

## WSR 24-04-048

## PROPOSED RULES

## WASHINGTON STATE PATROL

[Filed January 31, 2024, 2:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-120.

Title of Rule and Other Identifying Information: Chapter 212-80 WAC, Fire protection sprinkler system contractors.

Hearing Location(s): On March 19, 2024, at 10:00 a.m., at 106 11th Street S.E., Room 1011, Olympia, WA 98507.

Date of Intended Adoption: March 20, 2024.

Submit Written Comments to: Kimberly Mathis, Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by March 18, 2024.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by March 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 212-80-073, 212-80-205, 212-80-210, and 212-80-215 are needed to coincide with legislative changes to chapter 18.160 RCW that amended licensing fees and enforcement and fines for a contractor who commits an infraction, which will become effective January 1, 2024. Changes within WAC 212-80-205 provide clarity.

Reasons Supporting Proposal: Updates are to ensure consistency and clarity.

Statutory Authority for Adoption: RCW 18.160.030.

Statute Being Implemented: Chapters 18.160 and 18.270 RCW.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Melissa Gannie, Olympia, Washington, 360-596-3903; Enforcement: Washington State Patrol (WSP), Fire Protection Bureau, Olympia, Washington, 360-596-3903.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 provides that a cost-benefit analysis (CBA) is required before adopting a rule described in subsection (5) of the statute. RCW 34.05.328 (5)(a)(i) makes the requirements applicable to significant legislative rules of certain identified agencies. WSP is not one of those identified agencies. The requirements also apply to any rule of an agency if the section is voluntarily made applicable to the rule by the agency or by a majority vote of the joint administrative rules review committee. Neither of these conditions have been met, therefore the requirement of preparing a CBA is not applicable to this rule making. See RCW 34.05.328 (5)(a)(ii).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

January 31, 2024

**OTS-5154.1**

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

**WAC 212-80-073 Fire protection sprinkler system contractor license fees.** (1) **Initial application fee** is \$100 only charged once when a person makes the initial application for any fire protection sprinkler system contractor license.

(2) **Annual license fee** is paid by the contractor when:

(a) Submitting the application for a license; or

(b) Renewing the fire sprinkler system license. The annual license fees for each contractor license level are:

Level 1	<del>(\$100)</del> <u>\$125</u>
Level 2	<del>(\$300)</del> <u>\$375</u>
Level 3	\$1,500
Level U	\$1,500
Level I&T	\$1,000

(3) Except as provided by (b) of this subsection, the annual license fee as provided by subsection (2) (a) of this section will be prorated based upon the portion of the year such license is in effect, provided that:

(a) The annual license fee is allowed to be prorated only once in the history of the company.

(b) When the director finds that a contractor performed work covered by this chapter and chapter 18.160 RCW, the contractor must pay the full annual licensing fees, in addition to any penalties assessed by the director for unlicensed operation(s).

(c) The prorated fees are as follows:

Fire Sprinkler System Contractor Initial Prorated License Fees					
Month	1	2	3	U	I&T
January	Not prorated for January				
February	<del>(\$92.00)</del> <u>\$115.00</u>	<del>(\$275.00)</del> <u>\$344.00</u>	\$1,375.00	\$1,375.00	\$920.00
March	<del>(\$83.00)</del> <u>\$105.00</u>	<del>(\$250.00)</del> <u>\$313.00</u>	\$1,250.00	\$1,250.00	\$830.00
April	<del>(\$75.00)</del> <u>\$95.00</u>	<del>(\$225.00)</del> <u>\$282.00</u>	\$1,125.00	\$1,125.00	\$750.00
May	<del>(\$67.00)</del> <u>\$85.00</u>	<del>(\$200.00)</del> <u>\$251.00</u>	\$1,000.00	\$1,000.00	\$670.00
June	<del>(\$58.00)</del> <u>\$75.00</u>	<del>(\$175.00)</del> <u>\$220.00</u>	\$875.00	\$875.00	\$580.00
July	<del>(\$50.00)</del> <u>\$65.00</u>	<del>(\$150.00)</del> <u>\$189.00</u>	\$750.00	\$750.00	\$500.00
August	<del>(\$42.00)</del> <u>\$55.00</u>	<del>(\$125.00)</del> <u>\$158.00</u>	\$625.00	\$625.00	\$420.00

Fire Sprinkler System Contractor Initial Prorated License Fees					
Month	1	2	3	U	I&T
September	<del>(((\$33.00))</del> \$45.00	<del>(((\$100.00))</del> \$127.00	\$500.00	\$500.00	\$330.00
October	<del>(((\$25.00))</del> \$35.00	<del>(((\$75.00))</del> \$96.00	\$375.00	\$375.00	\$250.00
November	<del>(((\$17.00))</del> \$25.00	<del>(((\$50.00))</del> \$65.00	\$250.00	\$250.00	\$170.00
December	<del>(((\$8.00))</del> \$15.00	<del>(((\$25.00))</del> \$34.00	\$125.00	\$125.00	\$80.00

(4) License fees are nonrefundable once the director has issued the license.

(5) The director will invoice the annual license and certification fees for renewal to the contractor and the certificate of competency holders. Contractors may receive invoices for the certificate of competency holders they employ.

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

**WAC 212-80-205 Suspension or revocation of licenses or certificates.** (1) The director may refuse to issue or renew or may suspend or revoke the privilege of any individual acting as a certificate of competency holder, certified or not, or a licensed or unlicensed fire protection sprinkler system contractor to engage in the fire protection sprinkler system business. The director may establish penalties against a person or company who violates any provision of chapter 18.160 RCW or any provision of this chapter while he or she is engaged in the design, installation, inspection, testing, maintenance, or repair, of a fire sprinkler system or any part of such system.

(2) The following actions will result in suspension, revocation, or civil penalties against a fire protection sprinkler system contractor (~~(or)~~) and suspension or revocation for certificate of competency holder:

(a) Gross incompetence - The licensed contractor and/or certificate of competency holder demonstrated he or she does not have the qualifications or ability to perform at the level of license or certificate required to contract or offer to bid on the design, installation, inspection, testing, maintenance, or repair, of a fire protection sprinkler system or any part of such system. For the purpose of this subsection, qualifications mean that the person did not possess or has not possessed a valid certificate to the level required for the work performed.

(b) Gross negligence - The licensed contractor and/or certificate of competency holder has demonstrated a habitual failure in the preparation of layout drawings, installation, repair, alteration, testing, maintenance, inspection, or addition to fire protection sprinkler systems in accordance with plans, specifications, building codes, or the publications of the National Fire Protection Association. For the purpose of this subsection, "habitual failure" means that the person has over a period of time committed five violations of chapter 18.160 RCW, or this chapter in separate offenses, or has failed to design or install sprinkler systems in accordance with plans, specifications, building codes, or the publications of the National Fire Protection

Association. Violations for gross negligence identified and enforced by the authority having jurisdiction must:

(i) Show a pattern of performance issues or repetitive violations of chapter 18.160 RCW, and/or this chapter by the company or those it employs to the director;

(ii) Demonstrate that the pattern of performance issues or repetitive violations have occurred in any jurisdiction within the state of Washington beginning no more than five years from the date the authority having jurisdiction's investigation commences; and

(iii) Provide documentation to show the licensed contractor and/ or certificate of competency holder's gross negligence including, but not limited to:

(A) Correspondence between the licensed contractor or certificate of competency holder and the local authority having jurisdiction that identifies violations of work that do not comply with the applicable standards;

(B) Failed permit or work inspections;

(C) Issued stop work order;

(D) Investigations resulting from a complaint;

(E) Violation notices; or

(F) Issued citations or infractions.

(c) Dishonest practices - The licensed contractor (~~(or)~~) and the certificate of competency holder will not engage in dishonest fire protection sprinkler systems business practices that include, but are not limited to:

(i) Charging customers for work not performed. When a licensee is suspended, revoked, or denied, as part of a complaint investigation where the licensed contractor or certificate of competency holder received payment for supplies or work not performed and did not return the funds to the person contracting for the service, the director may upon receipt of a renewal application require that the licensed contractor or certificate of competency holder pay restitution as a condition to renew the license.

(ii) Receiving any payments on work that the licensed contractor or the certificate of competency holder is not licensed or certified to perform.

(iii) Implying either verbally or in writing that either the licensed contractor or the certificate of competency holder possesses the appropriate license or certificate to bid on or complete fire sprinkler work when he or she does not have that fire protection sprinkler system contractor license or certification level.

(iv) Performing certification, installation, inspection, testing, or maintenance for a water based fire protection sprinkler system or equipment contrary to the National Fire Protection Association codes, National Fire Protection Association standards, or manufacturer's specifications.

(v) Performing certification, installation, inspection, testing, or maintenance for a water based fire protection sprinkler system or equipment beyond that which the contractor is licensed and/ or certificate of competency holder is certified, regardless of whether or not the work done was in compliance with the National Fire Protection Association codes, National Fire Protection Association standards, or manufacturer's specifications.

(d) Actions showing an indifference to comply with the fire protection sprinkler system business practices that include, but are not limited to a licensed contractor:

(i) Offering to contract for fire protection sprinkler system work without currently employing a certificate of competency holder.

(ii) Requiring or allowing employees to falsify any sprinkler tags, labels, or inspection reports.

(iii) Permitting or requiring a certificate of competency holder to use his or her certificate in connection with the preparation of any technical drawings that have not been prepared personally by the certificate of competency holder or under his or her direct supervision, or in violation of this chapter.

(e) Any violation of this section constitutes a Level 3 violation.

(3) The licensed contractor or certificate of competency holder will be notified in writing of the denial, suspension, or revocation action.

(4) The director may deny, suspend, or revoke a license or certificate under the following process:

(a) The director must give the licensed contractor or certificate of competency holder notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW before the denial, suspension, or revocation of the license or certificate.

(b) Upon receiving notice of the denial, suspension, or revocation action, the licensed contractor or certificate of competency holder may, within 30 days from the date of the notice of action, request in writing to the director a hearing on the denial, suspension, or revocation of the license or certificate. An adjudicative proceeding will be commenced within 90 days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the director may, at the request of the licensed contractor or certificate of competency holder, or on his or her own initiative, schedule an informal settlement conference which will be without prejudice to the rights of the parties. The informal settlement conference will be held in Thurston County at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

(d) The director may, without prior notification to the licensed contractor or certificate of competency holder, deny, suspend, or revoke a license or certificate if the director finds that there is a danger to the public health, safety, or welfare that requires immediate action. In every summary suspension of a license or certificate, an order signed by the director or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instated and determined. The director must give notice as is practicable to the licensed contractor or certificate of competency holder.

(5) The following penalties are associated with performing fire protection sprinkler system work while a license and/or certificate is denied, suspended, or revoked:

(a) Any person engaged in the trade of designing, installing, inspecting, testing, maintaining, or repairing a fire protection sprinkler systems or any part of such system while his or her license and/or certificate is denied, suspended, or revoked, will be issued a Level 3 violation.

(b) Any licensed or unlicensed fire protection sprinkler system contractor that allows an employee (~~or trainee~~) to engage in the trade designing, installing, inspecting, testing, maintaining, and/or repairing a fire protection sprinkler system or any part of such a system while his or her license or certificate has been denied, suspended, or revoked, will be issued a Level 3 violation.

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

**WAC 212-80-210 Imposing citations and civil penalties.** (1) The director may impose civil penalties or fines to any licensed contractor (~~or~~) for their actions and/or their employees/certificate of competency holder that violates any provision of chapter 18.160 RCW, or this chapter. The director may impose the civil penalties and/or fines listed herein to any unlicensed contractor (~~or uncertified person~~) who operates in the state of Washington as a licensed fire protection sprinkler system contractor (~~or~~) and/or employees of same acting as a certificate of competency holder. The director will record all violations.

(2) The director may issue a citation when an investigation verifies that the fire protection sprinkler system contractor or certificate of competency holder was not in compliance with or otherwise in violation of chapter 18.160 RCW, or this chapter.

(3) A violation is an action by a person or company who engages in the design, installation, inspection, testing, maintenance, or repair of a fire protection sprinkler system or any part of such a system, and fails to comply with chapter 18.160 RCW, or this chapter.

(4) The director must take action on a license or certificate within five years after the violation is reported to the director.

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

**WAC 212-80-215 Citations and penalties.** (1) The director may at his or her discretion issue either a monetary penalty and/or take an action against a license or certificate depending on the severity of the violation(s) evidenced in the investigation. Each violation is classified and penalties assessed according to the violation type as provided by the chart below:

<del>(Violation</del> Level	Monetary Penalty Issued	Action Taken Against License and/or Certificate
1	Warning to \$500	License: No action
		Certificate: No action

<b>((Violatio n Level</b>	<b>Monetary Penalty Issued</b>	<b>Action Taken Against License and/or Certificate</b>
2	\$500 to \$1,000	<b>License:</b> Suspended immediately for remainder of the license year or 30 calendar days, whichever is longer.
		<b>Certificate:</b> Suspended immediately for remainder of the license year or 30 calendar days, whichever is longer.
		<b>Certificate:</b> If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.
3	\$1,000 to \$5,000	<b>License:</b> Suspended immediately for remainder of the license year or 90 calendar days, whichever is longer.
		<b>Certificate:</b> Suspended immediately for remainder of the license year or 90 calendar days, whichever is longer.
		<b>Certificate:</b> If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.))

<b><u>Violation Level</u></b>	<b><u>Action Against the License</u></b>	<b><u>Monetary Penalty</u></b>	<b><u>Action Against the Certification</u></b>	<b><u>Penalty</u></b>
<u>1</u>	<u>No Action</u>	<u>\$300 to \$7,500</u>	<u>No Action</u>	<u>Warning</u>
<u>2</u>	<u>Suspended immediately for 30 calendar days.</u>	<u>\$400 to \$10,000</u>	<u>Suspended immediately for 30 calendar days.</u>	<u>Warning</u>
<u>3</u>	<u>Suspended immediately for 90 calendar days.</u>	<u>\$1,500 to \$15,000</u>	<u>Suspended immediately for 90 calendar days.</u>	<u>Warning</u>

(2) If a licensed contractor or certificate of competency holder has incurred multiple findings of the same violation over a period of time, the director may classify the licensed contractor or certificate of competency holder as a habitual offender and issue either an increased monetary penalty or the action against the license or certificate depending on the severity of the violation(s) evidenced in multiple investigations as provided by the chart below:

<b>((Violatio n Level</b>	<b>Monetary Penalty Issued</b>	<b>Violation Level and Action Taken Against License and/or Certificate</b>
1	\$1,000	Evidence of three or more Level 1 violations without compliance over a period of two calendar years constitutes an increase to a Level 2 violation.

<b>((Violation Level</b>	<b>Monetary Penalty Issued</b>	<b>Violation Level and Action Taken Against License and/or Certificate</b>
2	\$2,500 per violation	Evidence of three or more Level 2 violations without compliance over a period of two calendar years constitutes an increase to a Level 3 violation. <b>License:</b> Suspended immediately for remainder of the license year or 60 calendar days, whichever is longer. <b>Certificate:</b> Suspended immediately for remainder of the license year or 60 calendar days, whichever is longer. <b>Certificate:</b> If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.
3	\$5,000 per violation	Evidence of two or more violations without compliance over a period of three calendar years constitutes an increase to a Level 3 violation. <b>License:</b> Suspended immediately for remainder of the license year or 180 calendar days, whichever is longer. <b>Certificate:</b> Suspended immediately for remainder of the license year or 180 calendar days, whichever is longer. <b>Certificate:</b> If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.))

<b><u>Violation Level</u></b>	<b><u>Violation Threshold</u></b>	<b><u>Monetary Penalty</u></b>	<b><u>Action Against the License</u></b>	<b><u>Action Against the Certification</u></b>
<u>1</u>	<u>Evidence of three or more Level 1 violations without compliance over a period of 24 months constitutes an increase to a Level 2 violation.</u>	<u>\$1,000</u>	<u>Warning</u>	<u>Warning</u>
<u>2</u>	<u>Evidence of three or more Level 2 violations without compliance over a period of 24 months constitutes an increase to a Level 3 violation.</u>	<u>\$7,500 per violation</u>	<u>Suspended immediately for 60 calendar days.</u>	<u>Suspended immediately for 60 calendar days.</u>
<u>3</u>	<u>Evidence of two or more Level 3 violations without compliance over a period of 36 months.</u>	<u>\$15,000 per violation</u>	<u>Suspended immediately for 180 calendar days.</u>	<u>Suspended immediately for 180 calendar days.</u>

(3) Any fire protection sprinkler system contractor found to engage in the sprinkler trade using individuals not certified as a certificate of competency holder consistent with RCW 18.160.040 or this rule shall be assessed additional penalties based upon severity as follows:



<u>Instance Using an Uncertified Certificate of Competency Holder</u>	<u>Penalty Range</u>
<u>First time</u>	<u>\$1,500 - \$7,500</u>
<u>Second time</u>	<u>\$2,500 - \$10,000</u>
<u>Third time and any instance subsequent</u>	<u>\$5,000 - \$25,000</u>

(4) Level 1 violations include, but are not limited to:

(a) Failing to inform the director of the loss of their primary certificate of competency holder, as required by RCW 18.160.040.

(b) Failing to have the certificate of competency holder stamp plans, calculations, and/or test certificates.

(c) Allowing an employee to certify, install, inspect, maintain, and/or service water-based fire sprinkler systems or equipment contrary to NFPA codes, standards, or manufacturers' specifications without specific written permission from the location authority having jurisdiction.

(d) Working without a permit, or permission to do so, by the local authority having jurisdiction.

~~((4))~~ (5) Level 2 violations include, but are not limited to:

(a) Performing work on a sprinkler system where the employee's certificate of competency holder under RCW 18.160.040 does not have a current or valid license.

(b) Working without the appropriate level of license or certificate of competency.

(c) Permitting his or her license to be used in connection with the preparation of any technical drawings that have not been prepared by him or her personally, or under their direct supervision.

(d) Working with an expired license or permit (more than 90 days).

~~((5))~~ (6) Level 3 violations include, but are not limited to:

(a) Demonstrating gross incompetency or gross negligence in the preparation of technical drawings, the installation, inspection, testing, maintenance, repair, alteration, service, and/or addition to a fire sprinkler system.

(b) Allowing an employee to demonstrate gross incompetency or gross negligence in the installation, inspection, testing, maintenance, repair, alteration, service and/or addition to a fire sprinkler system.

(c) Charging a customer for fire sprinkler work not performed.

(d) Offering to contract for fire sprinkler work without a certificate of competency holder, as described in RCW 18.160.040.

(e) Allowing an employee to falsify any fire sprinkler tags, labels, or inspection reports.

(f) Working without a certified full-time certificate of competency holder on staff, or, in the case of an inspection and testing contractor, allowing any employee not certified by the chief of the Washington state patrol, through the director of fire protection, as an inspection and testing technician.

(g) Falsifying an application or document submitted to the chief of the Washington state patrol, through the director of fire protection, to obtain a sprinkler contractor license or certificate of competency.

(h) Committing three or more level II offenses within a three year period either as a company, through an employee of the company, through an employee acting as a certificate of competency holder for the company, and/or any combination thereof.

(i) Permitting his or her license to be used in connection with the stamping of any test certificates for work performed by someone other than his or her full-time employees.

((+6+)) (7) Civil penalties shall be resolved through the following:

(a) **Pay the penalty** by returning the notice and payment to the director at State Fire Marshal's Office, P.O. Box 42642, Olympia, WA 98504-2642 within 30 days from the date the penalty was issued. Payments must be made by check or money order payable to the Washington state patrol.

(b) **Request an informal conference** as outlined in WAC 212-80-235.

(c) **Request a formal hearing** as outlined in WAC 212-80-205 or 212-80-240.