered to be part of Catch Area 23A.

(b) Catch Area 23A is divided into four subareas:



(i) Subarea 23A-E (east): All waters of Catch Area 23A east of  $-122.9500^{\circ}$  ( $122^{\circ}57'W$ ) longitude and north of  $48.3750^{\circ}$  ( $48^{\circ}22.5'N$ ) latitude.

(ii) Subarea 23A-W (west): All waters of Catch Area 23A west of  $-122.9500^{\circ}$  ( $122^{\circ}57'W$ ) longitude and north of  $48.3750^{\circ}$  ( $48^{\circ}22.5'N$ ) latitude.

(iii) Subarea 23A-C (central): All waters of Catch Area 23 south of  $48.3750^{\circ}$  ( $48^{\circ}22.5'N$ ) latitude and east of a line projected  $335^{\circ}$  true from the New Dungeness Lighthouse ( $48.1818^{\circ}$ ,  $-123.1103^{\circ}$ ).

(iv) Subarea 23A-S (south): All waters of Catch Area 23A west of a line projected  $335^{\circ}$  true from the New Dungeness Lighthouse ( $48.1818^{\circ}$ ,  $-123.1103^{\circ}$ ).

(c) Catch Area 26A is divided into two subareas:

(i) Subarea 26A-E (east): All waters of Catch Area 26A north and east of a line projected  $110^{\circ}$  true from the southern tip of Possession Point ( $47.9061^{\circ}$ ,  $-122.3846^{\circ}$ ) on Whidbey Island to the shipwreck located 0.8 nautical miles north of Picnic Point ( $47.8931^{\circ}$ ,  $-122.3286^{\circ}$ ) on the opposite shore.

(ii) Subarea 26A-W (west): All waters of Catch Area 26A south and west of a line projected  $110^{\circ}$  true from the southern tip of Possession Point ( $47.9061^{\circ}$ ,  $-122.3846^{\circ}$ ) on Whidbey Island to the shipwreck located 0.8 nautical miles north of Picnic Point ( $47.8931^{\circ}$ ,  $-122.3286^{\circ}$ ) on the opposite shore.

(d) Catch Area 26B is divided into two subareas:

(i) Subarea 26B-1: All waters of Catch Area 26B westerly of a line projected from West Point ( $47.6619^{\circ}$ ,  $-122.4348^{\circ}$ ) to Alki Point ( $47.5763^{\circ}$ ,  $-122.4199^{\circ}$ ).

(ii) Subarea 26B-2: All waters easterly of a line projected from West Point ( $47.6619^{\circ}$ ,  $-122.4348^{\circ}$ ) to Alki Point ( $47.5763^{\circ}$ ,  $-122.4199^{\circ}$ ).

(3) **The following areas are defined as Puget Sound Shrimp Subareas, shrimp trawl harvest:** For the purpose of Puget Sound shrimp trawl harvest allocation and catch reporting, catch areas (WAC 220-301-040) are modified as follows:

(a) Trawl Subarea 23A East: That portion of Catch Area 23A, east of a line projected true north from the New Dungeness Lighthouse ( $48.1818^{\circ}$ ,  $-123.1103^{\circ}$ ) to the International Boundary.

(b) Trawl Subarea 23A West: That portion of Catch Area 23A, west of a line projected true north from the New Dungeness Lighthouse ( $48.1818^{\circ}$ ,  $-123.1103^{\circ}$ ) to the International Boundary.

(4) The following areas are defined as shrimp beam trawl harvest areas of special designation:

(a) South Lopez Sound is defined as those waters of Lopez Sound within Subregion 1B that are south of a line projected true east-west from the northern tip of Trump Island ( $48.5064^{\circ}$ ,  $-122.8369^{\circ}$ ).

(b) Rosario Box is defined as that portion of Catch Area 22A within Subregion 1B that are east of a line projected along  $-122.7833^{\circ}$  longitude (east of Blakely Island) and west of a line projected along  $-122.7167^{\circ}$  longitude (west of Cypress Island) in Rosario Strait.

(c) Lummi-Sinclair Triangle is defined as those waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island ( $48.6097^{\circ}$ ,  $-122.6572^{\circ}$ ) to Carter Point ( $48.6404^{\circ}$ ,  $-122.6088^{\circ}$ ) on Lummi Island.

(5) In shrimp Subregions 1A, 1B, and 1C, all catch must be reported by catch area and subregion combined (for example 22A-1A).

OTS-4779.1

AMENDATORY SECTION (Amending WSR 20-04-058, filed 1/30/20, effective 7/1/20)

**WAC 220-330-020 Crab, shrimp, crawfish—Gear and gear-related unlawful acts. General gear requirements:**

(1) It is unlawful to take, fish for, or possess crab, shrimp, and crawfish except by hand or with hand dip nets, ring nets, shellfish pots, or any hand-operated, nonmechanized instrument. It is unlawful to harvest shellfish in any manner that penetrates the shell.

(2) It is unlawful to set, fish, or pull more than 2 units of gear per person per day, unless otherwise provided in this subsection. A unit of gear is defined as a hand dip net, shellfish pot, ring net or any other instrument used to capture crab, shrimp, or crawfish. A violation of this subsection is punishable under RCW 77.15.160, 77.15.380, or 77.15.370, depending on the circumstances of the violation.

(a) In Marine Area 4 east of the Bonilla-Tatoosh line and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13 (Puget Sound), it is unlawful to set, fish, or pull more than 2 units of crab gear and 2 additional units of shrimp gear per person per day.

(b) In Marine Areas 4, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13, it is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled to have on board or to fish more than 4 shrimp pots.

(c) In the Columbia River, it is unlawful to set, fish, or pull more than 3 units of crab gear per person.

(d) In fresh water, it is permissible to use up to 5 units of gear per person to fish for crawfish.

(3) It is unlawful to violate the following provisions regarding unattended shellfish gear:

(a) (i) Unattended shellfish gear must be marked with a buoy that permanently, visibly, and legibly lists the first and last name and permanent mailing address of the owner.

(ii) Only one person's name and address may appear on a marker buoy.

(b) All buoys must consist of durable material. It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy.

(c) Buoys must remain visible on the surface at all times, except during extreme tidal conditions, or unless otherwise authorized under a permit issued by the director.

(d) Fishers shall use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(e) The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the line from floating on the water's surface.

~~((e))~~ (f) It is unlawful to use gear that has one or more line marks or to use multicolor line consistent with requirements for any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

(g) Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(4) It is unlawful to have more than one unit of unattended gear attached to a buoy line and buoy, or to fail to have a separate buoy for each unit of gear. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal-use purposes—Penalty.

(5) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.180 Unlawful interference with fishing or hunting gear—Penalty.

(6) It is unlawful to fish for or possess shellfish taken for personal use with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:

(a) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated, 100 percent cotton twine, hemp, jute, or sisal no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken.

(b) An opening in the pot mesh no less than 3 inches by 5 inches which is laced or sewn closed with untreated, 100 percent cotton twine, hemp, jute, or sisal no larger than thread size 120. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

(c) Attachment of pot lid or one pot side serving as a pot lid with no more than 3 single loops of untreated 100 percent cotton, hemp, jute, or sisal no larger than thread size 120 so that the pot lid or side will open freely if the twine or fiber is broken.

(d) Use of gear in violation of this subsection is an infraction, punishable under RCW 77.15.160.

(7) It is unlawful to set shellfish pots in a manner that they are not covered by water at all times. Use of gear in violation of this subsection is an infraction, punishable under RCW 77.15.160.

(8) **Gear setting and retrieval:**

(a) It is unlawful to fish, or place or retrieve gear outside of open days and hours.

(b) It is unlawful to fail to remove gear prior to the closure of a fishery.

(c) It is unlawful to fail to remove gear from the water within one hour after sunset if fishing is not allowed on the next calendar day.

(d) In waters that are open continuously, shellfish gear may be left in the water overnight, but may not be set or pulled from a vessel from one hour after official sunset to one hour before official sunrise in Marine Area 4 east of the Bonilla-Tatoosh line and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13.

(9) **Crab pot gear requirements:**

(a) All buoys attached to crab gear must be half red or half fluorescent red in color and half white in color. Flags and staff, if attached, may be any color. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) It is unlawful to fish for crab using shellfish pot gear greater than 13 cubic feet in volume.

(c) It is unlawful to fish for or possess crab taken with shellfish pot gear that are equipped with tunnel triggers or other devices which prevent free exit of crabs under the legal limit unless the gear is equipped with 2 or more escape rings located in the upper half of the pot and escape rings are 4 1/4 inches inside diameter or larger,

except in the Columbia River where escape ring minimum size is 4 inches inside diameter.

(d) It is unlawful to use mesh size smaller than 1 1/2 inches for crab pots.

(e) Unless otherwise designated, a violation of this subsection is a violation of RCW 77.15.382. Possession of crab while using gear in violation of the provisions of this section is a rebuttable presumption that the crab were taken with such gear.

**(10) Shrimp pot gear requirements:**

(a) All buoys attached to shrimp gear must be solid yellow or solid fluorescent yellow in color. Flags and staff, if attached, may be any color. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) It is unlawful to take, fish for, or possess shrimp taken with shellfish pot gear unless the gear meets the following requirements:

(i) A shrimp pot may not exceed 10 feet in perimeter and 1 1/2 feet in height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Shrimp pot minimum mesh size:

(A) Year-round, Marine Areas 1, 2, 3, and 4 west of the Bonilla-Tatoosh line and shoreward of 20 fathoms, the minimum mesh size for shrimp pots is 1/2 inch. Seaward of 20 fathoms, the minimum mesh size for shrimp pots is 1 inch.

(B) May 1 through October 15, Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13, the minimum mesh size for shrimp pots is 1 inch, with the following exception: June 1 through October 15, in any Marine Area or portion thereof that is closed for spot shrimp but open for coonstripe and pink shrimp, the minimum mesh size for shrimp pots is 1/2 inch.

(C) Half-inch mesh is defined as mesh that a 3/8 inch square peg will pass through each mesh opening; flexible (web) mesh pots must have mesh size openings that are a minimum of 1 1/8 inch stretch measure.

(D) One inch mesh is defined as a mesh that a 7/8 inch square peg will pass through each mesh opening; flexible (web) mesh pots must have mesh size openings that are a minimum of 1 3/4 inch stretch measure.

(iv) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(v) Unless otherwise designated, a violation of this subsection is a violation of RCW 77.15.382. Possession of shrimp while using gear in violation of the provisions of this section is a rebuttable presumption that the shrimp were taken with such gear.

(c) In the field, it is unlawful for each person harvesting shrimp to fail to use a separate container to hold their catch and the container must be in the harvester's presence or identified with the harvester's name. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(d) It is unlawful to dig for or possess ghost or mud shrimp taken by any method except hand operated, nonmechanized suction devices or dug by hand.

OTS-4781.1

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-030 Shellfish harvest logs.** (1) **Logbook requirement:** It is unlawful for any vessel operator engaged in the commercial harvest of crawfish, sea cucumber, sea urchin, scallop, shrimp, or squid to fail to obtain and accurately and completely maintain the appropriate harvest log available from the Washington department of fish and wildlife. It is unlawful for any license holder engaged in commercial sand shrimp fishing or operator of mechanical clam digging device to fail to obtain and accurately and completely maintain the appropriate harvest log available from the Washington department of fish and wildlife.

(2) **Logbook maintenance:** It is unlawful for any harvest vessel operator or license holder engaged in harvest as described in subsection (1) of this section, to fail to maintain the required harvest log: Aboard the vessel; at the harvest site; when crawfish, sea cucumbers, sea urchins, shrimp, squid, scallops, clams, or sand shrimp are aboard during transit of a harvest vessel, or are in possession of the license holder.

(3) **Logbook submission and retention:** It is unlawful for the vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to submit harvest logs for inspection upon request by department of fish and wildlife officers or authorized employees.

(4) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to comply with the following methods of logbook submittal and time frames related to harvest logbook submittal:

(a) Completed harvest logs for crawfish, coastal ocean pink shrimp, sea cucumber, sea urchin, scallop, Puget Sound shrimp pot and trawl, and squid must be received by the department within 10 days following any calendar month in which fishing occurred(~~(, required completed harvest logs must be received by the department)~~); however, vessel operators or license holders may submit logs directly to authorized department employees.

(b) Vessel operators or license holders responsible for submitting logs to the department, as described in subsection (1) of this section, must maintain a copy of all submitted logs for a period of three years following the harvest activity. Copies of harvest logs, which are required to be maintained, must be available for inspection upon request by department of fish and wildlife officers and authorized employees.

(c) Original harvest logs must be maintained and submitted in ascending consecutive order of the log serial number.

(5) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to send completed harvest logs to the appropriate following mailing address, except as provided for in subsection (4)(a) of this section.

**For Puget Sound Shrimp Pot and Trawl Harvest Logbooks:**

ATTN: PUGET SOUND SHRIMP HARVEST MANAGER

Washington Department of Fish and Wildlife

375 Hudson St.  
Port Townsend, WA 98368.

**For Coastal Shrimp Harvest Logbooks:**

ATTN: COASTAL SHRIMP HARVEST MANAGER  
Washington Department of Fish and Wildlife  
48 Devonshire Rd.  
Montesano, WA 98563.

**For Crawfish Harvest Logbooks:**

ATTN: FISH PROGRAM - CRAWFISH HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Sea Urchin and Sea Cucumber Harvest Logbooks:**

ATTN: FISH PROGRAM - SEA URCHIN/SEA CUCUMBER HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Clam (harvest with mechanical digging devices) Harvest Logbooks:**

ATTN: FISH PROGRAM - GEODUCK HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Scallop Harvest Logbooks:**

ATTN: FISH PROGRAM - SCALLOP HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Squid (Coastal waters) Harvest Logbooks:**

ATTN: FISH PROGRAM - COASTAL SQUID HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 43150  
Olympia, WA 98504-3150.

**For Squid (Puget Sound waters) Harvest Logbooks:**

ATTN: PUGET SOUND SQUID HARVEST MANAGER  
Washington Department of Fish and Wildlife  
375 Hudson St.  
Port Townsend, WA 98368.

**For Coastal Sand Shrimp Harvest Logbooks:**

ATTN: COASTAL SAND SHRIMP HARVEST MANAGER  
Washington Department of Fish and Wildlife  
P.O. Box 190  
Ocean Park, WA 98640-0190.

**For Puget Sound Sand Shrimp Harvest Logbooks:**

ATTN: PUGET SOUND SAND SHRIMP HARVEST MANAGER  
Washington Department of Fish and Wildlife  
375 Hudson St.  
Port Townsend, WA 98368.

(6) It is unlawful for any harvest vessel operator or license holder engaged in harvest as described in subsection (1) of this section to fail to permanently and legibly record in ink the following information within the following time frames:

(a) (~~(Shrimp (other than Puget Sound shrimp or sand shrimp) or crawfish with shellfish pot gear:))~~) **Crawfish:**

(i) Before leaving the catch area where harvest occurred, record the vessel Washington department of fish and wildlife boat registration number, number of pots pulled, date pulled, soak time, and gear location; and

(ii) Immediately after delivery of shellfish to an original receiver, record the weight of all shellfish.

(b) (~~(Shrimp with beam trawl or shrimp trawl gear:))~~) **Puget Sound shrimp trawl gear:**

(i) Before commencing a new tow or prior to leaving the site where the catch was taken, record the vessel ((identity)) name, current date of fishing activity, location fished, trawl width, ((~~Marine Fish-Shellfish Management and Catch Reporting Area fished,~~)) depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, tow speed, duration of tow, and estimated weight of shrimp of each species caught for each tow.

(ii) Immediately after delivery of shrimp to an original receiver((7)) or ((~~before leaving the last catch site of the day~~)) the submission of a fish receiving ticket, if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket ((serial)) number.

(c) **Coastal shrimp trawl gear:**

(i) Before commencing a new tow, record the vessel name, current date of fishing activity, depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, duration of tow, estimated weight of shrimp of each species not retained for each tow, and estimated weight of shrimp of each species caught for each tow.

(ii) Immediately after delivery of shrimp to an original receiver or the submission of a fish receiving ticket, if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket number.

(d) **Sea urchins and sea cucumbers:**

(i) Before leaving the harvest site, record the vessel identity, date, Marine Fish-Shellfish Catch Reporting Area fished, location fished, depth fished, latitude and longitude to the nearest tenth of a minute or to the nearest second, and the approximate weight in pounds of sea urchins or sea cucumbers harvested.

(ii) Upon landing or delivery to an original receiver, the exact species and weight of sea urchins, as recorded on the shellfish receiving ticket, must be recorded.

(iii) Upon landing or delivery to an original receiver, the exact weight of sea cucumbers, as recorded on the shellfish receiving ticket, and whether or not prelanded processing occurred ("whole-live" or "split-drained"), must be recorded.

((~~(d)~~)) (e) **Clams, with mechanical digging devices:**

(i) Before the end of each day's fishing and departure from the harvest grounds, record the vessel identity if a harvest vessel is used in harvest operation, exact location by latitude and longitude to the nearest thousandths of a minute (recorded in WGS 84 datum), and date of harvest.

(ii) Weight by each clam species in pounds upon landing or delivery to an original receiver.

(iii) Weight in pounds of each clam species caught and returned to the harvest grounds.

((~~(e)~~)) (f) **Scallops:**

(i) Before leaving the location where the catch was taken, record the vessel identity, date, location, and duration of harvest and estimated weight in pounds and species of scallops caught for each tow or dive hour.

(ii) Upon landing or delivery to an original receiver, the exact weight in pounds, as recorded on the shellfish receiving ticket, and species of harvested scallops.

~~((f))~~ (g) Squid, except when taken incidental to any other lawful fishery:

(i) Coastal:

(A) Before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, starting and ending time of fishing, and numbers of other species caught and returned.

(B) Weight in pounds of squid upon landing or delivery to an original receiver.

(ii) Puget Sound:

(A) Before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, location (nearest landmark, bay, or GPS coordinates), starting and ending time of fishing, total vessel wattage or lumens of attracting lights, and numbers of other species caught and returned.

(B) Weight in pounds of squid upon landing or delivery to an original receiver.

~~((g))~~ (h) Sand shrimp (Puget Sound and coastal), except when taken incidental to other lawful fishery:

(i) Prior to leaving the harvest site, the location or identification number of the harvest tract, date of harvest, number of trenches pumped, average length and width of trenches (yards), total number of sand shrimp retained (dozens).

(ii) At the time of delivery to an original receiver, total number of sand shrimp sold (dozens), and the name of the sand shrimp buyer.

~~((h) Shrimp (other than sand shrimp), using shellfish pot gear in Puget Sound:)~~ (i) Puget Sound shrimp pot:

(i) Prior to leaving the harvest site, the name of vessel operator, license number, the vessel's Washington department of fish and wildlife boat registration number, buoy brand, date, phone number, pot mesh size, pull date, groundline length, number of pots pulled, depth fished, soak time, gear location (including latitude and longitude to the nearest hundredth of a minute), Shrimp Management Unit fished (region, subregion, catch area, subarea), species targeted, sorted catch estimates, and weight(s) in pounds of catch (~~(, and shellfish receiving ticket number)~~). A separate weight for each species caught and retained must be recorded. Any time that gear is deployed the location must be recorded. For pots deployed on a (~~(ground line both)~~) ground line, the start (~~(and end)~~) location (~~(s)~~) for each string must be provided.

(ii) Immediately after delivery of shrimp to an original receiver (~~(, or before leaving the last catch site of the day if the operator holds a wholesale fish dealer's license or limited fish seller endorsement and is the original receiver)~~), record the fish receiving ticket (~~(serial)~~) number.

(7) Violation of this section as it relates to failing to report required information or failing to submit log books is punishable un-



der RCW 77.15.280 reporting of fish or wildlife harvest. Violation of this section as it relates to knowingly providing false or misleading information is punishable under RCW 77.15.270, providing false information.

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-455 Commercial crab fishery—Seasons and areas—Puget Sound.** The open times and areas for commercial crab fishing in Puget Sound are as follows:

(1) It is unlawful to fish for, take, or possess crab for commercial purposes except during open commercial crab harvest seasons and from open commercial crab management units as set by emergency rule. Commercial crab fishing will be open from one hour before sunrise to one hour after sunset during open seasons, except as provided below.

(2) The following areas are closed to commercial crab fisheries regulated by the department:

(a) Crab Management Regions 4, 5, and 6 (WAC 220-320-110).

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from Sandy Point Light No. 2 (48.7868°, -122.7124°) to Gooseberry Point (48.7324°, -122.6728°).

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder off the southeast portion of Point Francis (48.6973°, -122.6073°) to the old pilings at Stevie's Point (~~((0.2 miles north-west of the point where the Lehigh Cement pipeline meets the shoreline; 48.7682°, -122.5282°))~~) (48.7765°, -122.5523°).

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island (48.4131°, -122.5814°) and extending south to the most westerly tip of Hope Island (48.3959°, -122.5788°), thence southeast to Seal Rocks (48.3737°, -122.5634°), thence southeast to the green can buoy (Buoy No. 5; 48.3630°, -122.5510°) at the mouth of Swinomish Channel, thence easterly to the western tip of Goat Island (48.3630°, -122.5386°).

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point (48.0322°, -122.2274°) to the five-meter tower (48.0156°, -122.2707°) between Gedney (Hat) Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point (48.1935°, -122.4625°) to the intersection (48.1353°, -122.3999°) with a line projected true west from Kayak Point (48.1351°, -122.3678°), thence east to shore.

(f) Those waters of the Dungeness Bay Crustacean Special Management Area (WAC 220-320-120).

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-530 Commercial shrimp trawl fishery—Puget Sound.**

**License**

(1) It is unlawful to take, fish for, land, or deliver shrimp taken for commercial purposes with trawl gear from Puget Sound waters without a valid Puget Sound shrimp trawl license and a shrimp trawl permit, issued annually by the director, and without complying with all provisions of a Puget Sound shrimp trawl fishery permit.

A Puget Sound shrimp trawl license will only be issued to an individual who is a natural person, and this person shall be the primary operator. Holders of Puget Sound shrimp trawl licenses may designate a single alternate operator per license.

**Trawl gear and area restrictions**

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except during seasons opened by emergency rule and authorized by a permit issued by the director.

It is unlawful to operate shrimp beam trawl gear in Puget Sound from one hour after official sunset to one hour before official sunrise.

(3) It is unlawful to retain spot shrimp with trawl gear.

(4) Gear restrictions - Beam trawl gear is the only lawful trawl gear type permitted for Puget Sound. (~~Use of otter trawl gear or other trawl gear types is unlawful.~~)

(a) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, and 22A is 25 feet.

(b) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 23A (trawl Catch Area 23A; WAC 220-320-140), 23B, 23C, 25A, and 29 is 60 feet.

(5) (~~Area restrictions:~~

~~(a) Catch Areas 21B, 22B, and those waters of Catch Area 20A north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light, at the Lummi Reservation (48.7868°, -122.7124°) are closed year round.~~

~~(b)) Depth restrictions - It is unlawful to fish for shrimp with beam trawl gear in waters shallower than the following:~~

~~(a) 100 feet in Puget Sound.~~

~~(b) 120 feet in Catch Area 20A.~~

~~(6) Closed areas - It is unlawful to fish for shrimp with beam trawl gear year-round in the following areas:~~

~~(a) Catch Area 21A except those waters of the Lummi-Sinclair Triangle, as defined in WAC 220-320-140(4).~~

~~(b) Catch Areas 21B, 22B, and those waters of Catch Area 20A north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light, at the Lummi Reservation (48.7868°, -122.7124°).~~

~~(c) Subregion 1A, as defined in WAC 220-320-140 (1)(a)(i).~~

~~(d) Discovery Bay Shrimp District, as defined in WAC 220-320-120 (1)(b).~~

~~(e) Sequim Bay CSMA, as defined in WAC 220-320-120(6).~~

~~(f) Catch Area 23D.~~

~~(7) Area restrictions - The following areas are closed from the season opening through the dates described in the following paragraphs.~~

~~(a) Catch Area 20A outside of those waters north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light at the Lummi Reservation (48.7868°, -122.7124°) are closed through July 31st.~~

~~((c) Catch Area 21A is closed year round, except that those waters north and west of a line from the southern tip of Sinclair Island (48.6097°, -122.6572°) to Carter Point (48.6404°, -122.6088°) on Lummi Island)) (b) Those waters of the Lummi-Sinclair Triangle, as defined in WAC 220-320-140 (4) (c) are closed through June 30th.~~

~~((d) In Catch Area 22A:~~

~~(i) Shrimp trawl fishing is closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island (48.5064°, -122.8369°) from the season opening through July 9th, except as described in (f) of this subsection.~~

~~(ii) Shrimp trawl fishing is closed that portion east of a line projected along -122.7833° longitude (east of Blakely Island) and west of a line projected along -122.7167° longitude (west of Cypress Island) in Rosario Strait from the season opening through June 15th, except as described in (f) of this subsection.~~

~~(e) Subregion 1B (Catch Areas 20B and 22A) is closed through June 15th, except as described in (f) of this subsection.~~

~~(f)) (c) Those waters of South Lopez Sound, as defined in WAC 220-320-140 (4) (a), are closed through July 9th.~~

~~(d) All waters of subregion 1B, with the exception of South Lopez Sound and the Lummi-Sinclair Triangle, as defined in WAC 220-320-140(4), are closed through June 15th, except as described in (e) of this subsection.~~

~~(e) The following areas may open on the described dates and remain open from that date contingent upon the results of department-approved observer sampling to evaluate bycatch. Bycatch parameters must be satisfied for the fishery to remain open earlier than the date((s)) described in (d) ((and (e))) of this subsection.~~

~~(i) ((In Catch Area 22A, in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island (48.5064°, -122.8369°): May 1st.~~

~~(ii) That portion of Catch Area 22A east of a line projected along -122.7833° longitude (east of Blakely Island) and west of a line projected along -122.7167° longitude (west of Cypress Island) in Rosario Strait:)) Those waters of the subregion 1B, except South Lopez Sound and the Lummi-Sinclair Triangle, as defined in WAC 220-320-140(4) may open as early as May 1st.~~

~~((iii) Subregion 1B (Catch Areas 20B and 22A): May 16th.~~

~~(iv)) (ii) Trawl fishers seeking to open before the date((s)) described in (d) ((and (e))) of this subsection must coordinate with the department to arrange a department-approved bycatch observation plan prior to commencing fishing.~~

~~((g) It is unlawful to fish for shrimp in Puget Sound with beam trawl gear in waters shallower than 100 feet.~~

~~(h) It is unlawful to fish for shrimp with beam trawl gear shallower than 120 feet in Catch Area 20A.~~

~~(i)) A violation of this section is punishable under RCW 77.15.750.~~

### ~~(Landing and reporting~~

~~(6) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a licensed fish buyer, or if transferred at sea, without transfer to a licensed fish buyer. A fisher who is a licensed fish buyer or a limited fish seller may complete and return a fish receiving ticket to satisfy the requirements of this subsection.~~

~~(7) Harvesters must also comply with reporting provisions of WAC 220-340-030.)~~

### OTS-4782.3

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-420 Commercial crab fishery—Unlawful acts. (1)**

**Crab size and sex restrictions.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crab; or

(b) Any male Dungeness crab measuring less than 6-1/4 inches, caliper measurement, at the widest part of the shell immediately in front of the points (tips).

(2) Violation of subsection (1) of this section is a gross misdemeanor or class C felony depending on the value of fish or shellfish taken, possessed, or delivered, punishable under RCW 77.15.550 (1)(c).

(3) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any commercial crab fishing.

(4) **Net fishing boats must not have crab on board.** It is unlawful for any person to possess any crab on board a vessel geared or equipped with commercial net fishing gear while fishing with the net gear for commercial purposes or while commercial quantities of food fish or shellfish are on board. Violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550(1), depending on the quantity of crab taken or possessed.

(5) **Area must be open to commercial crabbing.** It is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots for taking crab for commercial purposes in any area or time that is not open for commercial crabbing by rule of the department, except when acting lawfully under the authority of a valid gear recovery permit as provided in WAC 220-340-450.

(6) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, or a gross misdemeanor punishable under RCW 77.15.522 depending on the circumstances of the violation.

(7) **When it is unlawful to buy or land crab from the ocean without a crab vessel inspection.** It is unlawful for any fisher or wholesale fish buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel that has not been issued a Washington crab vessel inspection certificate during the first 30 days following the opening of a coastal crab season.

(a) Authorized department personnel will perform inspections for Washington crab vessel inspection certificates no earlier than 12 hours prior to the opening of the coastal crab season and during the following 30-day period.

(b) A Washington crab vessel inspection certificate may be issued to vessels made available for inspection at a Washington coastal port that:

- (i) Are properly licensed commercial crab fishing; and
- (ii) Contain no Dungeness crab on board the vessel.

(8) Violation of subsection (7) of this section is a gross misdemeanor, punishable under RCW 77.15.550 (1)(a) Violation of commercial fishing area or time—Penalty.

(9) **Barging of crab pots by undesignated vessels.** It is unlawful for a vessel not designated on a Dungeness crab coastal or Puget Sound fishery license to deploy crab pot gear except under the following conditions:

(a) **Coastal**

(i) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(ii) The undesignated vessel carries no more than 250 crab pots at any one time; and

(iii) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(b) **Puget Sound**

(i) The vessel deploys pot gear only during the 48-hour period immediately following the initial season opening date and time;

(ii) The primary or alternate operator designated on the license associated with the barged gear is on board the nondesignated vessel ("barge" vessel) while the gear is being deployed; and

(iii) The Puget Sound commercial crab license holder who owns the gear intended for barging has provided notice to the department via email at [crab.report@dfw.wa.gov](mailto:crab.report@dfw.wa.gov) at least 24 hours in advance of the fishery opening date. Notice must include the following information:

(A) Name and license number(s) of the owner of the gear being barged;

(B) Name of the designated primary operator, if different from the licensed owner;

(C) Name of the alternate operator, if used to deploy pots from a nondesignated vessel;

(D) Buoy brand number and number of pots to be deployed from a nondesignated vessel;

(E) Name and identification numbers (WN and/or Coast Guard) of the nondesignated vessel;

(F) Puget Sound Crab Management Region or set location.

(10) Violation of subsection (9) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(11) **Storing crab prior to delivery to an original receiver, Puget Sound.** It is unlawful for a Puget Sound commercial crab license holder to store crab off-vessel prior to delivery to an original receiver, except under the following conditions:

(a) It is unlawful to store crab, off-vessel or on-vessel, for more than 10 days (~~(prior to)~~) without making a delivery to an original receiver.

(b) All crab that have been removed from a vessel and are not immediately delivered to an original receiver must be stored in containers labeled with the following:

- (i) Fisher name;
- (ii) WDFW-issued vessel ID number;
- (iii) Puget Sound commercial crab license number;
- (iv) Date of harvest;

~~((ii) An estimate of pounds of crab contained;~~

~~(iii) Either the)) (v) The quantity of pounds of crab retained by Crab Management Region or by Marine Fish-Shellfish (MFSF) Catch Reporting Area ((or the Crab Management Region from which the catch originated));~~

~~((iv)) (vi) Containers used for storing crab removed from a vessel and not delivered to an original receiver by 5:00 p.m. of the day following the day of harvest must additionally be labeled with the commercial fish and shellfish transportation ticket number(s).~~

(c) Storage of crab is subject to the reporting requirements described in WAC 220-352-340.

(12) **Electronic monitoring system (EM system)** is defined as a vessel monitoring system that automatically determines a vessel's position, records individual pot retrieval via a hydraulic pressure reading, and transmits this information to an EM system service provider. The service provider receives the transmission and provides automated data access to the Pacific States Marine Fisheries Commission (PSMFC) in a format consistent with PSMFC specifications where it is available to WDFW for management and enforcement.

(a) The department has published a compliance guide for the EM system which provides additional information and instructions to follow in complying with this regulation and is incorporated by reference herein. The guide can be obtained by contacting the EM program manager: 48 Devonshire Road, Montesano, WA 98563; phone: 360-249-4628; email: coastal.crab.EM@dfw.wa.gov or wdfw.wa.gov/fishing/commercial/crab/coastal.

(b) It is unlawful for the operator of a vessel designated to a coastal Dungeness crab license that is used to commercial fish for coastal Dungeness crab as defined by WAC 220-340-400 to fail to:

(i) Obtain an EM system that is capable of recording and transmitting vessel location and hydraulic pressure readings and have it installed on board the vessel designated to the coastal Dungeness crab license. The operating requirements for the EM system are as follows:

(A) The EM system must accurately record the vessel's position at least once every minute.

(B) The EM system must transmit the vessel location data to the service provider at least once every hour.

(C) A hydraulic pressure sensor must be installed on the main high pressure supply line between the hydraulic pump and the crab block of a vessel that controls it such that recorded pressure readings show pressure increases during pot hauling activity.

(D) The hydraulic pressure sensor must accurately record a pressure reading at least once every 10 seconds.

(E) The EM system must transmit hydraulic pressure sensor readings at least once every hour.

(F) If the EM system can determine when a vessel is moored, the EM system may automatically decrease the position and hydraulic pressure recording rate to at least once every hour.

(G) The EM system must be able to store vessel position and hydraulic pressure data in the event of service coverage interruption. Once service is restored, the system must transmit stored data to the service provider.

(H) The EM system must include a feedback mechanism to indicate to the vessel operator that the system is operational.

(ii) Arrange for an EM system service provider to receive and relay transmissions to Pacific States Marine Fisheries Commission (PSMFC) in a format consistent with PSMFC specifications.

(A) The following data fields must be provided to the PSMFC whenever a new system is installed, or new data transmissions begin: Vessel coast guard number, WDFW vessel registration number, state of registration, serial number or unique identifier linked to the EM system, EM service provider name, name of the make and model of the EM system, date the system was installed or started transmitting data, date the system was removed or stopped transmitting data.

(B) The following data fields must be recorded by the EM system and relayed to the PSMFC every hour: Serial number or unique identifier linked to the EM system, date, time, latitude, longitude, pressure reading from sensor, speed, vessel name.

(iii) Activate the EM system and submit an EM system activation report to WDFW before the vessel is used to fish in the coastal commercial Dungeness fishery. Commercial crab fishing is defined in WAC 220-340-400. An activation report must be submitted to WDFW under the following circumstances:

(A) Annually before gear is deployed at the start of each coastal commercial Dungeness crab season.

(B) When an EM system is reactivated following a reinstallation.

(C) When there is a change in service provider.

(D) When any changes are made to the information required in the EM activation report.

(iv) Operate and maintain the EM system in good working order continuously, 24 hours a day when a vessel is fishing for coastal commercial crab, as defined in WAC 220-340-400, in the Washington coastal commercial Dungeness crab fishery unless the vessel is operating under an exemption provided under (b) (v) (A), (B), (C), or (b) (vi) (A) or (B) of this subsection.

(v) Request and secure an EM exemption permit when there is an interruption in the EM system function and comply with the requirements of this subsection and the terms of the EM exemption permit. Vessels required to operate and maintain an EM system under (b) of this subsection may be temporarily exempt from this requirement if a valid WDFW EM exemption permit is received from WDFW. An exemption is only authorized for the period specified on the permit. The exemption permits are as follows:

(A) EM system failure exemption permit. Vessels required to operate and maintain an EM system under (b) of this subsection may be temporarily exempt from EM system requirements in situations due to an EM system failure, or hydraulic pressure sensor failure by obtaining an EM system failure exemption permit. In the event a system failure exemption permit is granted by WDFW, the operator of the vessel must submit a harvest logbook per WAC 220-340-460 and use electronic navigational equipment (including, but not limited to, chart plotters, hand-held global positioning systems, etc.) to record a track line of the vessel's movements while commercial crab fishing, and track line information must be made available to WDFW officers or authorized employees immediately upon request and retained for 30 days. Requests for multiple exemption permits for a single vessel within a season will be reviewed and approved at the discretion of WDFW.

(B) Haul out exemption permit. Vessels required to operate and maintain an EM system under (b) of this subsection may be temporarily

exempted from EM requirements when it is anticipated that a vessel's EM system will be inoperable due to removing the vessel from the water for less than 14 days and coastal commercial Dungeness crab gear will remain lawfully deployed by obtaining a "Haul Out Exemption Permit" from WDFW.

(C) Emergency exemption permit: Vessels required to operate and maintain an EM system under (b) of this subsection may be exempt from EM requirements in emergency situations rendering the vessel's EM system inoperable for less than 14 days including, but not limited to, fire, flooding, or extensive physical damage to critical areas of the vessel by obtaining an emergency exemption permit from WDFW.

(D) To request an exemption permit described in (b)(v) of this subsection, a vessel owner must contact WDFW. For an exemption permit to be valid, a request must be received by WDFW as soon as it is apparent that there is a system failure or emergency or at least 2 hours before a haul out exemption is needed.

(vi) Submit a long-term departure exemption report. A vessel that is required to operate and maintain an EM system under (b) of this subsection may be exempt from this requirement if a long-term departure exemption report is submitted to WDFW in compliance with all the conditions described in (b)(vi)(A), (B), or (C) of this subsection. The basis for a long-term departure exemption report are as follows:

(A) Suspension of fishing operations. Vessels required to operate and maintain an EM system under (b) of this subsection may be exempted from EM system requirements when the vessel has concluded fishing for coastal commercial Dungeness crab for the current season or has suspended fishing operations such that all commercial gear is removed from waters open to the coastal Dungeness crab fishery.

(B) Emergency. Vessels required to operate and maintain an EM system under (b) of this subsection may be exempted from EM system requirements in emergency situations rendering the vessel's EM system inoperable for more than 14 days including, but not limited to, fire, flooding, or extensive physical damage to critical areas of the vessel, and the vessel will not resume fishing for coastal commercial Dungeness crab for the remainder of the current season.

(C) Long-term departure reports must be received by WDFW no later than 24 hours after a vessel has concluded fishing for the season.

(vii) Contact WDFW immediately if transmission of position and pressure sensor readings have been interrupted and no more than 24 hours after being notified by WDFW that position and pressure sensor readings are not being received, by notifying the EM program manager, phone: 360-249-4628, or email [coastal.crab.EM@dfw.wa.gov](mailto:coastal.crab.EM@dfw.wa.gov).

(viii) Make the EM system available for inspection by WDFW enforcement personnel, USCG personnel, or any authorized employee upon request.

(ix) Ensure that the EM system or signal is not interfered with, tampered with, disabled, or destroyed and is operated and maintained according to the EM system provider instructions.

(x) Pay all charges levied by the service provider as necessary to ensure continuous operation of the EM system.

(13) Violation of subsection (12) of this section is a gross misdemeanor punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.



AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-340-430 Commercial crab fishery—Gear requirements. (1) Buoy tag and pot tag required.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) and (c) of this subsection. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-340-440 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters, except if authorized by permit issued by the director, each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, except if authorized by permit issued by the director, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) All remaining, undeployed buoy tags per license per region must be onboard the designated vessel and available for immediate inspection by the department, except under the following conditions: The holder or alternate operator of a Puget Sound crab license has declared, as permitted under (f) of this subsection, that deployed tags have been lost and are unrecoverable, under penalty of perjury, and

has been granted permission by the department to use undeployed buoy tags as a replacement.

(f) Replacement crab buoy tags.

(i) Puget Sound: (~~The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.~~) Puget Sound commercial crab license holders are required to request permission to use undeployed buoy tags in the event deployed buoy tags are lost and are unrecoverable. Requests to use undeployed buoy tags must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss. Requests must be made using a department provided electronic form.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery in the case of extraordinary loss or on a case-by-case basis. Replacement buoy tags will not be issued in excess of the license holder's permanent pot limit.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached, unless otherwise authorized by permit issued by the director.

(b) It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy. The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the excess line from floating on the water's surface.

(c) No buoys attached to Puget Sound or coastal commercial crab gear (~~in Puget Sound~~) may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-330-020.

(d) It is unlawful for any coastal or Puget Sound commercial Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. The license holder, or alternate operator, must register the buoy brand and buoy color(s) to be used with the license each crab season using the WDFW online registration form. In the event that a license is transferred to another vessel or owner in the same season, the license holder must reregister the buoy brand and buoy color(s) to be used with the license for the remainder of that crab season. A license holder may register only one unique buoy brand and one unique buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations, unless otherwise authorized by permit issued from the director.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

**(6) ~~((Coastal)) Commercial crab fishery line requirements.~~**

(a) All crab pots used in ~~((the coastal))~~ any Dungeness crab fishery shall be set up to use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(b)(i) It is unlawful for a coastal Dungeness crab fishery license holder to use line that connects the main buoy to the crab pot that is not marked sufficiently to identify it as gear used exclusively in the Washington coastal Dungeness crab fishery.

(ii) For each shellfish pot used in the Washington coastal commercial Dungeness crab fishery and rigged with line, that line must be marked with no less than 12 continuous inches of red in at least two places. At a minimum, 12 continuous inches of line must be marked in red, no more than one fathom from the main buoy and no more than one fathom from the pot.

(7) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-340-460 Commercial crab fishery—Coastal Dungeness crab logbook requirements.** (1) It is unlawful for any vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery without a fully operational electronic monitoring system to fail to have in possession, and to complete a department-issued paper or a department-approved electronic logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, the Columbia River, or the Pacific Ocean waters for all crab deliveries to a Washington port. Fully operational means the electronic monitoring system is collecting, storing, and transmitting data per WAC 220-340-420(12). For the purposes of this section, "delivery" is defined as provided in RCW 77.65.210.

(2) It is unlawful for any vessel operator engaged in fishing without a fully operational electronic monitoring system to fail to comply with the following method and time frame related to harvest logbook submittal and record keeping:

(a) The department must receive a copy of the completed logbook sheets or electronic fields within ~~((ten))~~ 10 days following any ~~((calendar month in which fishing occurred))~~ landing made by a vessel while fishing for Dungeness crab in the coastal commercial fishery without a fully operational electronic monitoring system. Completed Dungeness crab harvest ~~((logs))~~ logbooks must be ~~((sent))~~ submitted to the ~~((following address:))~~ Washington department of fish and wildlife ~~((, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd., Montesano, WA 98563))~~ using a WDFW logbook drop box or the following electronic mail address: coastal.crab.EM@dfw.wa.gov.

(b) Vessel operators engaged in fishing for Dungeness crab in the coastal commercial fishery and without a fully operational electronic monitoring system must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting ~~((logs))~~ harvest logbooks to the department must maintain a copy of

all submitted (~~logs~~) harvest logbooks for no less than three years after the fishing activity ended.

(c) Vessel operators can obtain paper logbooks by contacting the department's coastal Dungeness crab manager at 360-249-4628 or at coastal.crab.EM@dfw.wa.gov.

(3) A violation of this section is an infraction, punishable under RCW 77.15.160.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-340-510 Commercial ocean spot shrimp pot fishery—Coastal waters.** It is unlawful to fish for, possess, or deliver ocean spot shrimp (*Pandalus platyceros*) taken for commercial purposes from state waters west of the Bonilla-Tatoosh line, or from offshore waters, except as provided for in this section:

#### **License and area**

(1) It is unlawful to fish for, possess, or deliver spot shrimp taken for commercial purposes from state waters west of the Bonilla-Tatoosh line, or from offshore waters, unless the fisher has a valid Washington-coastal spot shrimp pot fishery license. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

(2) It is unlawful to fish for or possess spot shrimp or to set spot shrimp gear in waters of the Pacific Ocean adjacent to the state of Oregon without the licenses or permits required to commercially fish for spot shrimp within the state waters of Oregon. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Season**

(3) It is unlawful to fish for, take, or possess spot shrimp on board a commercial fishing vessel, except from March 15 through September 15 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(4) The total allowable catch of spot shrimp taken from waters west of the Bonilla-Tatoosh line and from offshore waters during a calendar year is 200,000 pounds round weight. Of this 200,000 pounds round weight, no more than 100,000 pounds can be taken south of 47 degrees 04.00' N. latitude, and no more than 100,000 pounds can be taken north of 47 degrees 04.00' N. latitude.

#### **Gear**

(5) It is unlawful to fish with spot shrimp pot gear for commercial purposes if the pots exceed a maximum 153-inch bottom perimeter and a maximum 24-inch height. It is unlawful to possess spot shrimp taken with spot shrimp pot gear that exceeds a maximum 153-inch bottom perimeter and a maximum 24-inch height.

(a) Shrimp pot gear must be constructed with net webbing or rigid mesh. At least 50 percent of the net webbing or mesh covering the sides of the pot must easily allow passage of a seven-eighths inch diameter dowel.

(b) Pot gear is required to have an escape mechanism as provided for in WAC 220-340-060.

(c) Set line end marker buoys must be floating and visible on the surface of the water, equipped with a pole, flag, radar reflector, and operating light, and marked with the clear identification of the license holder and the vessel designated on the coastal spot shrimp pot license.

(d) Fishers shall use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(6) It is unlawful to fish for spot shrimp for commercial purposes with more than a maximum of 500 pots. It is unlawful to possess spot shrimp taken for commercial purposes with more than a maximum of 500 pots.

(7) It is unlawful to use gear that has one or more line marks or to use multicolor line consistent with requirements for any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

(8) A violation of subsection (5) or (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

#### **Incidental catch**

~~((8))~~ (9) It is unlawful for persons fishing in any coastal spot shrimp fishery to deliver spot shrimp while having on board the fishing vessel any bottomfish taken in the coastal bottomfish fishery under WAC 220-355-100.

~~((9))~~ (10) It is unlawful to retain any species of finfish or shellfish taken with spot shrimp pot gear, except octopus, squid, or up to 50 pounds round weight of other shrimp species taken incidentally with spot shrimp pot gear.

~~((10))~~ (11) A violation of subsection ~~((8))~~ (9) or ~~((9))~~ (10) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Harvest logs**

~~((11))~~ (12) It is unlawful for any spot shrimp pot fishery license holder or vessel operator engaged in fishing for spot shrimp in the coastal commercial spot shrimp fishery to fail to complete a department-issued harvest log for all fishing activity in state or off-shore waters.

~~((12))~~ (13) It is unlawful for any vessel operator engaged in fishing for spot shrimp for commercial purposes to fail to comply with the following method and time frame related to harvest log submittal and recordkeeping:

(a) Completed harvest logs must be submitted so that the department receives them within ~~((ten))~~ 10 days following any calendar month in which fishing occurred. Washington-coastal spot shrimp pot license holders can submit the completed harvest logs to a WDFW employee upon request, or mail the completed harvest logs to Washington Department of Fish and Wildlife, Attention: Coastal Spot Shrimp Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Washington-coastal spot shrimp pot license holders or vessel operators engaged in fishing for spot shrimp in the coastal commercial fishery must complete a harvest log entry for each day fished, prior to offloading the spot shrimp. Washington-coastal spot shrimp pot li-

cense holders must maintain a copy of all submitted harvest log entries for no less than three years after the fishing activity ended.

(c) Washington-coastal spot shrimp pot license holders or vessel operators can obtain a harvest logbook by contacting the department's coastal spot shrimp manager at 360-249-4628.

~~((13))~~ (14) A violation of subsection ~~((11))~~ (12) or ~~((12))~~ (13) of this section is a misdemeanor, punishable under RCW 77.15.280, Reporting of fish or wildlife harvest—Rules violation—Penalty.

#### Permit

~~((14))~~ (15) It is unlawful to fish for, retain, land, or deliver spot shrimp taken with pot gear for commercial purposes without a valid coastal spot shrimp pot fishery permit.

~~((15))~~ (16) It is unlawful to take, retain, land, or deliver any spot shrimp taken with pot gear without complying with all provisions of a coastal spot shrimp pot fishery permit.

~~((16))~~ (17) A violation of subsection ~~((14))~~ (15) or ~~((15))~~ (16) of this section is punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

### **WAC 220-340-520 Commercial shrimp pot fishery—Puget Sound.**

#### License

(1) It is unlawful to take, fish for, land, or deliver shrimp taken for commercial purposes with pot gear from Puget Sound waters without a valid Puget Sound shrimp pot license.

A Puget Sound shrimp pot license will only be issued to an individual who is a natural person, and this person shall be the primary operator. Holders of Puget Sound shrimp pot licenses may designate a single alternate operator per license.

#### Pot Gear and area

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear except during seasons opened by emergency rule.

~~((Gear restrictions in all areas, maximum 100 pots per fisher))~~ In all areas fishers are limited to a maximum of 100 spot shrimp pots, as defined in subsection (5)(d) of this section, and a maximum of 100 nonspot shrimp pots, as defined in subsection (5)(e) of this section, except for dual licensees as provided for in RCW 77.70.410.

(4) Buoy requirements, in all areas:

(a) Buoys must be solid orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.

(b) Buoys must be marked with the clear identification of the license holder and the vessel designated on the Puget Sound shrimp pot license.

(c) When two or more shrimp pots are attached to a common ground line, the number and type of pots (spot shrimp or nonspot shrimp pot) so attached must be clearly labeled on the required buoy.

(d) Fishers shall use only the amount of line reasonably necessary to compensate for tides, currents, and weather. The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.

(e) It is unlawful to use gear that has one or more line marks or to use multicolor line consistent with requirements for any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

(5) Pot requirements, in all areas:

(a) A shrimp pot may not exceed a maximum of 153-inch bottom perimeter and a maximum of 24-inch height.

(b) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(c) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(d) Spot shrimp may only be harvested using pots with a minimum mesh size of one inch. Mesh size of one inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(e) Nonspot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(6) Harvest restrictions, all areas:

(a) It is unlawful to set or pull shrimp pot gear from one hour after official sunset to one hour before official sunrise.

~~(b) ((It is unlawful to deploy spot shrimp pots and nonspot shrimp pots concurrently within the same Catch Reporting Area, with the following exceptions:~~

~~(i) Spot and nonspot shrimp pots may be concurrently deployed in Catch Area 23A but not within the same subarea (23A-E, 23A-W, 23A-C, or 23A-S) concurrently.~~

~~(ii) Nonspot pots may be deployed within Sequim Bay CSMA (WAC 220-320-120) concurrently with spot shrimp pots deployed in the remaining portion of Catch Area 25A outside of Sequim Bay CSMA.~~

~~(iii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.~~

~~(e))~~ Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and an estimate of total pounds that are being targeted prior to the deployment of any shrimp gear by email or text message to shrimp.report@dfw.wa.gov, or by using the Puget Sound commercial shrimp reporting website.

~~((d))~~ (c) It is unlawful to harvest nonspot and spot shrimp in the same day.

~~((e) It is unlawful to harvest shrimp in more than one catch area per day, except for concurrent pot deployment described in (b) of this subsection.~~

~~(f))~~ (d) Nonspot shrimp pot harvest restrictions:

(i) Harvest of nonspot shrimp is not permitted deeper than 175 feet in Shrimp Management ((Area)) Region 2E.

(ii) Harvest of nonspot shrimp is not permitted deeper than 175 feet in Shrimp Management Subregion 1A.

(iii) Harvest of nonspot shrimp is not permitted deeper than 175 feet in Catch Area 23A including the corresponding shrimp subareas (23A-E, 23A-W, 23A-S, 23A-C).

(iv) Harvest of nonspot shrimp is not permitted deeper than 150 feet in Shrimp Management Region 2W.

**((Reporting**

~~(7) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a wholesale fish buyer, or if transferred at sea, without transfer to a wholesale fish buyer. A fisher who is a wholesale fish buyer or a limited fish seller may complete and return a fish receiving ticket to satisfy the requirements of this subsection.))~~

**OTS-4780.3**

AMENDATORY SECTION (Amending WSR 21-24-031, filed 11/22/21, effective 1/1/22)

**WAC 220-352-060 Completion, submission, distribution, and retention of copies of nontreaty fish receiving tickets.** (1) Original receivers must complete state of Washington nontreaty fish receiving tickets by recording the delivery amount using the appropriate weight or quantity measure for all fish or shellfish at the conclusion of the offload and prior to the fish or shellfish being processed or transported away from the delivery site.

(2) Fish receiving tickets paper forms must be made out in quadruplicate (four copies) at the time of delivery of fish or shellfish. Original receivers must use fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued. Original receivers reporting using paper forms must:

(a) Mail the state copy (green) of the fish receiving ticket to the department of fish and wildlife (department), except for original receivers who submit a fish receiving ticket in portable document format (PDF) to satisfy quick reporting requirements for salmon and sturgeon under WAC 220-352-315, 220-352-320, 220-352-325 and 220-352-330. The department must receive the state copy no later than the sixth working day after the day the original receiver completes the fish ticket.

(b) Retain the dealer copies (white and yellow) of the fish receiving ticket for his or her records.

(c) The deliverer must retain the fisher copy (gold) for his or her records.



(3) Original receivers who are required to submit fish receiving tickets using an electronic form under WAC 220-352-035(2) must:

(a) (i) ~~((Submit the ticket within 24 hours of completion of the delivery if required to report electronically under WAC 220-352-035(2))~~ For deliveries completed on a mobile device, original receivers are required to fill out an electronic fish ticket form at the delivery location and submit it immediately following the completion of the delivery of fish or shellfish before leaving the delivery location.

In the event of a cellular or broadband outage or lack of service at the delivery site, the original receiver must submit the ticket immediately upon regaining access to a cellular or broadband connection following the completion of the delivery.

(ii) For deliveries of fish and shellfish made to original receivers using a nonmobile device or desktop electronic fish ticket form, the original receiver must submit the ticket within 24 hours after the delivery is completed except:

~~((iii))~~ For deliveries ((made by vessels fishing and delivering under a)) of coastal Dungeness crab ((license)), the original receiver must submit the ticket by the close of the next business day after the delivery is ((completed)) complete.

(b) Submit the ticket in compliance with the timely reporting conditions set forth in the electronic fish receiving ticket reporting agreement if reporting voluntarily under WAC 220-352-035(3).

(4) Original receivers who submit fish receiving tickets using an electronic form must print and retain a copy of the completed electronic fish receiving ticket for three years unless:

(a) The fish receiving ticket is signed electronically under WAC 220-352-140 (4)(c) and an electronic copy of the signed and completed fish receiving ticket is available to the department including WDFW officers upon request for a minimum of three years; or

(b) An alternative fish ticket retention requirement is specified in the electronic fish receiving ticket agreement governing the voluntary reporting of the delivery.

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

**WAC 220-352-230 Commercial fish and shellfish transportation ticket.** (1) If fish or shellfish are transported from a vessel or catch site (if the fishery does not require a vessel) prior to completing a fish receiving ticket, the fisher must complete a commercial fish and shellfish transportation ticket as required by this section. The transportation ticket must accompany the fish or shellfish until the fish receiving ticket is completed. The purpose of this rule is to ensure catch accountability when fish or shellfish are transported by the fisher or his or her designee before a fish receiving ticket is required to be completed. Fish receiving ticket requirements under this chapter are still in effect.

(2) The fisher must complete the department provided transportation ticket with the following information:

(a) The name of the fisher who caught the fish or shellfish.

(b) The fisher's ~~((vessel registration))~~ WDFW-issued vessel ID number.

(c) The signature of the fisher or additional operator.

- (d) The name of the transporter.
- (e) The catch area where the fish or shellfish were caught.
- (f) The species of fish or shellfish being transported.
- (g) The individual number or approximate pounds of fish or shellfish being transported, as required under WAC 220-352-040.
- (h) The date(s) the fish or shellfish were harvested.

(3) In cases where the fisher does not deliver the fish or shellfish to an original receiver within twenty-four hours after offloading, the fisher must send a copy of the completed transportation ticket to the department. The completed ticket must arrive within the sixth working day. Once the fisher delivers the fish or shellfish to the original receiver, a copy of the transportation ticket must be attached or the ticket number must be written on the fish receiving ticket.

(4) In cases where an agent of the fisher delivers fish or shellfish with a transportation ticket to the original receiver, the original receiver must mail the transportation ticket, together with the state copy of the fish receiving ticket as required in WAC 220-352-060, 220-352-090, and 220-352-130. If the commercial fisher delivers and signs the fish receiving ticket, only the fish receiving ticket must be mailed in, and the transportation ticket is not required to be submitted with it.

Transportation tickets completed for deliveries reported using electronic fish receiving ticket forms should be attached to the printed and signed copy of the form, as required by WAC 220-352-140(5).

(5) Any person transporting commercially taken fish or shellfish or commercial quantities of fish or shellfish must provide a transportation ticket for inspection upon demand by a fish and wildlife officer.

(6) The provisions of this section do not apply to:

- (a) Fish and shellfish purchased at retail, provided the purchaser has, in his or her possession, a sales receipt documenting the purchase;
- (b) Fish or shellfish for which a fish receiving ticket has been completed and a copy of the fish receiving ticket is in the possession of the person transporting;
- (c) Fish or shellfish being transported by the department;
- (d) Hatchery carcass sales;
- (e) Private sector cultured aquatic products in transport;
- (f) Fish or shellfish being transported on a completed Oregon transportation ticket, provided that the fish were caught in the concurrent waters of the Columbia River and were landed on Washington's shore; and
- (g) Fish or shellfish being transported in the catching vessel, provided that the vessel is not being transported or towed over land.

AMENDATORY SECTION (Amending WSR 22-08-048, filed 3/31/22, effective 5/1/22)

**WAC 220-352-340 Puget Sound crab—Additional reporting requirements.** (1) **License registration:** Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region to which gear will be deployed for each license they hold prior to the fishery opening date.

- (a) Registrations must be updated when gear moves between areas.
- (b) The department must be notified if gear is not going to be deployed for a period of 72 hours or longer.
- (c) Registrations must be made by registering via the WDFW Puget Sound commercial crabbing web page or via email or text to crab.report@dfw.wa.gov.
- (d) Reports must include the following information:
- (i) Vessel operator name;
  - (ii) Vessel name and WDFW-issued vessel (~~(registration)~~) ID number;
  - (iii) Permit number(s) to be fished;
  - (iv) Crab Management Region to be fished;
  - (v) Gear deployment date.
- (2) **Quick reports:** Any person originally receiving or purchasing Dungeness crab taken from Puget Sound by nontreaty fishers must report to the department the previous day's purchases by 10:00 a.m. the following day.
- (a) Reports must be sent by email or text message to crab.report@dfw.wa.gov, or by using the Puget Sound commercial crab reporting website.
- (b) For crab originally received or purchased by a licensed fish buyer, reports must include, for each fish receiving ticket completed by a licensed fish buyer:
- (i) The name and department-issued license number of the whole-sale fish buyer or limited fish seller;
  - (ii) The phone number or email address of the wholesale fish buyer or limited fish seller;
  - (iii) The date of landing of crab; and
  - (iv) The quantity of pounds of crab delivered, by Crab Management Region (WAC 220-320-110) or by Marine Fish-Shellfish Management and Catch Reporting Area (WAC 220-301-040).
- (c) Receivers who complete and submit an electronic fish receiving ticket form, which is also received by the department, per the provisions of WAC 220-352-035 are exempted from the requirements of this subsection.
- (3) **Shellfish transportation tickets:** If crab are transported from a vessel prior to completing a fish receiving ticket and not delivered to an original receiver by 5:00 p.m. on the day following the day of harvest, the fisher must complete and submit a commercial fish and shellfish transportation ticket per the provisions of WAC 220-352-230 and submit a transported crab quick report to the department.
- (a) "Transported" is intended to include crab stored off, but in close proximity to, a vessel with Puget Sound commercial crab license beyond 5:00 p.m. on the day following the day of harvest and prior to delivery to an original receiver.
- (b) (~~(Separate)~~) "Stored" is intended to include crab removed from, and stored in close proximity to, a vessel with a Puget Sound commercial crab license prior to delivery to an original receiver up until 5:00 p.m. the day following the day of harvest.
- (c) Each day's harvest that is not delivered to a licensed fish buyer by 5:00 p.m. on the day following the day of harvest must be recorded separately on a commercial fish and shellfish transportation ticket(s) (~~must be filled out for each day's harvest that is not delivered to a licensed fish buyer by 5:00 p.m. on the day following the day of harvest~~).

(4) **Stored or transported crab quick reports:** Stored or transported crab quick reports must be submitted by the fisher and received by the department by 10:00 a.m. the day following the day crab are off-loaded from the vessel (~~(for storage)~~). Reports must be made (~~(on-line)~~) using the department-provided electronic forms on the Puget Sound commercial crab reporting website, or by email or text to crab.report@dfw.wa.gov. Reports must include:

- (a) (~~(The name of the fisher who caught the crab)~~) Fisher name;
- (b) (~~(The)~~) WDFW-issued vessel ID number;
- (c) Puget Sound commercial crab license number;
- (d) Date of harvest ((of the crab));
- (~~(e)~~) ~~Puget Sound commercial license number of the fisher who caught the crab;~~
- (~~d~~) ~~The vessel ID from which the crab were harvested;~~
- (~~e~~) ~~The number of containers used to store the crab;~~
- (~~f~~) ~~The approximate weight of the crab retained;~~
- (~~g~~) ~~Catch Reporting Area of crab harvested;~~
- (~~h~~) ~~(e) The quantity of pounds of crab retained by Crab Management Region or by Marine Fish-Shellfish ((Management))~~ Catch Reporting Area; (~~and~~
- (~~i~~) ~~(f) Shellfish transportation ticket number(s).~~

(5) (~~(Delivery of crab previously retained beyond 5:00 p.m. on the day following the day of harvest (transported crab):~~) **Sale of stored or transported crab quick report:** Commercial harvesters of crab in Puget Sound must report (~~(the delivery to an original receiver of all transported crab)~~) to the department the delivery of stored or transported crab to an original receiver. Reports are due by 10:00 a.m. the day following the delivery (~~(to an original receiver)~~). Reports must be made using the department-provided electronic forms on the Puget Sound commercial crab reporting website, or by email or text to crab.report@dfw.wa.gov. Reports must contain:

- (a) Fisher name;
- (b) WDFW-issued vessel ID number;
- (c) Puget Sound commercial crab license number;
- (d) Date of sale;
- (e) Dealer name;
- (f) Commercial shellfish transportation ticket number(s) associated with the delivered crab; and
- (g) Fish receiving ticket number(s) corresponding to landing date of delivery.

#### OTS-4647.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-360-220 Hagfish pot trial fishery—Season and gear.** It is unlawful to fish for hagfish for commercial purposes except as provided in this section:

- (1) Season - Open year-round to hagfish pot gear only.
- (2) Area - Open only in Pacific Ocean waters greater than 50 fathoms in depth.

(3) Gear restrictions:

(a) Maximum of 100 hagfish pots per permit. Pots may be fished individually or on a common ground line.

(b) Hagfish pot gear requirements:

(i) Maximum entrance tunnel size of eleven square inches. Entrance tunnels may be of any shape.

(ii) Each pot is required to have at least one escape exit of at least nine and one-half square inches in opening and which must be constructed of 120 thread size or smaller untreated cotton twine.

(c) Buoy requirements: Hag fish pot gear must be buoyed. Marker buoys must be floating and visible on the surface of the water, equipped with a pole, flag, radar reflector and operating light, and marked with the clear identification of the permittee. If ground lines are used, ground line end marker buoys must display the number of pots on the ground line.

It is unlawful to use gear that has one or more line marks or to use multicolor line consistent with requirements for any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

**WSR 23-22-111**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed October 31, 2023, 12:02 p.m., effective November 2, 2023]

Effective Date of Rule: November 2, 2023 (two business days after filing).

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule implements a part of the federal SECURE Act 2.0 that is already in effect, so the department of retirement systems is using an expedited effectiveness date of two business days after filing as permitted under RCW 34.05.380 (3)(a).

Purpose: To implement the requirement from the federal SECURE Act 2.0 that allows former public safety officers to deduct \$3,000 in medical premiums directly from their taxes instead of needing to deduct premiums from their pension.

Citation of Rules Affected by this Order: Amending WAC 415-02-100.

Statutory Authority for Adoption: SECURE Act 2.0, part of the Consolidated Appropriations Act of 2023 (P.L. 117-328); and RCW 41.50.050.

Adopted under notice filed as WSR 23-19-101 on September 20, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, 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 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 1, 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: October 31, 2023.

Mike Ricchio  
Assistant Director  
Administrative Services Division

**OTS-4869.1**

AMENDATORY SECTION (Amending WSR 07-22-026, filed 10/26/07, effective 11/26/07)

**WAC 415-02-100 Can I have my insurance premiums deducted from my retirement allowance?** (1) The department will ~~((only))~~ accept requests by retirees to deduct insurance premiums from retirement allowances if ~~((one of the following conditions is met:~~

~~(a))~~ the retiree's insurance provider has at least ~~((twenty-five))~~ 25 such retirees enrolled in a deduction program and has an established agreement with the department ~~((; or~~

~~(b) The retiree was an eligible public safety officer, as defined by Internal Revenue Code (IRC) 402(1), who has elected to participate in the federal tax savings program on health benefits for public safety officers under IRC 402(1). The retiree's insurance provider must have an established agreement with the department).~~

~~(2) ((For insurance providers under subsection (1)(a) of this section,))~~ The department may suspend deductions if the provider has fewer than ~~((twenty-five))~~ 25 participants and remains under ~~((twenty-five))~~ 25 participants for ~~((ninety))~~ more than 90 days.

(3) This rule applies to all retirement systems administered by the department.

## WSR 23-22-112

## PERMANENT RULES

## DEPARTMENT OF CORRECTIONS

[Filed October 31, 2023, 1:36 p.m., effective December 1, 2023]

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

Purpose: Make administrative changes as necessary to ensure WAC complies with department policy. The purpose for making changes to this section of the WAC is to remove work release from the applicability. This change allows for the update to chapter 137-56 WAC, which will separate partial and total confinement, include all partial confinement programs, and identify progressive discipline within partial confinement.

Citation of Rules Affected by this Order: Amending WAC 137-25-010, 137-25-020 and 137-25-030; and WAC 137-28-140, 137-28-160, 137-28-180, 137-28-190, 137-28-200, 137-28-210, 137-28-220, 137-28-230, 137-28-240, 137-28-250, 137-28-270, 137-28-285, 137-28-290, 137-28-295, 137-28-300, 137-28-305, 137-28-310, 137-28-350, 137-28-360, 137-28-370, 137-28-380, 137-28-390, and 137-28-410.

Statutory Authority for Adoption: RCW 79.01.090.

Adopted under notice filed as WSR 23-17-100 on August 16, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 26, Repealed 0.

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

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Date Adopted: October 31, 2023.

Cheryl Strange  
Secretary

**OTS-4729.1**

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-25-010 Application of chapter.** The definitions and serious violations described herein apply to (~~offenders~~) incarcerated individuals committed to both total and partial confinement facilities.



AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-25-020 Definitions.** For the purposes of this chapter, the following terms have the following meanings:

(1) Aggravated assault - An assault resulting in a documented physical injury requiring treatment in a medical facility/treatment center by medical staff including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered treatment.

(2) Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

(3) Attempting - Putting forth an effort to commit any violation.

(4) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

(5) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(6) Facility - A correctional facility as defined in RCW 72.09.015.

(7) Infraction - A term designating the procedures and documents related to ((offender)) incarcerated individual misconduct and the facility disciplinary process.

(8) ((Offender)) Incarcerated individual - An inmate as defined in RCW 72.09.015.

(9) Possessing - When an item(s) is found on an ((offender)) incarcerated individual or in an ((offender's)) incarcerated individual's assigned area of responsibility.

(10) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration; genital or anal contact/penetration with an inanimate object; masturbation; sadistic/masochistic abuse; bondage; bestiality; and/or bodily excretory behavior which appears to be sexual in nature.

(11) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without ((his/her)) their consent or when ((he/she is)) they are unable to consent or refuse:

(a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

(b) Contact between the mouth and the penis, vagina, or anus.

(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.

(12) Sexual contact against a staff member - Contact against a staff member without ((his/her)) their consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.

(13) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.

(14) Staff member - A department of corrections employee, contract staff, or volunteer.

(15) Violation - The act of failing to comply with a rule enumerated in this chapter.

AMENDATORY SECTION (Amending WSR 19-24-045, filed 11/26/19, effective 12/13/19)

**WAC 137-25-030 Serious violations.** (1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation, with the exception of attempting an aggravated assault. Attempting to commit an aggravated assault will be charged as violation:

- (a) #633 When against another (~~offender~~) incarcerated individual;
- (b) #704 When against a staff member; or
- (c) #711 When against a visitor or community member.

**Category A**

501 - Committing homicide
502 - Committing aggravated assault against another ( <del>offender</del> ) <u>incarcerated individual</u>
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules
511 - Committing aggravated assault against a visitor or community member
521 - Taking or holding any person hostage
550 - Escaping
601 - Possessing, manufacturing, or introducing an explosive device or any ammunition, or any component thereof
602 - Possessing, manufacturing, or introducing any firearm, weapon, sharpened instrument, knife, or poison, or any component thereof
603 - <del>Possessing</del> , introducing or transferring any unauthorized drug or drug paraphernalia
604 - Committing aggravated assault against a staff member
611 - Committing sexual assault against a staff member
613 - Committing an act of sexual contact against a staff member
635 - Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or ( <del>offender-on-offender</del> ) <u>incarcerated individual on incarcerated individual</u> sexual assault)
637 - Committing sexual abuse against another ( <del>offender</del> ) <u>incarcerated individual</u> , as defined in department policy
650 - Rioting( <del>, as defined in RCW 9.94.010</del> )
651 - Inciting others to riot( <del>, as defined in RCW 9.94.010</del> )

830 - Escaping from work/training release with voluntary return within 24 hours
831 - While in work/training release, failing to return from an authorized sign out
882 - While in prison, introducing, possessing, or using a cell phone, electronic/wireless communication device, or related equipment without authorization

**Category B - Level 1**

504 - Engaging in a sex act with another person(s) ( <del>within the facility</del> ) that is not otherwise included in these rules, except in an approved extended family visit
553 - Setting a fire
560 - Possessing items or materials likely to be used in an escape without authorization
633 - Assaulting another ( <del>offender</del> ) <u>incarcerated individual</u>
704 - Assaulting a staff member
711 - Assaulting a visitor or community member
744 - Making a bomb threat
884 - Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle
886 - Adulterating any food or drink
892 - Giving, selling, or trading any prescribed medication, or possessing another ( <del>offender's</del> ) <u>incarcerated individual's</u> prescribed medication

**Category B - Level 2**

505 - Fighting with another ( <del>offender</del> ) <u>incarcerated individual</u>
556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member
607 - Refusing to submit to a urinalysis and/or failing to provide a urine sample within the allotted time frame when ordered to do so by a staff member
608 - Refusing or failing to submit to a breath alcohol test or other standard sobriety test when ordered to do so by a staff member
609 - Refusing or failing to submit to testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by a staff member
652 - Engaging in or inciting a group demonstration
655 - Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance
682 - Engaging in or inciting an organized work stoppage
707 - Introducing or transferring alcohol or any intoxicating substance not otherwise included in these rules
716 - Using an over the counter medication without authorization or failing to take prescribed medication as required when administered under supervision
736 - Possessing, manufacturing, or introducing an unauthorized key or electronic security access device

750 - Committing indecent exposure
752 - ( <del>Possessing</del> ) <u>Admitting use</u> , or receiving a positive test for use of, an unauthorized drug, alcohol, or <u>other</u> intoxicating substance
778 - Providing a urine specimen that has been diluted, substituted, or altered in any way

**Category B - Level 3**

503 - Extorting or blackmailing, or demanding or receiving anything of value in return for protection against others or under threat of informing
506 - Threatening another with bodily harm or with any offense against any person or property
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area
525 - Violating conditions of a furlough
549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy
558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties
600 - Tampering with, damaging, blocking, or interfering with any locking, monitoring, or security device
605 - Impersonating ( <del>any staff member, other offender, or visitor</del> ) <u>or assuming the identity of any other person</u>
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction
654 - Counterfeiting or forging, or altering, falsifying, or reproducing any document, article of identification, money, or security or other official paper without authorization
660 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is five dollars or more
709 - Out-of-bounds: Being in another ( <del>offender's</del> ) <u>incarcerated individual's cell</u> or being in ( <del>an</del> ) <u>a restricted or out of bounds area</u> ( <del>in</del> ) <u>of the facility</u> with one or more ( <del>offenders</del> ) <u>incarcerated individuals</u> without authorization
738 - Possessing clothing or assigned equipment of a staff member
739 - Possessing, transferring, or soliciting any person's identification information, including current staff members or their immediate family members, when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the superintendent
745 - Refusing a transfer to another facility
746 - Engaging in or inciting an organized hunger strike
762 - Noncompliance with the DOSA program. Note: <i>This violation must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC</i>

777 - Causing injury to another person by resisting orders, assisted movement, or physical efforts to restrain
813 - Being in the community without authorization, or being in an unauthorized location in the community
814 - While in work/training release, violating an imposed special condition
879 - Operating or being in a motor vehicle without permission or in an unauthorized manner or location
889 - Using facility phones, information technology resources/systems, or related equipment without authorization

**Category C - Level 1**

508 - Spitting or throwing objects, materials, or substances in the direction of another person(s)
557 - Refusing to participate in an available work, training, education, or other mandatory programming assignment
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices
610 - While in prison, receiving or possessing prescribed medication without authorization
620 - Receiving or possessing contraband during participation in off-grounds or outer perimeter activity or work detail
659 - Committing sexual harassment against another ((offender)) incarcerated individual, as defined in department policy
661 - Committing sexual harassment against a staff member, visitor, or community member
663 - Using physical force, intimidation, or coercion against any person
702 - Possessing, manufacturing, or introducing an unauthorized tool
708 - Organizing or participating in an unauthorized group activity or meeting
717 - Causing a threat of injury to another person by resisting orders, assisted movement, or physical efforts to restrain
720 - Flooding a cell or other area of the facility
724 - Refusing a cell or housing assignment
734 - Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group
810 - Failing to seek/maintain employment or training or maintain oneself financially, or being terminated from a work, training, education, or other programming assignment for negative or substandard performance
893 - Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband

896 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information

899 - Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the offender committed

**Category C - Level 2**

552 - Causing an innocent person to be penalized or proceeded against by providing false information

554 - Damaging, altering, or destroying any item that is not the ((offender's)) incarcerated individual's personal property, the value of which is ten dollars or more

710 - Acquiring an unauthorized tattoo/piercing/scar, tattooing/piercing/scarring another, or possessing tattoo/piercing/scarring paraphernalia

718 - Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action

726 - Telephoning, sending written or electronic communication, or otherwise initiating communication with a minor without the approval of that minor's parent or guardian

**Category C - Level 3**

606 - Possessing, introducing, or transferring any tobacco, tobacco products, matches, or tobacco paraphernalia

657 - Being found guilty of four or more general violations arising out of separate incidents within a 90-day period

658 - Failing to comply with any administrative or posthearing sanction imposed for committing any violation

812 - Failing to report/turn in all earnings

**Category D**

517 - Committing an act that would constitute a misdemeanor and that is not otherwise included in these rules

551 - Providing false information to the hearing officer or in a disciplinary appeal

555 - Stealing property, possessing stolen property, or possessing another offender's property

559 - Gambling or possessing gambling paraphernalia

656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service

662 - Soliciting goods or services for which the provider would expect payment, when the ((offender)) incarcerated individual knows or should know that ((he/she)) they lack((s)) sufficient funds to cover the cost

706 - Giving false information when proposing a release plan
714 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is ten dollars or more
725 - Telephoning or sending written or electronic communication to any <del>((offender))</del> <u>incarcerated individual</u> in a correctional facility, or <u>partial confinement</u> directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee
728 - Possessing any sexually explicit material(s), as defined in <del>((WAC 137-48-020))</del> <u>DOC Policy 450.100</u>
740 - Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense
741 - Stealing food, the value of which is <del>((five))</del> <u>ten</u> dollars or more
742 - Establishing a pattern of creating false emergencies by feigning illness or injury
755 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is ten dollars or more
811 - Entering into an unauthorized contract
861 - Performing or taking part in an unauthorized marriage
890 - Failing to follow a medical directive and/or documented medical recommendations, resulting in injury

(2) If contraband or another violation is discovered in an ~~((offender's))~~ incarcerated individual's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all ~~((offenders))~~ incarcerated individuals assigned responsibility for that area.

#### OTS-4730.1

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-140 Purpose.** The rules in this chapter provide a standardized system to determine whether misconduct by an ~~((offender))~~ incarcerated individual has occurred, and to provide a system that clearly links an ~~((offender's))~~ incarcerated individual's behavior and participation in available work, training, education, or other programming as determined through classification with the receipt or denial of earned release time and other privileges as outlined in department policy.

The rules in this chapter shall not apply to proceedings of the indeterminate sentence review board.

The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-160 Definitions.** For the purposes of this chapter, the following terms have the following meanings:

- (1) Attempting - Putting forth an effort to commit any violation.
- (2) Business days - Monday through Friday, excluding holidays and days the facility is experiencing altered/modified/emergency operational status.
- (3) Conspiring - Entering into an agreement with another person(s) to commit a violation.
- (4) Facility - A correctional facility as defined in RCW 72.09.015.
- (5) Hearing officer - A trained staff member designated by the superintendent to conduct disciplinary hearings processes, as well as review appeals of general violations.
- (6) Infraction - A term designating the procedures and documents related to ((~~offender~~)) incarcerated individual misconduct and the facility disciplinary process as a result of a rule violation.
- (7) Infraction review officer - A trained staff member who assesses and evaluates the accuracy of the infraction packet, to include verification of the incident, appropriateness of the violation(s) charged, thoroughness of the information, and verification that supporting documents are included and that all evidence is collected and handled correctly (when applicable) before submittal to the hearing office.
- (8) Lesser included offense - A less serious violation than the one charged, but one which the ((~~offender~~)) incarcerated individual necessarily committed in carrying out the charged violation.
- (9) ((~~Offender~~)) Incarcerated individual - An inmate as defined in RCW 72.09.015.
- (10) Possessing - When an item(s) is found on an ((~~offender~~)) incarcerated individual or in an ((~~offender's~~)) incarcerated individual's assigned area of responsibility.
- (11) Promptly - To act as soon as reasonably possible, consistent with facility goals of safety, security, and rehabilitation.
- (12) Staff member - A department of corrections employee, contract staff, or volunteer.
- (13) Violation - The act of failing to comply with a rule enumerated in this chapter or chapter 137-25 WAC.



AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-180 Notification.** (1) All (~~offenders~~) incarcerated individuals confined in a facility shall have access to policies and rules regarding:

(a) Their rights and responsibilities in disciplinary matters;  
(b) Acts prohibited in the facility; and  
(c) Disciplinary action that may be taken in the event of misconduct.

(2) All (~~offenders~~) incarcerated individuals shall have access to a copy of the local disciplinary policies of the facility to which they are assigned.

(3) (~~Offenders~~) Incarcerated individuals unable to read or understand English shall be provided access to a written or recorded translation of these rules in their accustomed language.

(4) (~~Offenders~~) Incarcerated individuals should be provided access to changes to disciplinary policies or rules in advance of their effective date.

(a) Complete and up-to-date copies of these rules and all facility disciplinary policies shall be available for (~~offender~~) incarcerated individual access at each facility.

(b) (~~Offenders~~) Incarcerated individuals are responsible for informing themselves of changes to the rules and policies.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-190 Referral to law enforcement.** (1) The superintendent should report any felony under state or federal law committed in a facility to law enforcement. Any time an (~~offender~~) incarcerated individual commits a serious violation after losing all potential earned release time credits, the superintendent should report the (~~offender~~) incarcerated individual to local law enforcement for possible felony prosecution under RCW 9.94.070.

(2) The superintendent may report any misdemeanor under state or federal law committed in a facility to law enforcement.

(3) Nothing in this section shall prevent an (~~offender's~~) incarcerated individual's assignment to administrative segregation.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-200 Out-of-state (~~offenders~~) incarcerated individuals.** (1) (~~Offenders~~) Incarcerated individuals committed to the department of corrections who have been transferred to a prison in another state shall be subject to the disciplinary rules and procedures applicable to that prison. That prison may, in its discretion, use any presumptive sanction guidelines currently in effect in Washington state facilities.

(2) (~~Offenders~~) Incarcerated individuals committed to the department of corrections from other states shall be subject to the dis-

ciplinary rules and procedures currently in effect in the Washington state facility to which they are assigned.

(3) Each state shall forward all serious infraction reports and appeals to the originating state within seven days of the final action, and may include a recommendation that the ~~((offender))~~ incarcerated individual return to the originating state.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-210 Hearing officers.** (1) Each hearing shall be conducted by a hearing officer designated by the superintendent.

(2) Hearing officers may not preside over a hearing when they are related to the ~~((offender))~~ incarcerated individual, witness, victim, or infracting officer, or have direct personal involvement in the infraction under consideration. For purposes of this section, direct personal involvement means knowledge or interest acquired through witnessing, investigating, or directly participating in the incident under consideration. This rule shall not preclude hearing officer participation where the hearing officer has acquired knowledge of the incident as part of regular facility responsibilities.

(3) Hearing officers may disqualify themselves or may be disqualified by the superintendent if biased for or against any ~~((offender))~~ incarcerated individual so that they cannot render a fair and impartial decision in the hearing.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-220 General violations.** (1) Any of the following types of behavior may constitute a general violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

**Unauthorized possession/theft**

- 051 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is less than five dollars
- 053 - Possessing anything not authorized for retention or receipt by an ~~((offender))~~ incarcerated individual and/or not issued to an ~~((offender))~~ incarcerated individual through approved channels
- 255 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is less than ten dollars
- 310 - Pretending or failing to take prescribed medication by concealing or retaining the medication
- 354 - Stealing food, the value of which is less than ~~((five))~~ ten dollars
- 356 - Possessing an unauthorized amount of clothing, bedding, or issued supplies

**Lending/trading**

- 351 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is less than ten dollars

**Altering/destroying property**

- 055 - Damaging, altering, or destroying any item that is not the ((offender's)) incarcerated individual's personal property, the value of which is less than ten dollars

**Disruptive behavior/lying**

- 202 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s)
- 203 - Lying to a staff member
- 353 - Engaging in disruptive behavior
- 355 - Roughhousing, or engaging in horseplay or any other unauthorized physical contact with another ((offender(s))) incarcerated individual(s)
- 357 - Demonstrating, practicing, or using martial arts or other self-defense tactics

**Failure to follow rules and orders**

- 103 - Failing to follow any oral/written orders, rules, or policies not otherwise included in these rules
- 105 - Failing to perform a work, training, education, or other programming assignment as directed
- 210 - Out of bounds: Being in an area where the presence of the ((offender)) incarcerated individual is unauthorized
- 214 - Interfering or failing to comply with count procedures
- 251 - Smoking or possessing tobacco or related products/paraphernalia where prohibited
- 301 - Failing to maintain one's clothing, personal hygiene, or quarters in accordance with facility rules or policies

**Unauthorized communication/visitor contact**

- 303 - Using the mail, telephone, or electronic communications without authorization
- 304 - Conducting/participating in unwanted written, telephone, or electronic communications with any person
- 305 - Corresponding with or engaging in conduct with a visitor in violation of published or posted rules or policies

**Inappropriate use of equipment**

- 212 - Using any equipment or machinery when not specifically authorized or contrary to instructions or safety standards

**Unexcused absence/feigning illness**

- 104 - Being absent from work or any assignment, scheduled meeting, appointment, or call out without authorization

- 352 - Pretending to be ill or injured contrary to medical/mental health screening results

**Inappropriate sexual behavior**

- 244 - Displaying sexual affection with another ~~((offender))~~ incarcerated individual(s)
- 309 - Engaging in an unauthorized display of affection with a visitor

(2) If contraband or another violation is discovered in an ~~((offender's))~~ incarcerated individual's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all ~~((offenders))~~ incarcerated individuals assigned responsibility for that area.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-230 General infraction procedure.** (1) In the event of a general violation, a staff member may make an on-site adjustment. An on-site adjustment may consist of counseling, warning, or reprimanding the ~~((offender))~~ incarcerated individual and/or directing the ~~((offender))~~ incarcerated individual to remove ~~((himself/herself))~~ themselves from the situation immediately. An action addressed through an on-site adjustment cannot be considered a general violation for the purposes of determining whether a #657 serious violation has occurred.

(2) In the event of a general violation where a staff member does not make an on-site adjustment, the staff member will prepare and submit an infraction report per department policy. The staff member will attach copies of any supporting documents.

(3) The general infraction report shall be promptly submitted for review to the supervisor designated by the superintendent. Upon review, if the supervisor determines the action meets the criteria of a serious violation, ~~((he/she))~~ they may return the report to the reporting staff member to upgrade the general violation to a serious violation. If the violation is upgraded, the reporting staff member will forward the serious infraction report to the infraction review officer.

(4) If the action was appropriately charged as a general violation, the supervisor will decide whether the ~~((offender))~~ incarcerated individual is guilty or not guilty within five business days of receiving the report, unless an extension is approved in writing by the hearing officer. The supervisor will conduct an informal hearing at which ~~((he/she))~~ they may allow witnesses and documentary evidence with the ~~((offender))~~ incarcerated individual present.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-240 General violations—Sanctions.** (1) If the supervisor finds the ~~((offender))~~ incarcerated individual not guilty of a general violation, disciplinary sanctions shall not be imposed on the ~~((offender))~~ incarcerated individual for that violation. Records per-

taining to the violation shall not be placed in the ((offender's)) incarcerated individual's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the supervisor finds the ((offender)) incarcerated individual guilty of any general violation, the supervisor may impose one or more of the following sanctions:

(a) Reprimand or warning;

(b) Issuance of a written order to cease the problematic behavior. The order will include a warning that if the identified behavior is repeated within a specified period (not to exceed ((~~one hundred eighty~~)) 180 days), the ((offender)) incarcerated individual will be charged with a serious violation ((~~(+)~~)) (#658 under WAC 137-25-030);

(c) Loss of a privilege or privileges as specified by the supervisor for a period not to exceed ((~~ten~~)) 10 consecutive days on the first offense, ((~~twenty~~)) 20 consecutive days on the second offense, and ((~~thirty~~)) 30 consecutive days on the third offense within a six-month period;

(d) Evening cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, not to exceed ((~~ten~~)) 10 consecutive evenings;

(e) Weekend and/or holiday cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period of one or more weekends, not to exceed four consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the ((offender's)) incarcerated individual's programming or work day Friday and terminate at the beginning of the ((offender's)) incarcerated individual's programming or work day Monday;

(f) Confinement to cell/room except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period not to exceed ((~~ten~~)) 10 consecutive days;

(g) Up to ((~~one hundred twenty~~)) 120 hours of extra work duty.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-250 General infraction appeals.** (1) If the supervisor finds the ((offender)) incarcerated individual guilty of a general violation, only the ((offender)) incarcerated individual may appeal the decision and/or sanction(s) to a hearing officer.

(a) The appeal must be in writing and must include the reason(s) why the ((offender)) incarcerated individual believes the action taken was incorrect and specify the desired relief.

(b) The appeal must be delivered to the hearing officer within ((~~two~~)) five business days of receiving the notice.

(c) Failure to follow appeal procedures shall be deemed a waiver of the appeal, however the hearing officer may consider appeals filed beyond the ((~~two~~)) five business day period.

(2) The hearing officer will review and act on the appeal request within ((~~ten~~)) 10 business days of receipt unless an extension is approved in writing by the superintendent. The hearing officer may af-

firm the decision and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s).

(3) Once a decision is made on the appeal, the ~~((offender))~~ in-carcerated individual shall be notified in writing within three business days, unless an extension is approved in writing by the superintendent.

(4) Sanctions will not be stayed upon appeal.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-270 Serious infraction procedure.** (1) When a staff member witnesses a serious violation or determines that a serious violation has occurred, ~~((he/she))~~ they shall prepare and submit an infraction report per department policy. The staff member will attach to the report copies of any supporting documents, including a summary of any confidential information, which shall not identify the confidential source(s).

(2) The infraction review officer will review the serious infraction report and any supporting documents and/or evidence. If the report is incomplete or the charge(s) is inappropriate, the infraction review officer will return the report to the reporting staff member to be revised, rewritten, or reinvestigated. Otherwise, the infraction review officer will forward the report to the hearing clerk or designee to schedule a hearing.

The infraction review officer may recommend referral to a mental health professional as defined in department policy for consultation if there is a question whether:

(a) Mental illness contributed to the behavior that led to the violation; or

(b) The ~~((offender's))~~ in-carcerated individual's mental health status may need to be monitored.

(3) A negotiated hearing process will be used for any violation specifically identified in department policy. The serious infraction report will be forwarded to the designated hearing officer per department policy.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-285 ((Offender)) Incarcerated individual rights.** (1) An ~~((offender))~~ in-carcerated individual charged with a violation(s) has the right to:

(a) A fair and impartial hearing;

(b) Written notice of the alleged violation(s) and a summary of the supporting evidence at least ~~((twenty-four))~~ 24 hours before the hearing;

(i) The notice shall include a statement of the rights listed in this section.

(ii) The ~~((offender))~~ in-carcerated individual may waive the ~~((twenty-four))~~ 24 hour notice.

(c) Be present at the hearing or waive presence at the hearing;

(d) Request a department advisor and/or an interpreter to assist the ((offender)) incarcerated individual in preparing for and participating in the hearing;

(e) Testify or remain silent;

(f) Call witnesses and present documentary evidence, though the hearing officer may exclude witnesses/evidence deemed irrelevant, duplicative, or unnecessary;

(g) Propose questions for the hearing officer to ask witnesses, although the hearing officer may exclude questions deemed irrelevant, duplicative, or unnecessary;

(h) Appeal the hearing officer's finding(s) and/or sanction(s) imposed to the superintendent within ((fifteen)) 15 business days of the hearing officer's decision.

(2) ((Offenders)) Incarcerated individuals do not have the right to:

(a) Cross-examine witnesses;

(b) Have the reporting staff member present at the hearing;

(c) Receive a polygraph or other supplemental tests;

(d) Examine physical evidence;

(e) Receive confidential information.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-290 Preparations for hearing.** (1) When possible, hearings will be held in the facility where the violation(s) occurred. If the ((offender)) incarcerated individual is transferred to another facility before a hearing is conducted, the sending facility will provide the infraction report, along with any supporting documents, to the receiving facility.

(2) In preparation for the hearing, the hearing clerk or designee shall, at least ((twenty-four)) 24 hours before the hearing:

(a) Provide copies of the infraction report and nonconfidential supporting documents, including a summary of the supporting evidence, to the ((offender)) incarcerated individual;

(b) Advise the ((offender)) incarcerated individual in writing of the date, time, and location of the hearing and of the rights, restrictions, and responsibilities listed in this chapter;

(c) Obtain written acknowledgment of the ((offender's)) incarcerated individual's receipt of the infraction report and any supporting documents;

(d) Determine whether the ((offender)) incarcerated individual wishes to contest the allegation;

(e) Determine whether the ((offender)) incarcerated individual needs a department advisor and/or an interpreter. If assigned, the department advisor and/or interpreter will remain in place throughout the hearing process, unless the ((offender)) incarcerated individual declines assistance.

(3) If an ((offender is placed in prehearing confinement)) incarcerated individual is in segregation, the hearing will be held within three business days of service of the infraction report and any supporting documents, unless the ((offender)) incarcerated individual has waived ((twenty-four)) 24 hour notice for the hearing or the hearing is continued in writing by the hearing officer. A staff member may be assigned to assist in obtaining witness statements.

If a hearing is continued, a determination shall be made in writing whether the ((offender)) incarcerated individual should remain in segregation.

(4) For ((~~offenders not placed~~)) incarcerated individuals not in segregation, the hearing will be held within five business days of service of the infraction report and any supporting documents.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-295 Department advisors.** (1) A department advisor may be appointed per department policy to help the ((offender)) incarcerated individual prepare for and participate in the hearing. Before a department advisor is assigned, the following factors will be considered:

- (a) The ((offender's)) incarcerated individual's literacy;
- (b) The complexity of the issue(s);
- (c) The ((offender's)) incarcerated individual's overall ability to speak for ((~~himself/herself~~)) themselves and adequately present ((~~his/her~~)) their case;
- (d) The individual's mental status, as determined by a mental health professional or other employee with mental health training or experience;

(e) The ((offender's)) incarcerated individual's ability to communicate in English; and/or

((~~e~~)) (f) Any disability that might impair the ((offender's)) individual's ability to adequately defend ((~~himself/herself~~)) themselves.

(2) The department advisor will be a staff member who is not involved in the observation or investigation of the infraction.

(3) The department advisor shall attend the hearing, in whole or in part, based on the ((offender's)) incarcerated individual's needs. ((~~He/she~~)) They may attend in person or by telephone. ((~~He/she~~)) They shall not present the ((offender's)) incarcerated individual's case, question witnesses, or make any other oral presentation, unless requested by the hearing officer.

(4) When a hearing is continued for the purpose of appointing a department advisor, an advisor shall be appointed immediately.

(5) Conversations between department advisors and ((offenders)) incarcerated individuals are neither confidential nor privileged.

AMENDATORY SECTION (Amending WSR 20-08-037, filed 3/24/20, effective 4/24/20)

**WAC 137-28-300 Conduct of hearing.** (1) The hearing officer shall ensure that the ((offender's)) incarcerated individual's rights are protected throughout the hearing process. The hearing officer shall ensure that the ((offender)) incarcerated individual is capable of understanding the charge(s) against ((~~him/her~~)) them and the nature of the proceedings, and ((~~is~~)) they are able to adequately participate in the hearing. If there is reason to doubt the ((offender's)) incarcerated individual's understanding or ability, the hearing officer may



order a continuance of the hearing in order to obtain additional information.

(2) The (~~offender~~) incarcerated individual shall be present at all stages of the hearing, except during deliberations, examination of any physical evidence and/or confidential information, and any inquiry the hearing officer may make concerning the evidence/information presented, including the source(s) of confidential information.

(a) If new evidence/information is introduced outside the hearing, the (~~offender~~) incarcerated individual will have an opportunity to rebut the evidence/information during the hearing.

(b) Unless excused, an (~~offender's~~) incarcerated individual's failure to attend a scheduled hearing will be considered (~~his/her~~) a waiver of (~~the~~) their right to be present at the hearing.

(3) An audio recording will be made of all category A, B, and C hearings. A written record will also be made of all hearings.

(a) The record shall include:

(i) The name and DOC number of the (~~offender~~) incarcerated individual;

(ii) The date, location, and time of the hearing;

(iii) The name of the hearing officer;

(iv) The alleged violation(s);

(v) The (~~offender's~~) incarcerated individual's plea(s) to the alleged violation(s);

(vi) The names of witnesses;

(vii) A summary of the statements of the (~~offender~~) incarcerated individual and any witnesses, and information from any additional sources, including confidential sources;

(viii) A summary of any new evidence/information introduced outside the hearing;

(ix) A description of any physical evidence;

(x) The reasons for denying any witnesses;

(xi) Any witness statements requested by the (~~offender~~) incarcerated individual or hearing officer that were not provided or were unavailable, if applicable;

(xii) Any witness questions proposed by the (~~offender~~) incarcerated individual that the hearing officer did not ask and the reason(s) the questions were excluded (i.e., irrelevant, duplicative, or unnecessary);

(xiii) The hearing officer's decision, the sanction(s) imposed, and reasons.

(b) If the (~~offender~~) incarcerated individual is found guilty, the hearing officer will ensure all related reports, recordings, and attachments become part of the (~~offender's~~) incarcerated individual's file.

(4) The hearing officer will ensure physical evidence is handled per department policy.

(5) If an (~~offender's~~) incarcerated individual's behavior disrupts the hearing, (~~he/she~~) they may be removed and the hearing will continue on the record in the (~~offender's~~) incarcerated individual's absence.

(6) If the hearing officer determines that a witness's presence is necessary, the witness may participate by telephone or in person, at the hearing officer's discretion. If the hearing officer determines that participation would be unduly hazardous to facility safety or correctional goals, the witness will provide a written statement.

(7) The hearing officer has the authority to question all witnesses. The (~~offender~~) incarcerated individual may submit proposed

questions to be asked of witnesses, but the hearing officer may exclude questions that are irrelevant, duplicative, or unnecessary to the adequate presentation of the ~~((offender's))~~ incarcerated individual's case.

(8) Information from a confidential source will be introduced by the testimony of the staff member who received the information.

(a) The hearing officer shall, out of the presence of the ~~((offender))~~ incarcerated individual and off the record, review the confidential information and make an independent determination regarding the reliability of the source, the credibility of the information, and the necessity of not revealing the source. In determining whether the source is reliable and the information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

(b) The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information.

(c) The reliability and credibility determination and the need for confidentiality must be made on the record.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-305 Continuances.** (1) At any time during the disciplinary process, the hearing officer may continue the hearing:

(a) To determine the individual's mental status or competency;

~~((b))~~ (b) To appoint a department advisor;

~~((c))~~ (c) To obtain an interpreter;

~~((e))~~ (d) To obtain a witness(es) or witness statement(s);

~~((d))~~ (e) To correct errors;

(f) To obtain ~~((a-replacement))~~ an alternate hearing officer;

~~((e))~~ (g) To obtain crime lab reports or other documentation;

(h) If the witness(es) is temporarily unavailable;

~~((f))~~ (i) To determine restitution costs;

(j) If the ~~((offender))~~ incarcerated individual is unavailable (e.g., on escape, court-ordered custody, in transit to a nondepartment facility, etc.);

~~((g))~~ (k) At the reasonable request of the ~~((offender))~~ incarcerated individual;

~~((h))~~ (l) If the facility is experiencing altered/modified/emergency operational status ~~((+))~~

~~((i))~~ To determine restitution costs).

(2) Continuances shall be for no longer than necessary, and shall not exceed ~~((twenty))~~ 20 business days, unless approved by the superintendent.

(3) Hearings for ~~((offenders))~~ incarcerated individuals on escape status, in court-ordered custody, in transit to a facility in another jurisdiction, or otherwise unavailable may be continued for not more than ~~((twenty))~~ 20 business days after their return to department custody.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-310 Decision of hearing officer.** (1) In reaching a decision, the hearing officer will consider ~~((only))~~ the totality of the circumstances, the elements of the charged violation(s), all pertinent and exculpatory evidence presented at the hearing.

(2) The hearing officer is authorized to find an ~~((inmate))~~ incarcerated individual guilty of a lesser ~~((included offense))~~ WAC violation without issuing a new infraction report or conducting a new hearing.

(3) Where the evidence suggests an ~~((inmate))~~ incarcerated individual is guilty of an offense not charged and which is not a lesser ~~((included))~~ offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The ~~((inmate))~~ incarcerated individual may waive the right to a separate hearing and allow the hearing officer to conduct the hearing on the new charge.

(4) The ~~((offender))~~ incarcerated individual shall be informed of the hearing officer's decision in writing within three business days of the hearing, unless extended by the superintendent.

(5) The ~~((offender))~~ incarcerated individual shall be informed of ~~((his/her))~~ their right to appeal the hearing officer's decision to the superintendent.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-350 Sanctions—Authority to impose.** (1) If the hearing officer finds the ~~((offender))~~ incarcerated individual not guilty of a violation, disciplinary sanctions shall not be imposed on the ~~((offender))~~ incarcerated individual for that violation. Records pertaining to the violation shall not be placed in the ~~((offender's))~~ incarcerated individual's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the hearing officer finds the ~~((offender))~~ incarcerated individual guilty of a serious violation, the hearing officer may impose one or more of the sanctions listed in this section.

If the hearing officer determines that more than one violation occurred as a result of the same incident, ~~((he/she))~~ they shall not impose sanctions for the separate violations, but shall consider them together and impose penalties based on the most serious violation in the group.

(3) Allowable sanctions for serious violations are as follows. The hearing officer may consider factors such as prior documented be-

havior, infraction history, mental status, and overall facility and program adjustment when determining an appropriate sanction(s):

- (a) Any of the sanctions available for general violations;
- (b) Any of the sanctions available under department policy;
- (c) Loss of a privilege or privileges as outlined in department policy for a period not to exceed: Thirty consecutive days on the first offense, ~~((ninety))~~ 90 consecutive days on the second offense, and ~~((one hundred eighty))~~ 180 consecutive days on the third offense within a one-year period;
- (d) Confinement to cell/room except for meals (or with meals in cell), attendance at work or school assignments, or religious services, or law library if approved for emergency/priority access per department policy, for a period not to exceed ~~((thirty))~~ 30 consecutive days;

(e) Recommendation to the facility risk management team for review of custody classification;

~~((f))~~ ~~((Confinement on segregation status for a period not to exceed thirty consecutive days;~~

~~((g))~~ ~~With assistant secretary approval, confinement on isolation status for a period not to exceed ten consecutive days. Where a serious violation occurs during a period of isolation, additional periods of isolation not to exceed ten consecutive days may be imposed. In situations where an offender is in isolation for more than ten consecutive days, the assistant secretary's prior approval is required unless the offender is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;~~

~~((h))~~ Restitution per WAC 137-28-410;

~~((i))~~ (g) Recommendation to the superintendent that ~~((he/she))~~ they deny good conduct time credit.

The recommendation will be consistent with guidelines established by the department secretary. Any sanctions in excess of the guidelines require assistant secretary approval;

~~((j))~~ (h) Suspension or termination of visitation, for certain violations as outlined in department policy, for a period not to exceed: Thirty consecutive days for the first offense, ~~((ninety))~~ 90 consecutive days for the second offense, and ~~((one hundred eighty))~~ 180 consecutive days for the third offense within a one-year period. In cases of multiple or very serious violations, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

~~((k))~~ (i) Restriction, interruption, or termination of correspondence, telephone, and/or electronic communication for a period not to exceed: Thirty consecutive days for the first offense, ~~((ninety))~~ 90 consecutive days for the second offense, and ~~((one hundred eighty))~~ 180 consecutive days for the third offense in a one-year period. Termination of correspondence, telephone, and/or electronic communication may be permanent:

(i) At the recipient's request;

(ii) At the request of the parent or guardian of the recipient, if the recipient is a minor or an incapacitated person;

(iii) If correspondence perpetuates criminal activity; or

(iv) If the contact violates a court order.

~~((l))~~ (j) Urinalysis or breath alcohol testing for a period not to exceed ~~((ninety))~~ 90 days for drug or alcohol related violations.

(4) The hearing officer may review any decision ((he/she)) they previously made and may modify downward any sanction previously imposed.

(5) In all cases, regardless of whether an appeal is requested, the superintendent may review and reduce a sanction imposed. Once the superintendent has made a decision on the appeal, no modifications will be made by the hearing officer.

(6) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-360 Sanctions and mental status.** In determining an appropriate sanction, the hearing officer should consider the ((offender's)) incarcerated individual's mental health and ((his/her)) their intellectual, emotional, and maturity levels and what effect a particular sanction might have on the ((offender)) incarcerated individual in light of such factors. The hearing officer may request the assistance of other department staff members, including mental health staff members, in determining appropriate and/or alternate sanctions.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-370 Sanctions—Limitations.** (1) No ((offender)) incarcerated individual shall be infracted for violation of ((offender)) incarcerated individual conduct rules unless ((he/she has)) they have been provided reasonable advance notice of the prohibited behavior, unless the rule was adopted on an emergency basis.

(2) Disciplinary sanctions shall not include:

- (a) Lowering the quantity or nutritional value of food;
- (b) Corporal punishment or physical restraint;
- (c) Confinement to an environment with unhealthful temperatures;
- (d) Denial of adequate medical treatment.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-380 Serious infraction appeals.** (1) If the hearing officer finds the ((offender)) incarcerated individual guilty of a serious violation, only the ((offender)) incarcerated individual may appeal the decision and/or sanction(s) to the superintendent.

(a) An appeal request cannot be filed when the ((offender)) incarcerated individual has pled guilty to the violation.

(b) The appeal request must be in writing and must include the reason(s) why the ((offender)) incarcerated individual believes the action taken was incorrect and specify the desired relief.

(c) The appeal request must be filed within ((fifteen)) 15 business days of receiving the notice.

(d) Failure to follow appeal procedures shall be deemed a waiver of the appeal, however the superintendent may consider appeals filed beyond the (~~fifteen~~) 15 business day period.

(2) The superintendent will review the hearing record and act on the appeal request within (~~ten~~) 10 business days of receipt. The superintendent may affirm the decision and sanction(s), affirm the decision and reduce the sanction(s), or dismiss/modify downward the decision and sanction(s). The superintendent may also reverse the decision and remand the matter for a new hearing, in which case the sanction(s) imposed at the new hearing may not be more severe than the sanction(s) originally imposed.

(3) The (~~offender~~) incarcerated individual shall be promptly notified in writing of the superintendent's decision.

(4) Sanctions will not be stayed upon appeal.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-390 Hearing officer reports to the indeterminate sentence review board.** (1) When the hearing officer determines that an (~~offender~~) incarcerated individual subject to the jurisdiction of the indeterminate sentence review board is guilty of a serious violation, the hearing officer may recommend to the superintendent that (~~he/she~~) they not certify good conduct time credit for the (~~offender~~) incarcerated individual pursuant to RCW 9.95.070.

The hearing officer's recommendation will be consistent with guidelines established by the department secretary. Any sanctions for loss of good conduct credits in excess of the guidelines require assistant secretary approval.

(2) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with violations providing for actual time loss of (~~twelve~~) 12 months or more and consistent with guidelines established by the department secretary.

(3) Whenever the hearing officer finds an (~~offender~~) incarcerated individual under the jurisdiction of the indeterminate sentence review board guilty of a serious violation and recommends either loss of good conduct time credits or an increase in the (~~offender's~~) incarcerated individual's minimum term, the records office must inform the indeterminate sentence review board of the hearing officer's decision and recommendation within (~~ten~~) 10 days, or within (~~ten~~) 10 days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the (~~offender~~) incarcerated individual is within (~~forty-five~~) 45 days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

(4) In all other cases where an (~~offender~~) incarcerated individual under the jurisdiction of the indeterminate sentence review board is found guilty of a serious violation, the records office must inform the indeterminate sentence review board of the hearing officer's decision within (~~thirty~~) 30 days, or within (~~thirty~~) 30 days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the (~~offender~~) incarcerated individual is within

((forty-five)) 45 days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

**WAC 137-28-410 Restitution.** (1) If the hearing officer imposes restitution as a sanction, the amount of restitution owed shall be determined at the infraction hearing. However, the hearing officer may continue the hearing in order to secure additional evidence regarding restitution. If continued, the ((~~offender~~)) incarcerated individual shall be present at the continued/reconvened hearing.

(2) The amount of restitution will be the replacement value of the item, the cost of repair, and/or the cost of any ((~~unnecessary~~)) expense caused by the ((~~offender's~~)) incarcerated individual's misconduct.

(3) The ((~~offender~~)) incarcerated individual may appeal the amount of restitution within the time limits of this chapter. If under appeal, the amount of the restitution will be held in the ((~~offender's~~)) incarcerated individual's account, but funds will not be withdrawn/withheld until the superintendent has decided the appeal.

(4) Restitution funds may be collected in the following ways:

(a) The funds may be withdrawn from the ((~~offender's~~)) incarcerated individual's account to make restitution, provided the ((~~offender's~~)) incarcerated individual's account is not reduced to less than ((~~ten dollars~~)) \$10; or

(b) Twenty percent of all funds being placed in the ((~~offender's~~)) incarcerated individual's account may be taken until the restitution is paid in full.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 137-28-280            Temporary prehearing placement.

**WSR 23-22-115**  
**PERMANENT RULES**  
**BUILDING CODE COUNCIL**

[Filed October 31, 2023, 2:30 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: Chapter 51-50 WAC; amendments to the 2021 International Building Code (IBC) to adopt R-4 occupancy group and modify code provisions related to licensed care facilities. This adoption will require coordination with chapter 51-54A WAC. The applicable sections in chapter 51-54A WAC will be amended with expedited rule making for consistency with chapter 51-50 WAC. In 1993, the R-4 occupancy designation was replaced with licensed care occupancies in the adopted Washington state uniform codes. In the 2006 international version of the codes, Washington removed licensed care occupancies and distributed those facilities to the appropriate I and R occupancies classifications, while continuing to strike the unneeded R-4 occupancy classification. The International Code Council model codes have evolved to include an enhanced building science model for the R-4 designation that includes mitigations for both active and passive fire and life safety systems. There is no longer a reason for nonadoption of R-4 occupancy group.

Citation of Rules Affected by this Order: Amending seven sections in chapter 51-50 WAC.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Other Authority: RCW 19.27.031, 19.27.074.

Adopted under notice filed as WSR 23-11-026 on May 10, 2023.

Changes Other than Editing from Proposed to Adopted Version:

WAC	Section	Change	Rationale/Discussion
51-50-0706	Section 706.4, Table 706.4	Proposed for deletion in the CR-102. Both must stay. Table 706.4 is proposed to be amended by adding the R-4 occupancy group.	This is an existing state amendment that is not related to R-4. With the CR-102 filing, the state building code council proposed the section and the table to be deleted, which was an oversight. Both the table and the section must stay in the 2021 IBC. Table 706.4 will be amended to add R-4 to match the model code language.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, 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 7, Repealed 0.

Date Adopted: October 20, 2023.

Tony Doan  
 Council Chair



## OTS-4545.6

AMENDATORY SECTION (Amending WSR 22-13-094, 23-12-103, and 23-20-023 [21-12-103], filed 6/14/22, 6/7/23, and 9/25/23 [6/2/21], effective 3/15/24 [7/3/21])

**WAC 51-50-0200 Chapter 2—Definitions.****SECTION 202—DEFINITIONS.**

**ADULT FAMILY HOME.** A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

**ASSISTED LIVING FACILITY.** A home or other institution, licensed by the state of Washington, providing housing, basic services and assuming general responsibility for the safety and well-being of residents under chapters 18.20 RCW and 388-78A WAC. These facilities may provide care to residents with symptoms consistent with dementia requiring additional security measures.

**AUTOMATIC LOAD MANAGEMENT SYSTEM (ALMS).** A system designed to manage electrical load across one or more EV Ready parking spaces.

**BOTTLE FILLING STATION.** A plumbing fixture connected to the potable water distribution system and sanitary drainage system that is designed and intended for filling personal use drinking water bottles or containers not less than 10 inches (254 mm) in height. Such fixtures can be separate from or integral to a drinking fountain and can incorporate a water filter and a cooling system for chilling the drinking water.

**CHILD CARE.** The care of children during any period of a 24-hour day.

**CHILD CARE, FAMILY HOME.** A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of 12 or fewer children, including children who reside at the home.

**CLIMATE ZONE.** A geographical region that has been assigned climatic criteria as specified in the Washington State Energy Code.

**CLUSTER.** Clusters are multiple *portable school classrooms* separated by less than the requirements of the building code for separate buildings.

**COMPOST.** Biodegradable solid wastes that are separated for composting such as food waste, food soiled paper, and yard waste.

**CUSTODIAL CARE.** Assistance with day-to-day living tasks; such as assistance with cooking, taking medication, bathing, using toilet facilities, and other tasks of daily living. Custodial care includes persons receiving care who have the ability to respond to emergency situations and may receive limited verbal or physical assistance. These care recipients may evacuate at a slower rate and/or who have mental and psychiatric complications.

**EFFICIENCY DWELLING UNIT.** A dwelling unit where all permanent provisions for living, sleeping, eating and cooking are contained in a single room.

**ELECTRIC VEHICLE (EV) CAPABLE PARKING SPACE.** A parking space provided with a conduit, electrical panel and load capacity to support future installation of EV charging equipment.

**ELECTRIC VEHICLE (EV) CHARGER.** Off-board charging equipment used to charge electric vehicles.

**ELECTRIC VEHICLE (EV) CHARGING STATION.** EV Ready parking space with installed EV charger.

**ELECTRIC VEHICLE (EV) READY PARKING SPACE.** A parking space provided with a receptacle outlet allowing charging of electric vehicles.

**ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE).** The conductors, including the ungrounded, grounded, and equipment grounding conductors, and the electric vehicle connectors, attachment plugs, personnel protection system, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

**HIGH-RISE BUILDING.** A building with an occupied floor, located more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access. For the purposes of this definition, an occupied roof with an occupant load of 50 or more is considered to be an occupied floor.

**HOSPICE CARE CENTER.** A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

**LIMITED VERBAL OR PHYSICAL ASSISTANCE.** Persons who, because of age, physical limitations, cognitive limitations, treatment or chemical dependency, and may not independently recognize, respond, or evacuate without limited verbal or physical assistance during an emergency situation. Verbal assistance includes prompting, giving, and repeating instructions. Physical assistance includes assistance with transfers to walking aids or mobility devices and assistance with egress.

**LOFT.** A space on an intermediate level or levels between the floor and ceiling of a Group R occupancy dwelling or sleeping unit, open on one or more sides to the room in which the loft is located, and in accordance with Section ((420.13)) 420.14.

**NIGHTCLUB.** An A-2 Occupancy in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds 350 square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

**PORTABLE SCHOOL CLASSROOM.** A prefabricated structure consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections and is designed to be used as an educational space with or without a permanent foundation. The structure shall be capable of being demounted and relocated to other locations as needs arise.

**RECYCLED MATERIALS.** Those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass.

**RESIDENTIAL SLEEPING SUITES.** A unit that provides multiple rooms or spaces for up to five residents, includes provisions for sleeping and can include provisions for living, eating, sanitation, and kitchen facilities.

**SMALL BUSINESS.** Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has 50 or fewer employees.

**STAGED EVACUATION.** A method of emergency response, that engages building components and trained staff to provide occupant safety during an emergency. Emergency response involves moving or holding certain occupants at temporary locations for a brief period of time before evacuating the building. This response is used by ambulatory surgery (~~facility~~) facilities and assisted living facilities to protect the health and safety of fragile occupants and residents.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 22-13-094, 23-12-103, and 23-20-023 [20-21-021], filed 6/14/22, 6/7/23, and 9/25/23 [10/9/20], effective 3/15/24 [11/9/20])

**WAC 51-50-0308 Section 308—Institutional Group I.**

**308.2 Institutional Group I-1.** Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions specified in Section 308.2.1 or 308.2.2 and shall comply with Section 420. This group shall include, but not be limited to, the following:

- Alcohol and drug centers;
- Assisted living facilities as licensed by Washington state under chapter 388-78A WAC;
- Congregate care facilities;
- Group homes;
- Halfway houses;
- Residential board and care facilities;
- ~~((Social rehabilitation facilities;))~~
- Residential treatment facilities as licensed by Washington state under chapter 246-337 WAC;
- Social rehabilitation facilities.

**308.2.5 Adult family homes.** Adult family homes licensed by Washington state shall be classified as Group R-3 or shall comply with the *International Residential Code*.

**308.2.6 ~~((Licensed care))~~ Assisted living facilities.** Assisted living facilities as licensed by Washington state under chapter 388-78A WAC shall be classified as Group I-1, Condition 2.

~~((Residential treatment facilities licensed by Washington state under chapter 246-337 WAC shall be classified as one or more occupancy types in accordance with chapter 246-337 WAC.))~~

**308.3 Institutional Group I-2.** Institutional Group I-2 occupancy shall include buildings and structures used for *medical care* on a 24-hour basis for more than five persons who are *incapable of self-preservation*. This group shall include, but not be limited to, the following:

- Foster care facilities.
- Detoxification facilities.*

Hospice care centers.  
 Hospitals.  
 Nursing homes.  
 Psychiatric hospitals.

**308.5.5 Family home child care.** Family home child care licensed by Washington state for the care of 12 or fewer children shall be classified as Group R-3 or shall comply with the *International Residential Code*.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 22-13-094, 23-12-103, and 23-20-023 [21-06-035], filed 6/14/22, 6/7/23, and 9/25/23 [2/23/21], effective 3/15/24 [3/26/21])

**WAC 51-50-0310 Section 310—Residential Group R.**

**310.3 Residential Group R-2.** Residential occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

Apartment houses

*Congregate living facilities* (nontransient) with more than 16 occupants

Boarding houses (nontransient)

Convents

*Dormitories*

Fraternities and sororities

Monasteries

Hotels (nontransient)

*Live/work units*

Motels (nontransient)

Vacation timeshare properties

**310.4.3 Adult family homes, family home child care.** Adult family homes and family home child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

**310.4.4 Foster family care homes.** Foster family care homes licensed by Washington state are permitted to comply with the *International Residential Code*, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

~~((310.5 Residential Group R-4. R-4 classification is not adopted. Any reference in this code to R-4 does not apply.))~~

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 22-13-094, 23-12-103, and 23-20-023 [20-01-090], filed 6/14/22, 6/7/23, and 9/25/23 [12/12/19], effective 3/15/24 [7/1/20])

**WAC 51-50-0420 Section 420—Groups I-1, R-1, R-2, R-3, and R-4.**

**420.2 Separation walls.** Walls separating dwelling units in the same building, walls separating sleeping units in the same building and

walls separating dwelling or sleeping units from other occupancies contiguous to them in the same building shall be constructed as fire partitions in accordance with Section 708. Buildings containing multiple sleeping units with common use or central kitchens shall not be classified as a single dwelling.

(EXCEPTIONS: ~~1. Where sleeping units include private bathrooms, walls between bedrooms and the associated private bathrooms are not required to be constructed as fire partitions.  
2. Where sleeping units are constructed as suites, walls between bedrooms within the sleeping unit and the walls between the bedrooms and associated living spaces are not required to be constructed as fire partitions.  
3. In Groups R-3 facilities, walls within the dwelling units or sleeping units are not required to be constructed as fire partitions.  
4. Groups R-2 and I-1 arranged into residential sleeping suites containing a maximum of five sleeping residents. Separation between bedrooms, living areas and toilet rooms within these residential sleeping suites shall not be required.  
5. Group I-1 sleeping areas arranged so that a dedicated staff member has direct observation over a multiple resident sleeping room, without intervening full height walls, shall not be required to provide fire partitions within the resident sleeping area.))~~

**420.12 Adult family homes.** This section shall apply to all newly constructed adult family homes and all existing single-family homes being converted to adult family homes. This section shall not apply to those adult family homes licensed by the state of Washington department of social and health services prior to July 1, 2001.

**420.12.1 Sleeping room classification.** Each sleeping room in an adult family home shall be classified as one of the following:

1. Type S - Where the means of egress contains stairs, elevators or platform lifts.
2. Type NS1 - Where one means of egress is at grade level or a ramp constructed in accordance with Section 1012 is provided.
3. Type NS2 - Where two means of egress are at grade level or ramps constructed in accordance with Section 1012 are provided.

**420.12.2 Types of locking devices and door activation.** All bedrooms and bathroom doors shall be openable from the outside when locked.

Every closet door shall be readily openable from the inside.

Operable parts of door handles, pulls, latches, locks and other devices installed in adult family homes shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. Pocket doors shall have graspable hardware available when in the closed or open position.

The force required to activate operable parts shall be 5.0 pounds (22.2 N) maximum. Required exit door(s) shall have no additional locking devices. Required exit door hardware shall unlock inside and outside mechanisms when exiting the building allowing reentry into the adult family home without the use of a key, tool or special knowledge.

**420.12.3 Smoke and carbon monoxide alarm requirements.** Alarms shall be installed in such a manner so that the detection device warning is audible from all areas of the dwelling upon activation of a single alarm.

**420.12.4 Escape windows and doors.** Every sleeping room shall be provided with emergency escape and rescue windows as required by Section (~~1030~~) 1031. No alternatives to the sill height such as steps, raised platforms or other devices placed by the openings will be approved as meeting this requirement.

**420.12.5 Grab bar general requirements.** Where facilities are designated for use by adult family home clients, grab bars for water closets, bathtubs and shower stalls shall be installed according to ICC A117.1.

**420.12.6 Shower stalls.** Where provided to meet the requirements for bathing facilities, the minimum size of shower stalls for an adult

family home shall be 30 inches deep by 48 inches (760 mm by 1220 mm) long.

**420.13 Licensed care cooking facilities.** In Group I-1, Condition 2 assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC, rooms or spaces that contain a cooking facility with domestic cooking appliances shall be permitted to be open to the corridor where all of the following criteria are met:

1. The number of care recipients housed in the smoke compartment is not greater than 30.
2. The number of care recipients served by the cooking facility is not greater than 30.
3. Only one cooking facility area is permitted in a smoke compartment.
4. The types of domestic cooking appliances permitted are limited to ovens, cooktops, ranges, warmers and microwaves.
5. The corridor is a clearly identified space delineated by construction or floor pattern, material or color.
6. The space containing the domestic cooking facility shall be arranged so as not to obstruct access to the required exit.
7. A domestic cooking hood installed and constructed in accordance with Section 505 of the *International Mechanical Code* is provided over the cooktop or range.
8. The domestic cooking hood provided over the cooktop or range shall be equipped with an automatic fire-extinguishing system of a type recognized for protection of domestic cooking equipment. Preengineered automatic extinguishing systems shall be tested in accordance with UL 300A and *listed* and *labeled* for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's instructions.
9. A manual actuation device for the hood suppression system shall be installed in accordance with Sections 904.13.1 and 904.13.2.
10. An interlock device shall be provided such that upon activation of the hood suppression system, the power or fuel supply to the cooktop or range will be turned off.
11. A shut-off for the fuel and electrical power supply to the cooking equipment shall be provided in a location that is accessible only to staff.
12. A timer shall be provided that automatically deactivates the cooking appliances within a period of not more than 120 minutes.
13. A portable fire extinguisher shall be installed in accordance with Section 906 of the *International Fire Code*.

**420.14 Lofts.** Where provided in Group R occupancies, *lofts* shall comply with this code as modified by Sections 420.14.1 through 420.14.5. *Lofts* constructed in compliance with this section shall be considered a portion of the story below. Such *lofts* shall not contribute to either the building area or number of stories as regulated by Section 503.1. The loft floor area shall be included in determining the *fire area*.

EXCEPTION: *Lofts* need not comply with Section ((420.13)) 420.14 where they meet any of the following conditions:

1. The *loft* has a maximum depth of less than 3 feet (914 mm).
2. The *loft* has a floor area of less than 35 square feet (3.3 m<sup>2</sup>).
3. The *loft* is not provided with a permanent means of egress.

**420.14.1 Loft limitations.** *Lofts* shall comply with the following conditions:

1. The *loft* floor area shall be less than 70 square feet (6.5 m<sup>2</sup>).

2. The *loft* ceiling height shall not exceed 7 feet (2134 mm) for more than one-half of the *loft* floor area.

The provisions of Sections 420.14.2 through 420.14.5 shall not apply to *lofts* that do not comply with Items 1 and 2.

**420.14.2 Loft ceiling height.** The ceiling height below a *loft* shall not be less than 7 feet (2134 mm). The ceiling height above the finished floor of the *loft* shall not be less than 3 feet (914 mm). Portions of the *loft* with a sloped ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not contribute to the *loft* floor area.

**420.14.3 Loft area.** The aggregate area of all *lofts* and *mezzanines* within a room shall comply with Section 505.2.1.

EXCEPTION: The area of a single *loft* shall not be greater than two-thirds of the area of the room in which it is located, provided that no other *lofts* or *mezzanines* are open to the room in which the *loft* is located.

**420.14.4 Permanent egress for lofts.** Where a permanent means of egress is provided for *lofts*, the means of egress shall comply with Chapter 10 as modified by Section 420.14.4.1.

**420.14.4.1 Ceiling height at loft means of egress.** A minimum ceiling height of 3 feet shall be provided for the entire width of the means of egress from the *loft*.

**420.14.5 Smoke alarms.** Single- or multiple-station smoke alarms shall be installed in all *lofts* in accordance with Section 907.2.11.1 or 907.2.11.2.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 22-13-094, 23-12-103, and 23-20-023 [20-01-090], filed 6/14/22, 6/7/23, and 9/25/23 [12/12/19], effective 3/15/24 [7/1/20])

**WAC 51-50-0706 Section 706—Fire walls.**

**706.3 Materials.** *Fire walls* that separate a building of Type I or II construction from a building of any construction type shall be of any approved noncombustible materials. Other *fire walls* shall be built of materials consistent with the types permitted for the type of construction of the building.

**706.4 Fire-resistance rating.** *Fire walls* shall have a *fire-resistance rating* of not less than that required by Table 706.4.

**Table 706.4  
Fire Wall Fire-resistance Ratings**

GROUP	FIRE-RESISTANCE RATING (hours)
A, B, E, H-4, I, R-1, R-2, U	3 <sup>a</sup>
F-1, H-3 <sup>b</sup> , H-5, M, S-1	3
H-1, H-2	4 <sup>b</sup>
F-2, S-2, R-3, R-4	2

- a In Type II, III, IV, or V construction, walls shall be permitted to have a 2-hour fire-resistance rating.
- b For Group H-1, H-2, or H-3 buildings, also see Sections 415.7 and 415.8.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION [NEW SECTION] (Amending WSR 22-13-094, 23-12-103, and 23-20-023, filed 6/14/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-50-10170 Section 1017—Exit access travel distance.**

**Table 1017.2  
Exit Access Travel Distance<sup>a</sup>**

Occupancy	Without Sprinkler System (feet)	With Sprinkler System (feet)
A, E, F-1, M, R, S-1	200 <sup>c</sup>	250 <sup>b</sup>
I-1	Not Permitted	250 <sup>b</sup>
B	200	300 <sup>c</sup>
<del>((F-Z, S-Z))</del> F-2, S-2, U	300	400 <sup>c</sup>
H-1	Not Permitted	75 <sup>d</sup>
<del>((H-Z))</del> H-2	Not Permitted	100 <sup>d</sup>
H-3	Not Permitted	150 <sup>d</sup>
H-4	Not Permitted	175 <sup>d</sup>
H-5	Not Permitted	200 <sup>c</sup>
<del>((I-Z, I-3))</del> I-2, I-3	Not Permitted	200 <sup>c</sup>
I-4	150	200 <sup>c</sup>

For SI: 1 foot = 304.8 mm.

<sup>a</sup> See the following sections for modifications to exit access travel distance requirements:

- Section 402.8: For the distance limitation in malls.
- Section 407.4: For the distance limitation in Group I-2.
- Sections 408.6.1 and 408.8.1: For the distance limitations in Group I-3.
- Section 411.2: For the distance limitation in special amusement areas.
- Section 412.6: For the distance limitations in aircraft manufacturing facilities.
- Section 1006.2.2.2: For the distance limitation in refrigeration machinery rooms.
- Section 1006.2.2.3: For the distance limitation in refrigerated rooms and spaces.
- Section 1006.3.4: For buildings with one exit.
- Section 1017.2.2: For increased distance limitation in Groups F-1 and S-1.
- Section 1030.7: For increased limitation in assembly seating.
- Section 3103.4: For temporary structures.
- Section 3104.9: For pedestrian walkways.
- Section 3116: For fixed guideway and passenger rail stations.

<sup>b</sup> Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. See Section 903 for occupancies where automatic sprinkler systems are permitted in accordance with Section 903.3.1.2.

<sup>c</sup> Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

<sup>d</sup> Group H occupancies equipped throughout with an automatic sprinkler system in accordance with Section 903.2.5.1.

<sup>e</sup> ~~Group R-3 and R-4 buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.3. See Section 903.2.8 for occupancies where automatic sprinkler systems are permitted in accordance with Section 903.3.1.3.~~

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 22-13-094, 23-12-103, and 23-20-023 [20/21/021], filed 6/14/22, 6/7/23, and 9/25/23 [10/9/20], effective 3/15/24 [11/9/20])

**WAC 51-50-1019 (~~Section 1019—Exit access stairways and ramps~~) Reserved.**



~~((1019.3 Occupancies other than Groups I-2 and I-3. In other than Groups I-2 and I-3 occupancies, floor openings containing exit access stairways or ramps shall be enclosed with a shaft enclosure constructed in accordance with Section 713.~~

## EXCEPTIONS:

1. Exit access stairways and ramps that serve or atmospherically communicate between only two adjacent stories. Such interconnected stories shall not be open to other stories.
2. In Group R-1, R-2 or R-3 occupancies, exit access stairways and ramps connecting four stories or less serving and contained within an individual dwelling unit or sleeping unit or live/work unit.
3. Exit access stairways serving and contained within a Group R-3 congregate residence are not required to be enclosed.
4. ~~Exit access stairways and ramps in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, where the area of the vertical opening between stories does not exceed twice the horizontal projected area of the stairway or ramp and the opening is protected by a draft curtain and closely spaced sprinklers in accordance with NFPA 13. In other than Group B and M occupancies, this provision is limited to openings that do not connect more than four stories.~~
5. ~~Exit access stairways and ramps within an atrium complying with the provisions of Section 404.~~
6. ~~Exit access stairways and ramps in open parking garages that serve only the parking garage.~~
7. ~~Exit access stairways and ramps serving smoke-protected or open-air assembly seating complying with the exit access travel distance requirements of Section 1030.7.~~
8. ~~Exit access stairways and ramps between the balcony, gallery or press box and the main assembly floor in occupancies such as theaters, places of religious worship, auditoriums, and sports facilities.~~
9. ~~Exterior exit access stairways or ramps between occupied roofs.))~~

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 23-22-119**  
**PERMANENT RULES**  
**BUILDING CODE COUNCIL**

[Filed October 31, 2023, 4:04 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: Chapter 51-54A WAC; Amendments to the 2021 International Fire Code to adopt provisions of the 2024 International Fire Code into the 2021 code. Specifically, Chapter 12 Energy Storage Systems and Chapter 80 Referenced Standards. Due to rapidly evolving technologies within the field of energy storage systems, these changes are necessary to address applications that are encountered in the field but not addressed within Chapter 12 of the International Fire Code. Reference to NFPA 855 is appropriate, as there are items in Chapter 12 that are not fully covered in NFPA 855. By combining the use of both documents, maximum safety can be obtained. In addition, the code user will benefit from the annex note explanations in NFPA 855.

Citation of Rules Affected by this Order: Two new sections in chapter 51-54A WAC; and amending three sections in chapter 51-54A WAC.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Other Authority: RCW 19.27.031, 19.27.074.

Adopted under notice filed as WSR 23-15-046 on July 13, 2023.

Changes Other than Editing from Proposed to Adopted Version:

WAC	Section	Change	Rationale/Discussion
51-54A-1207	1207.5.5/1207.11.10	Move text from 1207.11.10 to 1207.5.5: <u>"3.5. NFPA 2010, standard for Fixed Aerosol Fire-Extinguishing Systems. EXCEPTIONS: 1. Fire suppression systems for lead-acid and nickel-cadmium battery systems at facilities under the exclusive control of communications utilities that operate at less than 50 VAC and 60 VDC shall be provided where required by NFPA 76. 2. Lead-acid and nickel-cadmium systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations, shall not be required to have a fire suppression system installed. 3. Lead-acid battery systems in uninterruptible power supplies listed and labeled in accordance with UL 1778, utilized for standby power applications, which is limited to not more than 10 percent of the floor area on the floor on which the ESS is located shall not be required to have a fire suppression system."</u>	This text was placed incorrectly in the CR-102 filing and is moved to place it in the correct location.

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 3, 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 2, Amended 3, Repealed 0.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair

#### OTS-4642.4

#### NEW SECTION

##### **WAC 51-54A-1201 General.**

**1201.1 Scope.** The provisions of this chapter shall apply to the installation, operation, maintenance, repair, retrofitting, testing, commissioning and decommissioning of energy systems used for generating or storing energy including, but not limited to, energy storage systems under the exclusive control of an electric utility or lawfully designated agency. It shall not apply to equipment associated with the generation, control, transformation, transmission, or distribution of energy installations that is under the exclusive control of an electric utility or lawfully designated agency. Energy storage systems regulated by WAC 51-54A-1207 shall comply with this chapter as appropriate and NFPA 855.

**1201.3 Mixed system installation.** Where mixed systems are approved, the aggregate nameplate kWh energy of all energy storage systems in a fire area shall not exceed the maximum quantity specified for any of the energy systems in this chapter. Where required by the fire code official, a hazard mitigation analysis shall be provided and approved in accordance with Section 104.8.2 to evaluate any potential adverse interaction between the various energy systems and technologies.

#### NEW SECTION

##### **WAC 51-54A-1206 Stationary fuel cell power systems.**

**1206.1 General.** Stationary fuel cell power systems in new and existing occupancies shall comply with this section.

EXCEPTION: The temporary use of a fuel cell-powered electric vehicle to power a Group R-3 or R-4 building while parked shall comply with Section 1206.13.

**1206.5 Residential use.** Stationary fuel cell power systems shall not be installed in Group R-3 and R-4 buildings, or dwelling units associated with Group R-2 buildings unless they are specifically listed for residential use.

EXCEPTION: The temporary use of a fuel cell-powered electric vehicle to power a Group R-3 or R-4 building while parked shall comply with Section 1206.13.

**1206.6.3 Gas detection systems.** Stationary fuel cell power systems shall be provided with a gas detection system. Detection shall be pro-

vided in approved locations in the fuel cell power system enclosure, the exhaust system, or the room that encloses the fuel cell power system. The system shall be designed to activate at a flammable gas concentration of not more than 25 percent of the lower flammable limit (LFL).

**1206.6.3.1 System activation.** The activation of the gas detection system shall automatically:

1. Close valves between the gas supply and the fuel cell power system.
2. Shut down the fuel cell power system.
3. Initiate local audible and visible alarms in approved locations.

AMENDATORY SECTION [NEW SECTION] (Amending WSR 22-13-093, 23-12-107, and 23-20-027, filed 6/14/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-54A-1207 Electrical energy storage systems.**

**1207.1 General.** The provisions in this section are applicable to stationary and mobile electrical energy storage systems (ESS).

EXCEPTION: ESS in Group R-3 and R-4 occupancies not exceeding thresholds in Section 1207.11.4 shall comply with Section 1207.11 through 1207.11.9.

**1207.1.1 Scope.** ESS having capacities exceeding the values shown in Table 1207.1.1 shall comply with this section.

**TABLE 1207.1.1**  
**Energy Storage System (ESS) Threshold Quantities**

<u>Technology</u>	<u>Energy Capacity<sup>a</sup></u>
<u>Capacitor ESS</u>	<u>3 kWh</u>
<u>Flow batteries<sup>b</sup></u>	<u>20 kWh</u>
<u>Lead-acid batteries, all types</u>	<u>70 kWh<sup>c</sup></u>
<u>Lithium-ion batteries</u>	<u>20 kWh</u>
<u>Sodium nickel chloride batteries</u>	<u>70 kWh</u>
<u>Nickel-cadmium batteries (Ni-Cd), Nickel Metal Hydride (Ni-MH), and Nickel Zinc (Ni-Zn) batteries</u>	<u>70 kWh</u>
<u>Nonelectrochemical ESS<sup>d</sup></u>	<u>70 kWh</u>
<u>Other battery technologies</u>	<u>10 kWh</u>
<u>Other electrochemical ESS technologies</u>	<u>3 kWh</u>
<u>Zinc manganese dioxide batteries (Zn-MnO<sub>2</sub>)</u>	<u>70 kWh</u>

For SI: 1 kilowatt-hour = 3.6 megajoules.

<sup>a</sup> Energy capacity is the total energy capable of being stored (nameplate rating), not the usable energy rating. For units rated in amp-hours, kWh shall equal rated voltage times amp-hour rating divided by 1,000.

<sup>b</sup> Shall include vanadium, zinc-bromine, polysulfide-bromide and other flowing electrolyte-type technologies.

<sup>c</sup> Fifty gallons of lead-acid battery electrolyte shall be considered equivalent to 70 kWh.

<sup>d</sup> Covers nonelectrochemical technologies such as flywheel and thermal ESS.

**1207.1.1.1 Utilities and industrial applications.** This section shall not apply to capacitors and capacitor equipment for electric utilities and industrial facilities used in applications such as flexible ac

transmission (FACTS) devices, filter capacitor banks, power factor correction, and standalone capacitor banks for voltage correction and stabilization.

**1207.1.1.2 Mobile ESS.** Mobile ESS deployed at an electric utility sub-station or generation facility for 90 days or less shall not add to the threshold values in Table 1207.1.1 for the stationary ESS installation if both of the following conditions apply:

1. The mobile ESS complies with Section 1207.10.
2. The mobile ESS is only being used during periods in which the facility's stationary ESS is being tested, repaired, retrofitted, or replaced.

**1207.1.3 Construction documents.** The following information shall be provided with the permit application:

1. Location and layout diagram of the room or area in which the ESS is to be installed.
2. Details on the hourly fire-resistance ratings of assemblies enclosing the ESS.
3. The quantities and types of ESS to be installed.
4. Manufacturer's specifications, ratings, and documentation of the listings of each ESS and associated equipment.
5. Description of energy (battery) management systems and their operation.
6. Location and content of required signage.
7. Details on fire suppression, smoke or fire detection, thermal management, ventilation, exhaust, and deflagration venting systems, if provided.
8. Support arrangement associated with the installation, including any required seismic restraint.
9. A commissioning plan complying with Section 1207.2.1.
10. A decommissioning plan complying with Section 1207.2.3.
11. A fire safety and evacuation plan in accordance with Section 404.

**1207.1.3.1 Utilities applicability.** Plans and specifications associated with ESS owned and operated by electric utilities as a component of the electric grid that are considered critical infrastructure documents in accordance with the provisions of the North American Electric Reliability Corporation and other applicable governmental laws and regulations shall be made available to the fire code official for viewing based on the requirements of the applicable governmental laws and regulations.

**1207.1.4 Hazard mitigation analysis.** Failure modes and effects analysis (FMEA) or other approved hazard mitigation analysis shall be provided in accordance with Section 104.8.2 under any of the following conditions:

1. Where ESS technologies not specifically identified in Table 1207.1.1 are provided.
2. More than one ESS technology is provided in a (~~room or en-~~closed) single fire area where there is a potential for adverse interaction between technologies.
3. Where allowed as a basis for increasing maximum allowable quantities. See Section 1207.5.2.
4. Where flammable gases can be produced under abnormal conditions.

5. Where required by the fire code official to address a potential hazard with an ESS installation that is not addressed by existing requirements.

**1207.1.4.1 Fault condition.** The hazard mitigation analysis shall evaluate the consequences of the following failure modes. Only single failure modes shall be considered.

1. A thermal runaway condition in a single electrochemical ESS unit.

2. A mechanical failure of a nonelectrochemical ESS unit.

3. Failure of any battery (energy) management system or fire protection system within the ESS equipment that is not covered by the product listing failure mode effects analysis (FMEA).

4. Failure of any required protection system external to the ESS including, but not limited to, ventilation (HVAC), exhaust ventilation, smoke detection, fire detection, gas detection, or fire suppression system.

**1207.1.4.2 Analysis approval.** The fire code official is authorized to approve the hazardous mitigation analysis provided that the consequences of the hazard mitigation analysis demonstrate:

1. Fires will be contained within unoccupied ESS rooms or areas for the minimum duration of the fire-resistance-rated separations identified in Section 1207.7.4.

2. Fires involving the ESS will allow occupants or the general public to evacuate to a safe location.

**1207.1.5 Large-scale fire test.** Where required elsewhere in Section 1207, large-scale fire testing shall be conducted on a representative ESS in accordance with UL 9540A. The testing shall be conducted or witnessed and reported by an approved testing laboratory and show that a fire involving one ESS will not propagate to an adjacent ESS, and where installed within buildings, enclosed areas and walk-in units will be contained within the room, enclosed area or walk-in unit for the duration of the test. The test report shall be provided to the fire code official for review and approval in accordance with Section 104.8.2.

**1207.1.6.1 Fire mitigation personnel.** Where, in the opinion of the fire code official, it is essential for public safety that trained personnel be on-site to respond to possible ignition or re-ignition of a damaged ESS, the system owner, agent, or lessee shall dispatch within 15 minutes one or more fire mitigation personnel to the premise, as required and approved, at their expense. These personnel shall remain on duty continuously after the fire department leaves the premise until the damaged energy storage equipment is removed from the premises, or earlier if the fire code official indicates the public safety hazard has been abated.

**1207.2.1 Commissioning.** Commissioning of newly installed ESS and existing ESS that have been retrofitted, replaced, or previously decommissioned and are returning to service shall be conducted prior to the ESS being placed in service in accordance with a commissioning plan that has been approved prior to initiating commissioning. The commissioning plan shall include the following:

1. A narrative description of the activities that will be accomplished during each phase of commissioning, including the personnel intended to accomplish each of the activities.

2. A listing of the specific ESS and associated components, controls, and safety-related devices to be tested, a description of the tests to be performed, and the functions to be tested.

3. Conditions under which all testing will be performed, which are representative of the conditions during normal operation of the system.

4. Documentation of the owner's project requirements and the basis of design necessary to understand the installation and operation of the ESS.

5. Verification that required equipment and systems are installed in accordance with the approved plans and specifications.

6. Integrated testing for all fire and safety systems.

7. Testing for any required thermal management, ventilation, or exhaust systems associated with the ESS installation.

8. Preparation and delivery of operation and maintenance documentation.

9. Training of facility operating and maintenance staff.

10. Identification and documentation of the requirements for maintaining system performance to meet the original design intent during the operation phase.

11. Identification and documentation of personnel who are qualified to service, maintain and decommission the ESS, and respond to incidents involving the ESS, including documentation that such service has been contracted for.

12. A decommissioning plan for removing the ESS from service, and from the facility in which it is located. The plan shall include details on providing a safe, orderly shutdown of energy storage and safety systems with notification to the code officials prior to the actual decommissioning of the system. The decommissioning plan shall include contingencies for removing an intact operational ESS from service, and for removing an ESS from service that has been damaged by a fire or other event.

**EXCEPTIONS:**

Commissioning shall not be required for lead-acid and nickel-cadmium battery systems at facilities under the exclusive control of communications utilities that comply with NFPA 76 and operate at less than 50 VAC and 60 VDC. A decommissioning plan shall be provided and maintained where required by the fire code official.

1. Lead-acid and nickel-cadmium battery systems less than 50 VAC, 60 VDC that are in telecommunications facilities for installations of communications equipment under the exclusive control of communications utilities and located outdoors or in building spaces or walk-in units used exclusively for such installations that are in compliance with NFPA 76 shall be permitted to have a commissioning plan in compliance with recognized industry practices in lieu of complying with Section 1207.2.1.

2. Lead-acid and nickel-cadmium battery systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utilities, and located in building spaces or walk-in units used exclusively for such installations shall be permitted to have a commissioning plan in compliance with applicable governmental laws and regulations in lieu of developing a commissioning plan in accordance with Section 1207.2.1.

**1207.3.1 Energy storage system listings.** ESS shall be listed in accordance with UL 9540.

**EXCEPTIONS:**

1. Lead-acid and nickel-cadmium battery systems less than 50 VAC, 60 VDC in telecommunications facilities for installations of communications equipment under the exclusive control of communications utilities located outdoors or in building spaces used exclusively for such installations that are in compliance with NFPA 76.

2. Lead-acid and nickel-cadmium battery systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations.

3. Lead-acid battery systems in uninterruptible power supplies listed and labeled in accordance with UL 1778 and utilized for standby power applications.

**1207.3.7.1 Retrofitting lead acid and nickel cadmium.** Changing out or retrofitting of lead-acid and nickel-cadmium batteries in the following applications shall be considered repairs where there is no increase in system size or energy capacity greater than 10 percent of the original design.

1. At facilities under the exclusive control of communications utilities that comply with NFPA 76 and operate at less than 50 VAC and 60 VDC.

2. Battery systems used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations.

3. Batteries in uninterruptible power supplies listed and labeled in accordance with UL 1778 and used for standby applications only.

**1207.5 Electrochemical ESS protection.** The protection of electrochemical ESS shall be in accordance with Sections 1207.5.1 through 1207.5.8 where required by Sections 1207.7 through 1207.10.

**TABLE 1207.5**

**Maximum Allowable Quantities of Electrochemical ESS**

<b>Technology</b>	<b>Maximum Allowable Quantities<sup>a</sup></b>
<b>Storage Batteries</b>	
<u>Flow batteries<sup>b</sup></u>	<u>600 kWh</u>
<u>Lead-acid, all types</u>	<u>Unlimited</u>
<u>Lithium-ion</u>	<u>600 kWh</u>
<u>Sodium nickel chloride</u>	<u>600 kWh</u>
<u>Nickel-cadmium (Ni-Cd), Nickel metal hydride (Ni-MH) and nickel zinc (Ni-Zn)</u>	<u>Unlimited</u>
<u>Zinc manganese dioxide (Zn-MnO<sub>2</sub>)</u>	<u>Unlimited</u>
<u>Other battery technologies</u>	<u>200 kWh</u>
<b>Capacitors</b>	
<u>All types</u>	<u>20 kWh</u>
<b>Other Electrochemical ESS</b>	
<u>All types</u>	<u>20 kWh</u>

For SI: 1 kilowatt hour = 3.6 megajoules.

<sup>a</sup> For electrochemical ESS units rated in amp-hours, kWh shall equal rated voltage times the amp-hour rating divided by 1,000.

<sup>b</sup> Shall include vanadium, zinc-bromine, polysulfide-bromide, and other flowing electrolyte-type technologies.

**1207.5.1 Size and separation.** Electrochemical ESS shall be segregated into groups not exceeding 50 kWh (180 mega-joules). Each group shall be separated a minimum of three feet (914 mm) from other groups and from walls in the storage room or area. The storage arrangements shall comply with Chapter 10.

**EXCEPTIONS:**

1. Lead-acid and nickel-cadmium battery systems in facilities under the exclusive control of communications utilities and operating at less than 50 VAC and 60 VDC in accordance with NFPA 76.
2. Lead-acid and nickel-cadmium systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations.
3. Lead-acid battery systems in uninterruptible power supplies and labeled in accordance with UL 1778, utilized for standby power applications, and limited to not more than 10 percent of the floor area on the floor on which the ESS is located.
4. The fire code official is authorized to approve larger capacities or smaller separation distances based on large-scale fire testing complying with Section 1207.1.5.

**1207.5.3 Elevation.** Electrochemical ESS shall not be located in the following areas:



1. Where the floor is located more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access.
2. Where the floor is located below the lowest level of exit discharge.

**EXCEPTIONS:**

1. Lead-acid and nickel-cadmium battery systems less than 50 VAC and 60 VDC installed in facilities under the exclusive control of communications utilities in accordance with NFPA 76.
2. Lead-acid and nickel-cadmium systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations.
3. Lead-acid battery systems in uninterruptible power supplies and labeled in accordance with UL 1778, utilized for standby power applications, and limited to not more than 10 percent of the floor area on the floor on which the ESS is located.
4. Where approved, installations shall be permitted in underground vaults complying with NFPA 70, Article 450, Part III.
5. Where approved by the fire code official, installations shall be permitted on higher and lower floors.

**1207.5.4 Fire detection.** An approved automatic smoke detection system or radiant energy-sensing fire detection system complying with Section 907.2 shall be installed in rooms, indoor areas, and walk-in units containing electrochemical ESS. An approved radiant energy-sensing fire detection system shall be installed to protect open parking garage and rooftop installations. Alarm signals from detection systems shall be transmitted to a central station, proprietary or remote station service in accordance with NFPA 72, or where approved to a constantly attended location.

**EXCEPTION:**

Normally unoccupied, remote stand-alone telecommunications structures with a gross floor area of less than 1500 ft<sup>2</sup> (139 m<sup>2</sup>) utilizing lead-acid or nickel-cadmium batteries shall not be required to have a fire detection system installed.

**1207.5.4.1 System status.** Lead-acid and nickel-cadmium battery systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations shall be allowed to use the process control system to monitor the smoke or radiant energy-sensing fire detectors required in Section 1207.5.4.

**1207.5.5 Fire suppression systems.** Rooms and areas within buildings and walk-in units containing electrochemical ESS shall be protected by an automatic fire suppression system designed and installed in accordance with one of the following:

1. Automatic sprinkler systems, designed and installed in accordance with Section 903.3.1.1 for ESS units (groups) with a maximum stored energy capacity of 50 kWh, as described in Section 1207.5.1, shall be designed with a minimum density of 0.3 gpm/ft<sup>2</sup> (1.14 L/min) based over the area of the room or 2,500 square-foot (232 m<sup>2</sup>) design area, whichever is smaller, unless a lower density is approved based upon large-scale fire testing in accordance with Section 1207.1.5.
2. Automatic sprinkler system designed and installed in accordance with Section 903.3.1.1 for ESS units (groups) exceeding 50 kWh shall use a density based on large-scale fire testing complying with Section 1207.1.5.
3. The following alternative automatic fire-extinguishing systems designed and installed in accordance with Section 904, provided that the installation is approved by the fire code official based on large-scale fire testing complying with Section 1207.1.5:
  - 3.1. NFPA 12, Standard on Carbon Dioxide Extinguishing Systems.
  - 3.2. NFPA 15, Standard for Water Spray Fixed Systems for Fire Protection.
  - 3.3. NFPA 750, Standard on Water Mist Fire Protection Systems.
  - 3.4. NFPA 2001, Standard on Clean Agent Fire-Extinguishing Systems.

3.5. NFPA 2010, Standard for Fixed Aerosol Fire-Extinguishing Systems.

EXCEPTIONS:

1. Fire suppression systems for lead-acid and nickel-cadmium battery systems at facilities under the exclusive control of communications utilities that operate at less than 50 VAC and 60 VDC shall be provided where required by NFPA 76.
2. Lead-acid and nickel-cadmium systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations, shall not be required to have a fire suppression system installed.
3. Lead-acid battery systems in uninterruptible power supplies listed and labeled in accordance with UL 1778, utilized for standby power applications, which is limited to not more than 10 percent of the floor area on the floor on which the ESS is located, shall not be required to have a fire suppression system.

1207.6 Electrochemical ESS technology-specific protection. Electrochemical ESS installations shall comply with the requirements of this section in accordance with the applicable requirements of Table 1207.6.

**TABLE 1207.6  
Electrochemical ESS Technology-Specific Requirements**

Compliance Required <sup>b</sup>		Battery Technology					Sodium nickel chloride	Other ESS and Battery Technologies <sup>b</sup>	Capacitor ESS <sup>b</sup>
Feature	Section	Lead-acid	Nickel cadmium (Ni-Cd), nickel metal hydride (Ni-MH) and nickel zinc (Ni-Zn)	Zinc manganese dioxide (ZnMnO2)	Lithium-ion	Flow			
Exhaust ventilation	1207.6.1	Yes	Yes	Yes	No	Yes	No	Yes	Yes
Explosion control	1207.6.3	Yes <sup>a</sup>	Yes <sup>a</sup>	Yes	Yes	No	Yes	Yes	Yes
Safety caps	1207.6.4	Yes	Yes	Yes	No	No	No	Yes	Yes
Spill control and neutralization	1207.6.2	Yes <sup>c</sup>	Yes <sup>c</sup>	Yes <sup>f</sup>	No	Yes	No	Yes	Yes
Thermal runaway	1207.6.5	Yes <sup>d</sup>	Yes <sup>d</sup>	Yes <sup>e</sup>	Yes <sup>e</sup>	No	Yes	Yes <sup>e</sup>	Yes

- <sup>a</sup> Not required for lead-acid and nickel-cadmium batteries at facilities under the exclusive control of communications utilities that comply with NFPA 76 and operate at less than 50 VAC and 60 VDC.
- <sup>b</sup> Protection shall be provided unless documentation acceptable to the fire code official is provided in accordance with Section 104.8.2 that provides justification why the protection is not necessary based on the technology used.
- <sup>c</sup> Applicable to vented-type (i.e., flooded) nickel-cadmium and lead-acid batteries.
- <sup>d</sup> Not required for vented-type (i.e., flooded) batteries.
- <sup>e</sup> The thermal runaway protection is permitted to be part of a battery management system that has been evaluated with the battery as part of the evaluation to UL 1973.
- <sup>f</sup> Not required for batteries with jelled electrolyte.

1207.6.3 Explosion control. Where required by Table 1207.6 or elsewhere in this code, explosion control complying with Section 911 shall be provided for rooms, areas, ESS cabinets, or ESS walk-in units containing electrochemical ESS technologies.

EXCEPTIONS:

1. Where approved, explosion control is permitted to be waived by the fire code official based on large-scale fire testing complying with Section 1207.1.5 that demonstrates that flammable gases are not liberated from electrochemical ESS cells or modules.
2. Where approved, explosion control is permitted to be waived by the fire code official based on documentation provided in accordance with Section 104.8 that demonstrates that the electrochemical ESS technology to be used does not have the potential to release flammable gas concentrations in excess of 25 percent of the LFL anywhere in the room, area, walk-in unit or structure under thermal runaway, or other fault conditions.
3. Where approved, ESS cabinets that have no debris, shrapnel, or enclosure pieces ejected during large scale fire testing complying with Section 1207.1.5 shall be permitted in lieu of providing explosion control complying with Section 911.
4. Explosion control is not required for lead-acid and nickel-cadmium battery systems less than 50 VAC, 60 VDC in telecommunication facilities under the exclusive control of communications utilities located in building spaces or walk-in units used exclusively for such installations.
5. Explosion control is not required for lead-acid and nickel-cadmium systems used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility located in building spaces or walk-in units used exclusively for such installations.
6. Explosion control is not required for lead-acid battery systems in uninterruptible power supplies listed and labeled in accordance with UL 1778, utilized for standby power applications, and housed in a single cabinet in a single fire area in buildings or walk-in units.

1207.10.1 Charging and storage. For the purpose of Section 1207.10, charging and storage covers the operation where mobile ESS are charged

and stored so they are ready for deployment to another site, and where they are charged and stored after a deployment.

EXCEPTION: Mobile ESS used to temporarily provide power to lead-acid and nickel-cadmium systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations.

**1207.10.2 Deployment.** For the purpose of Section 1207.10, deployment covers operations where mobile ESS are located at a site other than the charging and storage site and are being used to provide power.

EXCEPTION: Mobile ESS used to temporarily provide power to lead-acid and nickel-cadmium systems that are used for dc power for control of substations and control or safe shutdown of generating stations under the exclusive control of the electric utility, and located outdoors or in building spaces used exclusively for such installations.

**1207.11 ESS in Group R-3 and R-4 occupancies.** ESS in Group R-3 and R-4 occupancies shall be in accordance with Sections 1207.11.1 through 1207.11.9.

EXCEPTIONS: 1. ESS listed and labeled in accordance with UL 9540 and marked "For use in residential dwelling units", where installed in accordance with the manufacturer's instructions and NFPA 70.  
2. ESS rated less than 1 kWh (3.6 megajoules).

**1207.11.1 Equipment listings.** ESS shall be listed and labeled in accordance with UL 9540.

EXCEPTIONS: Not adopted.

**1207.11.2.1 Spacing.** Individual ESS units shall be separated from each other by at least three feet (914 mm) except where smaller separation distances are documented to be adequate based on large-scale fire testing complying with Section 1207.1.5.

**1207.11.3 Location.** ESS shall be installed only in the following locations:

1. Detached garages and detached accessory structures.
2. Attached garages separated from the dwelling unit living space and sleeping units in accordance with Section 406.3.2 of the International Building Code.
3. Outdoors or on the exterior side of exterior walls located a minimum of three feet (914 mm) from doors and windows directly entering the dwelling unit.
4. Enclosed utility closets, basements, storage or utility spaces within dwelling units and sleeping units with finished or noncombustible walls and ceilings. Walls and ceilings of unfinished wood-framed construction shall be provided with not less than 5/8 in. Type X gypsum wallboard.

ESS shall not be installed in sleeping rooms, or closets or spaces opening directly into sleeping rooms.

**1207.11.4 Energy ratings.** Individual ESS units shall have a maximum rating of 20 kWh. The aggregate rating of the ESS shall not exceed:

1. 40 kWh within utility closets, basements, and storage or utility spaces.
2. 80 kWh in attached or detached garages and detached accessory structures.
3. 80 kWh on exterior walls.
4. 80 kWh outdoors on the ground.

ESS installations exceeding the permitted individual or aggregate ratings shall be installed in accordance with Sections 1207.1 through 1207.9.

**1207.11.6 Fire detection.** ESS installed in Group R-3 and R-4 occupancies shall comply with the following:

1. Rooms and areas within dwelling units, sleeping units, basements and attached garages in which ESS are installed shall be protected by smoke alarms in accordance with Section 907.2.11.

2. A listed heat alarm shall be installed in locations where smoke alarms cannot be installed based on their listing.

**1207.11.7 Protection from impact.** ESS installed in a location subject to vehicle damage shall be protected by approved barriers. Appliances in garages shall also be installed in accordance with Section 304.3 of the International Mechanical Code.

**1207.11.8 Ventilation.** Indoor installations of ESS that include batteries that produce hydrogen or other flammable gases during charging shall be provided with exhaust ventilation in accordance with Section 304.5 of the International Mechanical Code.

**1207.11.9 Toxic and highly toxic gas.** Model code section not adopted.

**1207.11.10 Electric vehicle use.** The temporary use of an owner or occupant's electric-powered vehicle to power a dwelling unit or sleeping unit while parked in an attached or detached garage or outdoors shall comply with the vehicle manufacturer's instructions and NFPA 70.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 22-13-093, 23-12-107, and 23-20-027 [19-02-086], filed 6/14/22, 6/7/23, and 9/25/23 [1/2/19], effective 3/15/24 [7/1/19])

**WAC 51-54A-8000 Referenced standards.**

NFPA 13-19: Standard for the Installation of Sprinkler Systems (except 9.3.6.3(5)) . . . . . 903.3.1.1, 903.3.2, 903.3.8.2, 903.3.8.5, 904.13, 905.3.4, 907.6.4, 914.3.2, 1019.3, 1103.4.8, 3201.1, 3204.2, 3205.5, Table 3206.2, 3206.4.1, 3206.10, 3207.2, 3207.2.1, 3208.2.2, 3208.2.2.1, 3208.4, 3210.1, 3401.1, 5104.1, 5104.1.1, 5106.5.7, 5704.3.3.9, Table 5704.3.6.3(7), 5704.3.7.5.1, 5704.3.8.4

NFPA (~~33~~) 33-18 Membrane Enclosures . . . . . 2404.3.5

NFPA 96-21 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations . . . . . 606.2, 606.3, 904.13

NFPA 130-20 Standard for Fixed Guideway Transit and Passenger Rail Systems . . . . . 4901.1

NFPA 855-23 Standard for the Installation of Stationary Energy Storage Systems . . . . . 1201.1

UL 142A-2018: Special Purpose Above ground Tanks for Specific Flammable or Combustible Liquids . . . . . 605.4

UL 2272-2016: Electrical Systems for Personal E-Mobility Devices . . . . . 323.2

UL 2849-2020: Electrical Systems for eBikes . . . . . 323.2

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.