

**WSR 20-01-001**  
**PERMANENT RULES**  
**ECONOMIC DEVELOPMENT**  
**FINANCE AUTHORITY**

[Filed December 4, 2019, 2:16 p.m., effective January 4, 2020]

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

Purpose: The Washington economic development finance authority (the agency) is engaging in the rule-making process to publish its public records compliance requirements, including information about the agency's organization, operations and procedures.

Citation of Rules Affected by this Order: New chapters 178-02 and 178-03 WAC.

Statutory Authority for Adoption: RCW 43.163.100.

Adopted under notice filed as WSR 19-20-009 on September 19, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 4, 2019.

Rodney Wendt  
Executive Director

**Chapter 178-02 WAC**

**ORGANIZATION, OPERATIONS  
AND PROCEDURES**

NEW SECTION

**WAC 178-02-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the Washington economic development finance authority with the provisions of RCW 42.56 and RCW 34.05.

NEW SECTION

**WAC 178-02-020 Rules of interpretation.** (1) All adjectives and adverbs, including but not limited to the words "adequate," "approved," "qualified," "reasonable," "reputable," "satisfactory," "sufficiently," and "suitable," as used in this title to qualify a person, procedure, process or otherwise shall be as determined by the authority or its designee.

(2) Where the word "shall" is used in this title, the subject rule or action to which the word relates is mandatory.

(3) Where the word "should" is used in this title, it indicates suggestion or recommendation but not a requirement.

(4) Where the word "may" is used in this title, the action or rule to which the word relates is permissive or discretionary.

(5) Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing a specific gender may also be extended to any gender and be considered to relate equally to any person.

NEW SECTION

**WAC 178-02-030 Definitions.** (1) "Act" means RCW 43.163, as amended.

(2) "Washington economic development finance authority" and "authority" each mean the corporate and politic public body created by the act and also refer to the staff and employees of the authority.

(3) "Board" means the members of the authority acting collectively as the governing body of the authority.

The terms defined in the act shall have the same meaning when used in this title.

NEW SECTION

**WAC 178-02-040 Description of organization.** (1) The authority is a public entity established under the provisions of RCW 43.163, which exercises essential governmental functions. The authority was created by the legislature of the state of Washington to establish a state economic development finance authority to act as a financial conduit that, without using state funds or lending the credit of the state or local governments, can issue nonrecourse revenue bonds and participate in federal, state, and local economic development programs to help facilitate access to needed capital by Washington businesses that cannot otherwise readily obtain needed capital on terms and rates comparable to large corporations, and can help local government obtain more capital more efficiently. The act also sets forth as a primary purpose the encouragement of the employment and retention of Washington workers at meaningful wages and to develop innovative approaches to the problem of unmet capital needs.

(2) Members. The authority shall consist of seventeen members as follows: The director of the department of commerce, the director of the department of agriculture, the state treasurer, one member from each caucus in the house of representatives appointed by the speaker of the house, one member from each caucus in the senate appointed by the president of the senate, and ten public members with one representative of women-owned businesses and one representative of minority-owned businesses and with at least three of the members residing east of the Cascades. The public members shall be residents of the state appointed by the governor on the basis of their interest or expertise in trade, agriculture or business finance or jobs creation and development. One of the public members shall be appointed by the governor as chair of the authority and shall serve as chair of the authority at the pleasure of the governor. The term of the persons appointed by the governor as public members of the authority, including the public member appointed as chair, shall be four years from the date of appointment.

In the event of a vacancy on the authority due to death, resignation or removal of one of the public members, or upon the expiration of the term of one of the public members, the governor shall appoint a successor for the remainder of the unexpired term. If any of the state offices is abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office.

Any public member of the authority may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing by the affected public member.

The state officials serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Such designations shall be made in writing and provided to the authority.

The members of the authority shall serve without compensation but shall be entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter.

Any public member may continue to serve past their scheduled term of office until the governor has appointed a new member to replace such member.

(3) Authority staff. The executive director shall be the chief operating officer of the authority and subject to the direction of the board. The executive director shall serve solely at the pleasure of the board. As the chief operating officer, the executive director is responsible for day-to-day operations and for operating the authority under the requirements of the Washington law. Compensation for the executive director shall be paid from non-appropriated funds under the control of the authority. Compensation, pay and benefits shall be reviewed annually by the board. The executive director may hire, terminate and pay subordinate staff as necessary, subject to board approval of additional subordinate staff positions and board approval of necessary budgeted funds. The executive director shall have custody of and be responsible for all moneys and securities of the authority and shall deposit all such moneys forthwith in such banks and funds as the authority may designate from time to time.

(4) Administrative office. The administrative office of the authority shall be located at 1000 Second Avenue, Suite 2700, Seattle, WA 98104-1046.

(5) Communications with the authority. To request information, or to make submittals or requests, or to obtain copies of agency decisions, members of the public may contact the authority at the following:

Attn: Executive Director  
Washington Economic Development Finance Authority  
1000 Second Avenue, Suite 2700  
Seattle, WA 98104-1046  
(206) 587-5634

#### NEW SECTION

**WAC 178-02-050 Operations and procedures—General** (1) Authority meetings. The meetings of the authority shall all be "regular meetings" or "special meetings" as those

designations are applied in RCW 42.30. Regular meetings shall be scheduled for each calendar quarter under an agreed upon schedule and location by the authority, and notice thereof shall be provided as required in RCW 42.30. Special meetings may be called at any time by the chair or a majority of the board. Notice of all special meetings shall be given by delivering personally, or by mail, fax or electronic mail, to each member a written notice specifying the time and place of the meeting and a copy of the agenda prepared by the executive director in consultation with the chair, and by giving such notice to the public as required by RCW 42.30. Pursuant to RCW 42.30.080(4), in certain circumstances, the notice requirements for a special meeting may be dispensed with where an emergency is deemed to exist. An executive session may be called by the authority to consider the appointment, employment or dismissal of an officer or employee, and such other matters as are permitted by RCW 42.30.110. Except during executive sessions, all meetings shall be open to the public under the guidelines established by state law for public bodies.

(2) Quorum. Nine members shall constitute a quorum, and the act of a majority of the members present at any meeting, if there is a quorum, shall be deemed the act of the authority. Members participating in a meeting through the use of any means of communication by which all members participating can hear each other during the meeting shall be deemed to be present at the meeting for all purposes.

(3) Chair's, vice chair's or secretary's voting rights. The chair, vice chair and secretary shall have the right to vote on all matters before the authority, just as any other authority member.

(4) Minutes of meetings. The executive director, at the direction of the secretary, shall keep minutes of the proceedings of the authority reflecting board member attendance and actions taken during the meeting.

(5) Rules of order. The authority shall generally follow *Robert's Rules of Order*, newly revised, in conducting its meetings.

(6) Form of authority action. The authority may act on the basis of a motion except when authorizing issuance of bonds and when otherwise taking official and formal action with respect to the creation of special funds and the issuance and sale of bonds for a project of a participant, in which case the authority shall act by resolution. Resolutions shall be adopted and motions approved upon the affirmative vote of a majority of the members of the authority present at any meeting. All bonds and coupons shall bear either the manual or the facsimile signatures of the governor and executive director.

(7) Public participation. The presiding officer may grant permission to any person or organization to make a presentation at any of the authority's public meetings. The presiding officer may limit any remarks addressed to the authority.

#### NEW SECTION

**WAC 178-02-060 Operations and procedures—Authority officers and committees.** (1) The officers of the authority. As described in the act, the chair shall be appointed by the governor. A vice chair, secretary and any additional officers determined necessary by the authority shall be

elected by majority vote of the board and serve until replaced by a majority vote of the members voting. The term of officers elected by the board shall continue until the earlier of: (a) the stated term of such appointment, (b) the death, resignation or removal of such officer from such position or from the board or (c) the election of a new officer for such position.

(2) Authority chair and vice chair. In addition to any other duties assigned to the chair by the act, by vote of the board or by this chapter, the chair shall convene board meetings and shall preside over the deliberations of the meeting. The chair shall be a member of each board committee and shall have the ability to vote on any matter coming before such committee; *provided*, that the chair shall not vote as an audit committee member on any matter on which the vice chair determines the chair would not have adequate objectivity due to the chair's check-signing authority. The vice chair shall act in the chair's absence with his or her same authority and chair special committees as designated by the authority chair; *provided*, that the vice chair shall not act as a signatory to financial account transactions.

(3) Secretary. The secretary shall be responsible for directing the executive director and staff in keeping minutes and records of board actions, sending out meeting announcements, distributing copies of minutes and the agenda to each board member and assuring that corporate records are maintained.

(4) Committee formation. The authority, either by direction of the chair or action of the board, may create committees as needed. All committees created by the authority shall be advisory in nature only and shall not act on behalf of the authority. Each committee will have a committee chairperson appointed by the chair of the authority. The committee chair may request the participation of any authority member willing to participate; *provided*, that no committee shall have members sufficient to constitute a quorum of the authority; *provided further*, that no committee meeting shall have sufficient authority members present and participating to constitute a quorum of the authority. The authority chair is an ex-officio member of all committees.

(5) Executive committee. The authority has and shall maintain an executive committee. The chair, vice chair and secretary comprise the membership of the executive committee. The executive director may serve as a non-voting ex-officio member of the executive committee. The executive committee may review issues and make recommendations to the full board. The executive committee may make recommendations regarding the annual performance evaluation of the executive director. The committee may, with the consent of the chair, delegate to the chair the making of any recommendation regarding the annual performance evaluation of the executive director.

(6) Audit committee. The authority has and shall maintain an audit committee. The audit committee is chaired by the vice chair of the authority and operates with at least three members of the board. The audit committee shall review the financial actions by the executive director and staff. The audit committee may develop and review the authority's fiscal procedures.

#### NEW SECTION

**WAC 178-02-070 Operations and procedures—Miscellaneous.** (1) Budget. Each year, the executive director and the executive committee shall prepare and recommend to the board an annual budget. Following such a recommendation, the board shall approve an annual budget. All authority expenditures must be within the total budget. If annual expenses are expected to exceed the budget, the executive director may submit a budget amendment to the board for the board's consideration. Any change in the budget sought by the executive director which proposes an increase of more than 10% in annual expenditures over the existing budget shall be submitted to the audit committee or the executive committee for review prior to submission to the board.

(2) Fiscal year. The authority's fiscal year shall be the calendar year.

(3) All financing documents relating to any issuance of the authority's nonrecourse revenue bonds to which the authority is a party may be executed or attested to by any of the following officials of the authority: the chair, the vice chair, the secretary and the executive director.

### Chapter 178-03 WAC

#### PUBLIC RECORDS

#### NEW SECTION

**WAC 178-03-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the Washington economic development finance authority with the provisions of RCW 42.56.001 through 42.56.904, dealing with public records.

#### NEW SECTION

**WAC 178-03-020 Definitions.** (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or propriety function prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

(3) "Washington economic development finance authority" and "authority" each refers to that state agency described in RCW 43.163.120.

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

NEW SECTION

**WAC 178-03-030 Public records available.** All public records of the authority are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.56.

NEW SECTION

**WAC 178-03-040 Public records officer.** The authority's public records shall be under the charge of the public records officer designated by the executive director of the authority. The person so designated shall be located in the administrative office of the authority. The public records officer shall be responsible for implementing the authority's rules and regulations regarding release of public records, coordinating the staff of the authority in this regard and generally ensuring compliance by the staff with the public records disclosure requirements of RCW 42.56.

NEW SECTION

**WAC 178-03-050 Office hours.** Public records shall be available for inspection and copying by appointment from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

NEW SECTION

**WAC 178-03-060 Requests for public records.** In accordance with the requirements of RCW 42.56 that agencies prevent unreasonable invasion of privacy, that they protect public records from damage or disorganization, and that they prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained by members of the public upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the authority, which form shall be available at its administrative office. The form shall be presented by the public records officer, or to any member of the authority's staff if the public records officer is not available, at the administrative office of the authority during the office hours specified in WAC 178-03-050. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;
- (d) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;
- (e) If the requested matter is not identifiable by reference to the authority's current index, an appropriate description of the record requested.

NEW SECTION

**WAC 178-03-070 Copying.** (1) No fee shall be charged for the inspection of public records.

(2) The following copy fees and payment procedures apply to requests to the authority under chapter 42.56 RCW:

(a) Pursuant to RCW 42.56.120 (2)(b), the authority is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(i) The authority does not have the resources to conduct a study to determine all of its actual copying costs;

(ii) To conduct such a study would interfere with other essential agency functions; and

(iii) Through the 2017 legislative process, the public and requesters have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(b) The authority will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The authority will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the authority may charge other copy fees authorized by statutes outside of RCW 42.56. The authority may enter into an alternative fee agreement with a requester under RCW 42.56.120(4).

(3) The authority may agree to provide copies without fee to federal, state, local, or tribal governments, or to others, when doing so is in the best interest of the authority.

NEW SECTION

**WAC 178-03-080 Review of denials of public records requests.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the executive director of the authority. The executive director shall return a final decision by the end of the second business day following denial of inspection.

(3) Administrative remedies shall not be considered exhausted until the authority has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

NEW SECTION

**WAC 178-03-090 Protection of public records.** In order that public records maintained on the premises of the authority may be protected from damage or disorganization as required by RCW 42.56.100, the following procedures and practices are hereby instituted:

(1) Upon receipt of a request by a member of the public for a public record, the public records officer or the staff member in the authority's office receiving the request shall review the request for a public record and the requested public record to determine whether deletions from such record should be made or the request for such record should be denied.

(2) Only after a determination has been made that all or such portion of a public record as is not deleted may be



inspected shall such public record or portion thereof be made available for inspection by a member of the public.

(3) Only the staff and members of the authority may open authority files to gain access to authority records for either authority business or to respond to a request for a public record.

(4) No public record of the authority may be taken from the premises of the authority by a member of the public.

(5) Public inspection of authority records shall be done only in such locations as are approved by the public records officer, which locations must provide an opportunity for authority staff members to ensure that no public record of the authority is damaged, destroyed, unreasonably disorganized or removed from its proper location or order by a member of the public.

(6) Public records of the authority may be copied only on the copying machines at the premises of the authority unless other arrangements are authorized by the public records officer.

#### NEW SECTION

**WAC 178-03-100 Records index.** (1) The authority has available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated since its inception:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the authority;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and reports or surveys, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the authority relating to any regulatory, supervisory, or enforcement responsibilities of the authority, whereby the authority determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or any private party.

(2) The current index promulgated by the authority shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

#### NEW SECTION

**WAC 178-03-110 Exemptions list.** (1) For informational purposes, the following is a list of every law, other than those listed in RCW 42.56, that the authority believes exempts or prohibits disclosure of specific information or records of the authority:

(a) The attorney-client privilege as codified at RCW 5.60.060(2).

(2) Notwithstanding the foregoing, pursuant to RCW 42.56.070(2), the failure of the authority to list any exemption herein shall not affect the efficacy of any such exemption.

#### **WSR 20-01-008**

#### **PERMANENT RULES**

#### **OFFICE OF THE**

#### **INSURANCE COMMISSIONER**

[Filed December 5, 2019, 11:22 a.m., effective January 5, 2020]

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

Purpose: To incorporate an internal audit function requirement for large insurers writing more than \$500 million, or insurance groups writing more than \$1 billion in annual premium. These insurers must maintain an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls.

Citation of Rules Affected by this Order: New WAC 284-07-214; and amending WAC 284-07-110, 284-07-213, and 284-07-220.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, and 48.46.200.

Adopted under notice filed as WSR 19-18-090 on September 4, 2019.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40360, Olympia, WA 98502, phone 360-725-7170, email TabbaA@oic.wa.gov, website www.insurance.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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Date Adopted: December 5, 2019.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 15-22-062, filed 10/30/15, effective 1/1/16)

**WAC 284-07-110 Definitions.** For the purposes of WAC 284-07-100 through 284-07-230 the following definitions shall apply:

(1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, the terms mean a Canadian-chartered or British-chartered accountant.

(2) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, ~~((and)) the internal audit functions of an insurer or group of insurers (if applicable), and external~~ audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of WAC 284-07-100 through 284-07-230 at the election of the controlling person. Refer to WAC 284-07-213(5) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors ~~((shall))~~ constitutes the audit committee.

(4) "Audited financial report" means and includes those items specified in WAC 284-07-130.

(5) "Group of insurers" means those licensed insurers included in the reporting requirements of chapter 48.31B RCW, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(6) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(7) "Independent board member" has the same meaning as described in WAC 284-07-213(3).

(8) "Insurer" has the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW, health maintenance organizations registered under chapter 48.46 RCW, fraternal benefit societies registered under chapter 48.36A RCW, and self-funded multiple employer welfare arrangements authorized under chapter 48.125 RCW.

(9) "Internal audit function" means a person or persons that provide independent, objective and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

(10) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g) and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g) and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g).

~~((10))~~ (11) "NAIC" means the National Association of Insurance Commissioners.

~~((11))~~ (12) "Policy holder" ~~((shall))~~ also means subscriber.

~~((12))~~ (13) "SEC" means the United States Securities and Exchange Commission.

~~((13))~~ (14) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

~~((14))~~ (15) "Section 404 report" means management's report on internal control over financial reporting as defined by the SEC and the related attestation report of the independent certified public accountant described in WAC 284-07-110(1).

~~((15))~~ (16) "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) The preapproval requirements of Section 201 (Section 10A(i) of the Securities and Exchange Act of 1934);

(b) The audit committee independence requirements of Section 301 (Section 10A (m)(3) of the Securities and Exchange Act of 1934); and

(c) The internal control of financial reporting requirements of Section 404 (Item 308 of SEC Regulations S-K).

AMENDATORY SECTION (Amending WSR 09-20-069, filed 10/5/09, effective 11/5/09)

**WAC 284-07-213 Requirements for audit committees.** This section ~~((shall))~~ does not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity.

(1) The audit committee ~~((shall be))~~ is directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to WAC 284-07-100 through 284-07-230. Each accountant ~~((shall))~~ must report directly to the audit committee.

(2) The audit committee of an insurer or group of insurers is responsible for overseeing the insurer's internal audit function and granting the person or persons performing the

function suitable authority and resources to fulfill their responsibilities if required by WAC 284-07-214.

~~(3)~~ Each member of the audit committee ~~((shall))~~ must be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection ~~((5))~~ (6) of this section and WAC 284-07-110(3).

~~((3))~~ (4) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

~~((4))~~ (5) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member for the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

~~((5))~~ (6) To exercise the election of the controlling person to designate the audit committee for purposes of WAC 284-07-100 through 284-07-230, the ultimate controlling person ~~((shall))~~ must provide written notice to the commissioners of the affected insurers. Notification ~~((shall))~~ must be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which ~~((shall))~~ must include a description of the basis for the change. The election ~~((shall))~~ remains in effect for perpetuity, until rescinded.

~~((6))~~ (7)(a) The audit committee ~~((shall))~~ must require the accountant that performs for an insurer any audit required by WAC 284-07-100 through 284-07-230 to timely report to the audit committee in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement, including:

- (i) All significant accounting policies and material permitted practices;
- (ii) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
- (iii) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance or health carrier holding company system, the reports required by (a) of this subsection may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

~~((7))~~ (8) The proportion of independent audit committee members ~~((shall))~~ must meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

- Note A: The commissioner has authority by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.
- Note B: All insurers with less than five hundred million dollars in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.
- Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

~~((8))~~ (9) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and federal flood program, less than five hundred million dollars may make application to the commissioner for a waiver from this section's requirements based upon hardship. The insurer ~~((shall))~~ must file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer ~~((shall))~~ must file the approval in an electronic format acceptable to the NAIC.

NEW SECTION

**WAC 284-07-214 Internal audit function requirements.** (1) An insurer is exempt from the requirements of this section if:

- (a) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Insurance Program, less than five hundred million dollars; and
- (b) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Insurance Program, less than one billion dollars.

(2) An insurer or group of insurers exempt from the requirements of this section is encouraged, but not required, to conduct a review of the insurer business type, sources of capital, and other risk factors to determine whether an internal audit function is warranted. The potential benefits of an internal audit function should be assessed and compared against the estimated costs.

(3) The insurer or group of insurers must establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance must be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(4) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and must appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(5) The head of the internal audit function must report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(6) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirement set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

**AMENDATORY SECTION** (Amending WSR 09-20-069, filed 10/5/09, effective 11/5/09)

**WAC 284-07-220 Exemptions and effective dates.** (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of WAC 284-07-100 through 284-07-230 if the commissioner finds, upon review of the application, that compliance with WAC 284-07-100 through 284-07-230 would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from WAC 284-07-100 through 284-07-230, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the rules and procedures pertaining to administrative hearings.

(2) Domestic insurers retaining a certified public accountant on the effective date of WAC 284-07-100 through 284-07-230 who qualify as independent (~~shall~~) must comply with WAC 284-07-100 through 284-07-230 for the year ending December 31, 1992, and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of WAC 284-07-100 through 284-07-230 who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise.

(a) As of December 31, 1992, file with the commissioner an audited financial report.

(b) For the year ending December 31, 1992, and each year thereafter, the insurers (~~shall~~) must file with the commissioner all reports and communications required by WAC 284-07-100 through 284-07-210.

(4) Foreign insurers (~~shall~~) must comply with WAC 284-07-100 through 284-07-230 for the year ending December 31, 1992, and each year thereafter, unless the commissioner permits otherwise.

(5) The requirements of WAC 284-07-150(4) shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

(6) The requirements of WAC 284-07-213 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written premium and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to change in premiums (~~shall have~~) has one year following the year the threshold is exceeded (but not later than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of business combination (~~shall have~~) has one calendar year following the date of acquisition or combination to comply with the independence requirements.

(7) The requirements of WAC 284-07-150 (7) through (12), 284-07-190, 284-07-215, and 284-07-217 are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements (~~shall have~~) has two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination (~~shall have~~) has two calendar years following the date of acquisition or combination to comply with the reporting requirements.

(8) The requirements of WAC 284-07-214 are to be in effect on January 1, 2020. If an insurer or group of insurers that is exempt from WAC 284-07-214 requirements no longer qualifies for that exemption, it has one year after the year the threshold is exceeded to comply with the requirements of WAC 284-07-214.

## WSR 20-01-023

### PERMANENT RULES

### CRIMINAL JUSTICE

### TRAINING COMMISSION

[Filed December 6, 2019, 11:46 a.m., effective January 6, 2020]

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

Purpose: To satisfy the legislative directive to conduct negotiated rule making, required by RCW 36.28A.450 and 9A.16.040 (found in chapter 1, Laws of 2019).

Citation of Rules Affected by this Order: New WAC 139-12-010, 139-12-020, and 139-12-030.

Statutory Authority for Adoption: RCW 9A.16.040 (found in chapter 1, Laws of 2019) and 43.101.080.

Adopted under notice filed as WSR 19-21-178 on October 23, 2019.

Changes Other than Editing from Proposed to Adopted Version:

**WAC 139-12-020, independent investigative team (IIT).**

- Removed "such as WSP.["]
- Added "the independent investigative function, provided it is not in an involved agency."

**WAC 139-12-020, initial incident response.**

- Inserted "police use of."

**WAC 139-12-020, member agency.**

- Inserted "police use of."

**WAC 139-12-030 Independent investigations criteria.**

- Replaced "factors" with "principles."
- Inserted "involved agency and the."
- Inserted "results in a compliant and complete investigation and."

**WAC 139-12-030 (1)(b).**

- Inserted "police use."
- Inserted "with the following exception:["]
- Moved section about specialized equipment underneath.
- Removed "no", added "not", removed "and", added "and the use is approved by the IIT commander." from section about specialized equipment.

**WAC 139-12-030 (2)(a).**

- Replaced "factors" with "principles."

**WAC 139-12-030 (2)(b).**

- Added a-f lettering.
- Inserted "Existing teams with [will] have until January 2021 to provide necessary information about the qualifications of current IIT investigators to the nonlaw enforcement community representatives for review."
- Inserted "nonlaw enforcement."

**WAC 139-12-030 (4)(b).**

- Removed "each year."

**WAC 139-12-030 (4)(c).**

- Inserted "by the chief(s) and/or sheriff(s)."
- Replaced "panel" with "board."

**WAC 139-12-030 (4)(c)(vi).**

- Replaced "must" with "are expected to."
- Inserted "sustained."
- Inserted "police use of."
- Removed "incident."

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 Non-governmental 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 3, 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: December 5, 2019.

Derek Zable  
Human Resource and  
Government Affairs Manager

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 20-02 issue of the Register.

**WSR 20-01-029**

**PERMANENT RULES**

**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed December 6, 2019, 2:23 p.m., effective January 6, 2020]

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

Purpose: To implement SSB 5815 section 2, juvenile rehabilitation amends the codified list of serious infractions that require individuals to be removed from minimum security status, and adopts rules based on empirically validated best practices to appropriately address offenses involving unlawful use or possession of a controlled substance and unlawful use of possession of alcohol committed by individuals placed in juvenile community facilities. Amendments also include technical corrections made necessary by the transfer of juvenile rehabilitation from the department of social and health services to the department of children, youth, and families.

Citation of Rules Affected by this Order: Amending WAC 110-730-0070.

Statutory Authority for Adoption: Section 2, chapter 468, Laws of 2019 (SSB 5815) and chapters 43.216 and 34.05 RCW.

Adopted under notice filed as WSR 19-21-010 on October 3, 2019.

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 Non-governmental 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: December 6, 2019.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

**WAC 110-730-0070 Residential disciplinary standards.** (1) Serious violations by a juvenile include:

- (a) Escape or attempted escape;
  - (b) Violence toward others with intent to harm and/or resulting in significant bodily injury;
  - (c) Involvement in or conviction of a criminal offense under investigation by law enforcement or awaiting adjudication for behavior that occurred during current placement;
  - (d) Extortion or blackmail that threatens the safety or security of the facility or community;
  - (e) Setting or causing an unauthorized fire with intent to harm self, others, or property, or with reckless disregard for the safety of others;
  - (f) Possession or manufacture of weapons or explosives, or tools intended to assist in escape;
  - (g) Interfering with staff or service providers in performing duties relating to the security ~~((and/or))~~, safety, or both, of the facility or community;
  - (h) Intentional property damage in excess of one thousand five hundred dollars;
  - (i) ~~((Possession, use, or distribution of drugs or alcohol, or use of inhalants;~~
  - ~~((j)))~~ (j) Rioting or inciting others to riot;
  - ~~((k)))~~ (i) Refusal of urinalysis or search; or
  - ~~((l)))~~ (k) Other behaviors which threaten the safety or security of the facility, its staff, or residents or the community.
- (2) Other violations by a juvenile placed in a community facility or residential treatment and care program include:
- (a) Unaccounted for time when a juvenile is away from the community facility or residential treatment and care program;
  - (b) Violation of conditions of authorized leave;
  - (c) Intimidation or coercion against any person;
  - (d) Misuse of medication such as hoarding medication or taking another person's medication;
  - (e) Self-mutilation, self tattooing, body piercing, or assisting others to do the same;
  - (f) Intentional destruction of property valued at less than fifteen hundred dollars;
  - (g) Fighting;
  - (h) Unauthorized withdrawal of funds with intent to commit other violations;
  - (i) Suspensions or expulsions from school or work;
  - (j) Violations of school, employment or volunteer work agreements related to custody and security concerns;

(k) Escape talk;

(l) Sexual contact or any other behavior, not defined as a serious violation, resulting in a referral to ~~((the department of licensing;))~~ child protective services((;)) or law enforcement; ~~((or))~~

(m) Lewd or disruptive behavior in the community; or

(n) Possession, use, or distribution of drugs or alcohol, or use of inhalants.

(3) Juveniles must be held accountable when there is reasonable cause to believe they have committed a violation.

(a) Whenever a juvenile placed in a community facility or residential treatment and care program commits a serious violation, the juvenile must be returned to an institution. The JRA program administrator who receives a service provider report of a serious violation must make arrangements to transfer the juvenile to an institution as soon as possible. Juveniles may be placed in a secure JRA or contracted facility pending transportation to an institution.

(b) Sanctions for serious violations committed by juveniles in an institution, and additional sanctions for serious violations committed by juveniles returned to an institution, must include one or more of the following:

(i) Loss of privileges for up to thirty days;

(ii) Loss of program level; or

(iii) Room confinement up to seventy-two hours.

(c) Sanctions for serious violations may also include, but are not limited to, one or more of the following:

(i) Change in release date;

(ii) Referral for prosecution;

(iii) Transfer to an intensive management unit;

(iv) Increase in security classification;

(v) Reprimand and loss of points;

(vi) Restitution; or

(vii) Community service.

(d) Sanctions for violations listed in WAC 388-730-0070(2) may include transfer to a higher security facility and must include one or more of the following:

(i) Loss or privileges;

(ii) Loss of program level;

(iii) Room confinement up to seventy-two hours;

(iv) Change in release date;

(v) Reprimand ~~((and/or))~~;

(vi) Loss of points;

~~((vii))~~ (vii) Additional restitution; or

~~((viii))~~ (viii) Community service.

(e) Sanctions for possession, use, or distribution of drugs or alcohol, or use of inhalants may include any listed in (d) of this subsection and the following:

(i) Review substance use screening tool;

(ii) Review current substance use assessment or refer for a new assessment; and

(iii) Consultation for appropriate level of intervention, treatment, and community safety.

(4) When a sanction is imposed, the juvenile must also receive a counseling intervention to address the violation.

(5) If the proposed sanctions for any violation includes extending the juvenile's established release date, the juvenile must be entitled to:

(a) A notice of an administrative review to consider extension of the release date and a written statement of the incident;

(b) An opportunity to be heard before a neutral review chairperson;

(c) Present oral or written statements, and call witnesses unless testimony of a witness would be irrelevant, repetitive, unnecessary, or would disrupt the orderly administration of the facility;

(d) Imposition of the sanction only if the administrative review chairperson finds by a preponderance of the evidence that the serious violation did occur; and

(e) A written decision, stating the reasons for the decision, by the administrative review chairperson.

(6) Each superintendent, regional administrator and service provider must clearly post, or make readily available, the list of serious violations and possible sanctions in all living units.

(7) Each program administrator must adopt procedures for implementing the requirements of this section.

### WSR 20-01-031

#### PERMANENT RULES

#### DEPARTMENT OF

#### CHILDREN, YOUTH, AND FAMILIES

[Filed December 6, 2019, 2:42 p.m., effective January 6, 2020]

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

Purpose: To implement SSB 5815 section 1, juvenile rehabilitation increases from twelve to up to sixteen hours per day individuals in community facilities may have approved leave to attend school or participate in approved work, educational, community restitution, or treatment programs.

Citation of Rules Affected by this Order: Amending WAC 110-730-0050 and 110-730-0060.

Statutory Authority for Adoption: Chapters 43.216 and 34.05 RCW.

Adopted under notice filed as WSR 19-21-024 on October 7, 2019.

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 Non-governmental 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: December 6, 2019.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

**WAC 110-730-0050 Institutional minimum.** (1) An institutional minimum classification must be assigned to a juvenile if:

(a) Indicated by the initial security classification assessment;

(b) Indicated by the community placement eligibility requirements unless a recent incident indicates the juvenile no longer meets these requirements; or

(c) The assistant secretary for ((~~JRA~~)) JR or designee approves an override of the medium security classification.

(2) Even if eligible under subsection (1) of this section, a juvenile must not receive an institutional minimum security classification if:

(a) The assistant secretary for ((~~JRA~~)) JR, or designee, signs an administrative override disapproving institutional minimum classification and assigning the juvenile a higher security classification; or

(b) The juvenile is a sex offender who meets the requirements for civil commitment referral under chapter 71.09 RCW or is classified as a risk level III under RCW 13.40.217.

(3) A juvenile classified as institutional minimum security:

(a) Must reside in an institution with the capability of at least:

(i) Lockable exterior doors or fire exit doors fitted with alarms; and

(ii) A security fence or windows without egress.

(b) May be permitted:

(i) Unescorted movement on facility grounds;

(ii) Participation in work crews or other programs outside the facility with a close staff escort;

(iii) Unescorted participation in community work, educational and community service programs, and family treatment or other activities to strengthen family ties, for up to ((~~twelve~~)) sixteen hours per day; and

(iv) Authorized leave pursuant to RCW 13.40.205.

(4) A juvenile on institutional minimum security must be transferred to minimum security upon the availability of an appropriate community placement if:

(a) Ten percent of the juvenile's sentence, and in no case less than thirty days, has been served in a secure facility; and

(b) All placement assessment requirements have been met.

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

**WAC 110-730-0060 Minimum security.** (1) The provisions of WAC ((~~388-730-0050~~)) 110-730-0050 also apply to a juvenile classified as minimum security, except the juvenile must reside in a community facility, residential treatment and care program, or a community commitment program facility (CCP) rather than in an institution.

(2) Juveniles must not be placed in a community facility or residential treatment and care program until:

(a) Ten percent of the juvenile's sentence, and in no case less than thirty days, has been served in a secure facility; and

(b) All placement assessment requirements have been met.

(3) In addition to the provisions of WAC ((388-730-0050)) 110-730-0050 (3)(b)(iii), minimum security juveniles may be permitted unescorted participation in treatment programs in the community that do not involve the family for up to ((twelve)) sixteen hours per day.

### WSR 20-01-032

#### PERMANENT RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed December 6, 2019, 5:11 p.m., effective January 6, 2020]

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

Purpose: Modifications are being made to chapter 172-121 WAC, to update definitions, the investigative process, updating interim restrictions, conduct review proceedings, brief hearings, the full hearing procedures, appeals, violations, and to repeal WAC 172-121-120.

Citation of Rules Affected by this Order: Repealing WAC 172-121-120; and amending WAC 172-121-020, 172-121-070, 172-121-075, 172-121-080, 172-121-100, 172-121-105, 172-121-110, 172-121-121, 172-121-122, 172-121-130, 172-121-140, and 172-121-200.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 19-20-024 on September 23, 2019.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 12, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, 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 0, Repealed 0.

Date Adopted: December 6, 2019.

Joseph Fuxa  
Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-020 Definitions.** For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Brief hearing" refers to a brief conduct review hearing before a conduct review officer or the student disciplinary council for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion and that do not involve felony-level sexual misconduct.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, the university may choose to fill the role of the complainant throughout the student conduct proceedings.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a brief or full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a brief conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" refers to the director of student rights and responsibilities or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to 301 Pence Union Building, or emailing them to [sr@ewu.edu](mailto:sr@ewu.edu).

"Full hearing" refers to a full conduct reviewing hearing before a conduct review officer (CRO) for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion, or that constitute felony-level sexual misconduct.

"Hearing authority" refers to the university official or student disciplinary council who holds a conduct review hearing.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on his or her personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant and the respondent.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct



for students, residence life handbook, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment, domestic violence, dating violence, stalking, and acts of non-consensual sexual activity for the purposes of WAC 172-121-030 through 172-121-140 (~~These terms are further defined~~) and for trainings provided on campus. However, in the violations section in WAC 172-121-200 the violations are defined separately and the term sexual misconduct has the more limited definition of nonconsensual sexual activity.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-070 Conduct review officials.** (1) The director of SRR or designee shall:

(a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;

(b) Manage the proceedings as described in this chapter;

(c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;

(d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and

(e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president delegates to the vice president of student affairs the authority to designate one or more (~~conduct review officers~~) CRO(s). The director of SRR may be designated as a (~~conduct review officer~~) CRO. The (~~conduct review officer~~) CRO(s) shall preside over brief hearings, council hearings, and full conduct hearings under this chapter and shall serve as the decision maker in such cases unless a brief hearing is held before the student disciplinary council.

As the presiding officer, in full hearings the (~~conduct review officer~~) CRO has authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Issue subpoenas pursuant to RCW 34.05.446;

(d) Rule on procedural matters, objections, and motions;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and receive relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.-452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default;

(n) Hold prehearing conferences; and

(o) Take any other action necessary and authorized by any applicable statute or rule.

(3) Student disciplinary council: All brief hearings are scheduled with a (~~conduct review officer~~) CRO unless one of the parties requests a brief hearing before the student disciplinary council. The council also serves as an appeal authority under WAC 172-121-130.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the vice president for student affairs. Appointment of council pool members is as follows:

(i) Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: The director of SRR, or designee, shall serve as chair of council proceedings but will not have the right to vote, except in the case of a tie;

(iii) Vacancies: Council pool vacancies shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a brief hearing or an appeal, the director of SRR shall select available members from the council pool to serve as the session council. Each session council must include a quorum. A quorum is three voting members, which must include at least one student, one faculty/staff member, and one other member who could be a student or faculty/staff member.

(4) Investigator: In certain cases, the CRO may assign a complaint to an investigator to conduct an investigation. The investigator will provide a written investigative report to the CRO.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-075 Conflicts of interest.** (1) Individuals who play a role in receiving, investigating, advising, presiding over, and making decisions pertaining to individual student conduct cases shall not have any conflict of interest in the process. A conflict of interest exists if the investigator, advisor, presiding officer or decision maker is the respondent, complainant, or a witness; if the respondent, complainant, or witness is a family member or friend; if the individual has a personal interest or bias; or if the individual has previously served in an advisory capacity for any of the parties or witnesses. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Challenges to council membership. Members of the student disciplinary council and the conduct review officer (CRO) are subject to the conflict of interest limitations set forth in subsection (1) of this section.

(a) If a member has such a conflict, the person shall recuse him/herself from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A member's or the (~~(conduct review officer's)~~) CRO's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the (~~(conduct review officer)~~) CRO. When such a challenge is made, the session

council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies him/herself from a case, the director of SRR will appoint a replacement.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-080 Administration and records.** (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed at least every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) A summary of the proceedings during a prehearing conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings;

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council or conduct review officer (CRO);

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476; and

(x) Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student discipline council or (~~(conduct review officer)~~) CRO communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the respondent may review the records relative to their case. The respondent shall request to review the case records by contacting the (~~(conduct review officer)~~) CRO. The (~~(conduct review officer)~~) CRO shall make every reasonable effort to support the respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the

Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The ~~((conduct review officer))~~ CRO may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the ~~((conduct review officer))~~ CRO.

(c) Required holds: The ~~((conduct review officer))~~ CRO shall place a hold on a student's academic record if the student is the respondent to a violation of the conduct code and

has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-100 Complaints.** (1) Filing of complaints.

(a) Any person may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities; or

(ii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is acting as the complainant, an EWU employee shall initiate the complaint.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct and/or criminal conduct that will require special processing under subsection (3) of this section and whether appropriate law enforcement or other authorities should be notified. The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if the allegations rise to the level of a felony under Washington criminal law. All allegations that may lead to a possible suspension, expulsion, or that rise to the level of felony sexual misconduct under Washington criminal law shall be referred for a university investigation and full hearing under WAC 172-121-122.

(3) Sexual misconduct proceedings. Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct regardless of the possible level of sanction or where the alleged acts occurred.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct to the university Title IX coordinator within twenty-four hours.

(b) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct when it is legally required to do so to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of sexual misconduct shall be promptly investigated and resolved. ~~((In the absence of extenuating circumstances, the university will seek to have the allegations resolved within sixty days from the date it is notified of the allegation.))~~

(c) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

(d) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the complainant that he or she is not required to file a report with local law enforcement. The university will report allegations of sexual misconduct to law enforcement or other authorities consistent with federal, state, and local law.

~~(4) Interim measures and interim restrictions. During the complaint review, the director of SRR (Title IX coordinator, or designee will evaluate the circumstances and recommend to the dean of students if any interim measures to assist or protect the parties during the conduct process are needed. Interim measures may include, but are not limited to, safety planning with the EWU police department, no contact directives, academic or workplace modifications, providing counseling for the complainant and/or respondent, campus housing modifications, and/or an interim restriction for the respondent. The purpose of an interim measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. The procedures and basis for imposing an interim restriction on the respondent is set forth)) will review whether any interim measures or interim restrictions are needed. Interim measures and interim restrictions are addressed in WAC 172-121-140.~~

(5) SRR will follow up with the parties as described below.

(a) For cases other than sexual misconduct, the director of SRR will contact the parties and provide them with the following information:

- (i) The parties' rights under the student conduct code;
- (ii) A summary of the allegations the complainant has against the respondent;
- (iii) The potential conduct code violations related to the allegations; and
- (iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct, the director of SRR will, in addition to the information specified under (a) of this subsection, provide both parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a preliminary conference.

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within ~~(ten)~~ seven business days of receiving notice of the dismissal.

(b) Preliminary conference. If the director of SRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-105 Conduct review proceedings. (1)**

General provisions:

(a) Conduct review proceedings in which the potential sanction is less than suspension, expulsion, or do not involve

allegations of felony level sexual misconduct are brief hearings in accordance with WAC 172-108-050(3) ~~((and shall be conducted in an informal manner))~~. Conduct review proceedings in which the potential sanction is suspension, expulsion, or that involve allegations of felony level sexual misconduct are considered full hearings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer (CRO) will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant and the respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant or the respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) The advisor must provide the ~~((conduct review officer))~~ CRO with a FERPA release signed by the student they are assisting;

(d) If a complainant or the respondent is represented by an attorney, the attorney shall provide the ~~((conduct review officer))~~ CRO and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding.

(4) Review of evidence:

(a) In brief hearings, the respondent, and, in cases of sexual misconduct, the complainant may request to view material related to their case prior to a scheduled hearing by contacting the ~~((conduct review officer))~~ CRO. To facilitate this process, the party should contact the ~~((conduct review officer))~~ CRO as early as possible prior to the scheduled hearing. The ~~((conduct review officer))~~ CRO shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In council hearings, the parties may request to view material related to the case prior to the scheduled hearing by contacting the ~~((conduct review officer))~~ CRO. To facilitate this process, the party should contact the ~~((conduct review officer))~~ CRO as early as possible prior to the scheduled hearing. The ~~((conduct review officer))~~ CRO shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the ~~((conduct review officer))~~ CRO. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the ~~((conduct review officer))~~ CRO shall allow any other party to object to the

request. The ~~((conduct review officer))~~ CRO will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

**AMENDATORY SECTION** (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-110 Notice of allegations and initial scheduling.** (1) Scheduling. If, after reviewing a complaint, the director of SRR decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the respondent. In cases alleging sexual misconduct, the CRO assigned must have completed training on issues relating to sexual misconduct, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the allegations to the respondent must:

(a) Be made in writing;

(b) Include a written list of the allegations against the respondent; ~~((and~~

~~((e-include))~~ (c) Indicate whether or not the allegation has been assigned to a university investigator and, if so, provide the contact information for the investigator; and

(d) In cases where an allegation is not assigned to an investigator, the information contained in subsection (2) of this section.

(2) After the conclusion of an investigation, or in cases where there is not an investigation, the director will provide written notice to the student the name of the ~~((conduct review officer))~~ CRO assigned to the case and the deadline for the respondent to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the respondent to contact the CRO will be within five business days of the date the director of SRR sent notification to the respondent.

~~((2))~~ (3) Failure to respond: If the respondent fails to respond to the notice of allegations, the director of SRR shall schedule the preliminary conference and notify the respondent. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

~~((3))~~ (4) Follow up with complainant. In all cases alleging sexual misconduct or if there will be a full hearing, the SRR office shall notify the complainant(s) of the date, time, and location of the preliminary conference and of their right to attend the conference. The SRR office shall also follow up with the complainant(s)/respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant has experienced any type of retaliatory behavior, the university shall take immediate steps to protect the complainant from further harassment or retaliation.

~~((4))~~ (5) The procedures for the preliminary conference for brief hearings is contained in WAC 172-121-121. The procedures for the preliminary and prehearing conference for full hearings is contained in WAC 172-121-122.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-121 Brief hearings.** Brief hearing procedures.

(1) The conduct review officer (CRO) may hold a brief hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve felony level sexual misconduct. A respondent shall be informed of the option to have a brief hearing before a CRO or before the student discipline council. Unless the respondent affirmatively requests a council hearing, brief hearings shall be conducted with a ~~((conduct review officer))~~ CRO.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105.

(d) Disruption of proceedings: Any person, including the respondent, who disrupts a hearing, may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by a telephonic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Preliminary conference. The SRR office will schedule a preliminary conference with the respondent. Only the respondent and the respondent's advisor may appear at the

preliminary conference, unless the case involves alleged sexual misconduct. In cases alleging sexual misconduct, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate preliminary conferences. The purpose of the preliminary conference is to advise the parties regarding the student conduct process. During the preliminary conference, the ~~((conduct review officer))~~ CRO will:

(a) Review the written list of allegations with the respondent;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

At the end of the preliminary conference, the ~~((conduct review officer))~~ CRO will either conduct or schedule a brief hearing with the respondent as set forth in this subsection. If proper notice was given of the preliminary conference and the respondent fails to attend the conference, the CRO may either proceed with the brief hearing and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

~~((3))~~ (6) Scheduling. A brief hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing. If the brief hearing will be held at a later date or time, the CRO shall schedule the hearing and notify the respondent and, in the case of sexual misconduct, the complainant of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so.

~~((4))~~ (7) If the respondent fails to appear at the brief hearing, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

~~((5))~~ (8) Deliberation. After the hearing, the CRO and/or council shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence. For council hearings, the council shall meet in closed session and, within seven business days, determine by majority vote whether the respondent violated the student conduct code.

(a) If the CRO and/or council determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO and/or council shall dismiss the complaint.

(b) If the CRO and/or council determines that the respondent violated the student conduct code, the CRO and/or council shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

~~((6))~~ (9) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the hearing authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed.

(10) Notification. The CRO, and/or the presiding officer in cases of a council hearing, shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's/CRO's decision. The findings shall be based exclusively on the evidence provided at the hearing. The decision must also identify the respondent's right to appeal.

In cases of sexual misconduct, the complainant shall be provided with written notice of:

- (a) The university's determination as to whether such sexual misconduct occurred;
- (b) The complainant's right to appeal;
- (c) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

Information regarding the discipline of the respondent will not be released unless:

- (i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or
- (ii) The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-122 Full hearing procedures.** (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion or that involve felony-level sexual misconduct. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a preliminary conference.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the CRO may conduct separate hearings for each student or consolidate the hearings as prac-

tical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the CRO shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the CRO will decide the case based on the information available.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105.

(d) Disruption of proceedings: Any person, including the respondent, who disrupts a hearing, may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by a telephonic appearance as determined by the CRO.

(4) Standard of proof. The CRO shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Preliminary conference. The SRR office or designee will arrange for a preliminary conference with each of the parties separately to advise them about the student conduct process. During the preliminary conference, the SRR office or designee will:

- (a) Review the written list of allegations with the respondent;
- (b) Inform the respondent who is bringing the complaint against them;
- (c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;
- (d) Explain the respondent's rights under the student code;
- (e) Explain the conduct review procedures;
- (f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and
- (g) Explain possible penalties under the student conduct code.

~~((3))~~ (6) Prehearing conference. Following the preliminary conference, the case will be referred to the CRO and the CRO will arrange for a prehearing conference with the parties. The purpose of the prehearing conference is for the CRO to explain what will occur for during the full hearing process, to schedule a date for the full hearing, and to address any preliminary matters or motions. Following the prehearing conference, the CRO shall schedule the hearing and notify the

respondent with the date, time, and location of the hearing. The director of SRR shall also notify the complainant of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so.

~~((4))~~ (7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the ~~(conductor review officer)~~ CRO in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence. Evidence, including hearsay evidence, is admissible if in the judgment of the ~~(conductor review officer)~~ CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The ~~(conductor review officer)~~ CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The ~~(conductor review officer)~~ CRO may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the ~~(conductor review officer)~~ CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

~~((5))~~ (8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five business days prior to the hearing, absent

extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

~~((6))~~ (9) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The CRO, upon motion ~~(made promptly and in any event at or before the time specified in the subpoena for compliance therewith,)~~ by a party or at his or her own discretion, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. Subpoenas may not be used to threaten or intimidate parties or witnesses.

~~((7))~~ (10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

~~((8))~~ (11) Witnesses.

(a) The complainant, respondent, investigator, and CRO may present witnesses at full hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.



(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

~~((9))~~ (12) Questioning:

(a) The complainant, the respondent, and their advisors may ask questions of each other or of any witnesses, except cross-examination questions for another party must be submitted in writing to the CRO. The CRO may ask such questions, but is not required to do so. The CRO may preclude any questions which he/she considers inappropriate, irrelevant, immaterial or unduly repetitious or may require that all questions be submitted to the CRO rather than allowing the parties to directly question witnesses. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The CRO may ask their own questions of any witness called before them.

~~((10))~~ (13) The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, video conferencing, or other means, as determined appropriate, subject to subsection ~~((2))~~ (3)(b) of this section.

~~((11))~~ (14) Deliberations and sanctions. Following the hearing, the CRO will determine whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the CRO shall make a decision based on the information available. If the CRO determines the respondent violated the student conduct code, the CRO shall then decide what sanctions shall be imposed. The CRO may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. The ~~((CRO's))~~ CRO shall issue a decision including his/her findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. The findings shall be based exclusively on the evidence provided at the hearing. Such decisions should be issued within seven business days from the date of the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available post-hearing remedies.

~~((12))~~ (15) Notification to the respondent. The director of SRR shall serve the respondent with a copy of the decision and notice of the right to appeal.

~~((13))~~ (16) Notification to the complainant. In cases of sexual misconduct, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-130 Appeals.** (1) Basis: Appeals following a brief hearing, full hearing, or dismissal of a complaint may be filed by the respondent or the complainant under this section. Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the notice of allegations and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The respondent was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(2) Filing: Appeals may be filed following a brief hearing ~~((or))~~, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ten ~~((calendar))~~ business days from service of the CRO's decision following a full

hearing or dismissal of a complaint, or within twenty-one calendar days from service of a decision from a brief hearing conducted by the CRO or student disciplinary council;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days; and

(d) For dismissal of a complaint, appeals are determined by the dean of students.

(3) Appeal authorities:

(a) For brief hearings heard by the CRO, appeals are determined by the student disciplinary council.

(b) For brief hearings heard by the student disciplinary council, appeals are determined by the dean of students.

(c) For full hearings, appeals are determined by the vice president for student affairs.

(4) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within thirty calendar days of the appeal authority receiving all necessary documentation.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the respondent, and, in cases of sexual misconduct, notify the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

(10) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

(11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-140 Interim measures and restrictions.** (1) Interim measures. During the complaint review, the director of SRR, Title IX coordinator, or designee will evaluate the circumstances and recommend to the dean of students if any interim measures to assist or protect the parties during the conduct code process are needed. Interim measures may include, but are not limited to, safety planning with the EWU police department, no contact directives, academic or workplace modifications, providing counseling for the complainant and/or respondent, campus housing modifications, and/or an interim restriction for the respondent. The purpose of an interim measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus.

(2) Interim restrictions. In situations where there is cause to believe that a student or a student organization poses an immediate danger to the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the allegations to the conduct review officer, who will process such allegations in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

~~((1))~~ (a) Interim restriction actions may only be imposed in the following situations:

~~((a))~~ (i) When a student or student organization poses an immediate threat to:

~~((i))~~ (A) The health, safety or welfare of any part of the university community or public at large;

~~((ii))~~ (B) The student's own physical safety and well-being; or

~~((iii))~~ (C) Any property of the university community; or

~~((b))~~ (ii) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community.

~~((2))~~ (b) During the interim restriction period, a student may be restricted by any or all of the following means:

~~((a))~~ (i) Denial of access including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

~~((b))~~ (ii) Interim suspension, including temporary total removal from the university or restriction of access to campus;

~~((c))~~ (iii) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be placed on a student.

(4) The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) could constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

~~((The date, time, and location for an))~~ An explanation of the process for emergency appeal ((hearing with the vice president for student affairs)) reviews.

(5) In cases alleging sexual misconduct, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement as to why the interim restriction should or should not be modified.

(6) Emergency appeal ((hearing)) review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal ((hearing)) review with the vice president for student affairs, or designee(~~(, within ten business days after the interim suspension is served)~~). If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within ~~((ten))~~ five business

days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within ten business days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to the criteria identified in WAC 172-121-140(1) upon which the interim restriction was imposed (threat to health or safety of the university community, potential for creating campus disorder, impeding the lawful activity of others, etc.). Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator or provided to the CRO under the regular hearing process.

(b) The vice president for student affairs, or designee, will conduct an emergency appeal~~((s hearing with the student or student organization subject to the interim restriction. The student may appear at the hearing telephonically and may be represented by counsel))~~ review. Emergency appeal reviews will address only the interim restriction decision of the dean of students and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency appeal review, the vice president will only review materials available to and information considered by the dean of students at the time the interim restriction was imposed, written statements by the two parties, and information that becomes available as a part of the university's investigation that the vice president deems relevant.

(c) In cases alleging sexual misconduct, if ~~((an interim restriction is imposed, the student, the student organization, and))~~ a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal the interim restriction using the process outlined in this subsection. ((Also, in such cases, if an appeal is filed)) If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to ((participate in the appeal proceeding)) submit a written statement to the vice president.

(d) ~~((The vice president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The respondent and the complainant, if he/she has the right to be present under (b) of this subsection, may have an advisor present at the meeting.~~

~~((e))~~ During the emergency appeal ((hearing)) review, the vice president for student affairs will review available materials and statements. ~~((After the meeting,))~~ The vice president for student affairs ((may uphold, modify, or terminate)) will issue a written decision upholding, modifying, or terminating the interim restriction action. The written decision shall include a rationale for the basis of the decision and be issued within fifteen business days of the date of service of an interim restriction.

~~((f))~~ (e) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

~~((g))~~ (f) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-200 Violations.** The following are defined as offenses which are subject to disciplinary action by the university.

(1) **Acts of academic dishonesty.** University policy regarding academic dishonesty is governed by the university academic integrity policy.

~~((Aets of social misconduct.))~~ **Abuse, threats and harassment.**

(a) Abuse. Assault and other forms of physical abuse(; verbal abuse, and/or other conduct which threatens or).

(b) Threats. Any conduct or statement that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of (~~(any)~~) another person.

~~((b))~~ (c) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Hostile or offensive; and

(v) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs and activities.

~~((e))~~ (d) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, disability, or veteran status when one of the conditions outlined in subsection (1) or (2) of this section are present:

(i) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

(ii) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.

(e) Domestic violence and dating violence.

(i) Domestic violence means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(B) Sexual assault of one family or household member by another; or

(C) Stalking of one family or household member by another family or household member.

(ii) Dating violence is a type of domestic violence, except the acts specified above are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The nature of the relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

~~((d))~~ ~~Harassment is conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities. Harassment based on someone's actual or perceived membership in a protected class, as defined by university policy, is also discrimination.~~

~~((e))~~ (f) Sexual and gender-based harassment. Sexual harassment is defined by the Office of Civil Rights as unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code when it is sufficiently severe or pervasive such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

In determining whether conduct is severe or pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code when it is sufficiently severe or pervasive, such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

~~((f))~~ (g) Retaliation. Any actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code is prohibited and is a separate violation of this code.

~~((g))~~ (3) **Sexual misconduct.** Sexual misconduct includes, but is not limited to:

~~((h))~~ (a) Nonconsensual sexual activity. Nonconsensual sexual activity is sexual contact or sexual intercourse without consent. Sexual contact is intentional contact with a person's intimate body parts without their consent. Intimate body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks. Nonconsensual sexual intercourse is penetration, no matter how slight, of the vagina, or anus, with any body part or object, without consent; or, oral penetration by a sex

organ of another person without consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

~~((+))~~ **(b) Other forms of sexual misconduct.** Other forms of sexual misconduct include indecent liberties; indecent exposure; sexual exhibitionism; sex-based cyber harassment; prostitution or the solicitation of a prostitute; peeping or other voyeurism; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.

~~((+))~~ **(4) Stalking.** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

~~((+))~~ **(a)** Fear for their health and/or safety or the health/safety of others; or

~~((+))~~ **(b)** Suffer substantial emotional distress.

~~((+))~~ **(5) Unauthorized use of electronic or other devices.** Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

~~((+))~~ **(6) Property violations.** Theft of, damage to, or misuse of another person's or entity's property. This also includes any conduct or statement that, when viewed objectively, threatens to damage another's property.

~~((+))~~ **(7) Weapons.** Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

~~((+))~~ **(8) Failure to comply.**

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

~~((+))~~ **(9) Trespassing/unauthorized use of keys.**

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

~~((+))~~ **(10) Deception, forgery, fraud, unauthorized representation.**

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

~~((+))~~ **(11) Safety.**

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

~~((+))~~ **(12) Alcohol, drugs, and controlled substances.**

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

~~((10))~~ **(13) Hazing.** Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

~~((11))~~ **(14) Disruptive conduct/obstruction.**

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

~~((12))~~ **(15) Violations of other laws, regulations and policies.**

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, or handbook provisions.

~~((13))~~ **(16) Assisting/attempts.** Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

~~((14))~~ **(17) Acts against the administration of this code.**

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code including, but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

~~((15))~~ **(18) Other responsibilities(+).**

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

~~((16))~~ **(19) Student organization and/or group offenses.** Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-121-120 Hearing procedures.

### **WSR 20-01-033**

#### **PERMANENT RULES**

#### **EASTERN WASHINGTON UNIVERSITY**

[Filed December 6, 2019, 5:29 p.m., effective January 6, 2020]

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

Purpose: The revision to WAC 172-122-310 Use of tobacco, electronic cigarettes, and related products, adds stadiums to the list of prohibited locations owned or leased by Eastern Washington University for the use of tobacco, electronic cigarettes and other related products.

Citation of Rules Affected by this Order: Amending WAC 172-122-310.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 19-20-023 on September 23, 2019.

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 Non-governmental 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 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: December 6, 2019.

Joseph Fuxa  
Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 18-06-023, filed 2/27/18, effective 3/30/18)

**WAC 172-122-310 Use of tobacco, electronic cigarettes, and related products.** Eastern Washington University is committed to providing a safe and healthy environment for its employees, students and visitors. In light of the associated health risks, the use of tobacco, electronic cigarettes, and related products in or on university owned or leased property is restricted as described herein.

(1) The use of tobacco, electronic cigarettes, and related products is prohibited:

(a) Within any building, stadium, or vehicle owned or leased by EWU, to include residence halls and university apartments; and

(b) Within twenty-five feet of entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by EWU; and

(c) Anywhere within the boundaries of the Arévalo Student Mall. The Arévalo Student Mall is enclosed by a rectangle surrounded by the southwest elevation of Patterson Hall, the northwest elevation of Tawanka Hall, the northeast elevation of JFK Library and the southeast elevation of the Pence Union Building.

(2) For the purposes of this section, "tobacco, electronic cigarettes, and related products" includes any cigarette, cigar, pipe, bidi, clove cigarette, e-cigarette/cigar/pipe, waterpipe (hookah) and smokeless or spit tobacco, dissolvable tobacco, snuff or snoose.

(3) Distribution or sale of tobacco, electronic cigarettes, or related products in or on EWU owned or leased property is prohibited. Advertising or sponsorship of tobacco, electronic cigarettes or related products is prohibited on EWU property or at University-affiliated events, including the use of brand or corporate names, trademarks, logos, symbols or mottos. EWU will neither solicit nor accept any grant or gift from a manufacturer, distributor or retailer whose principal business is tobacco, electronic cigarettes, or related products.

(4) Any person intentionally violating this section may be subject to a civil fine of up to one hundred dollars. Local law enforcement agencies may enforce this section by issuing a notice of infraction, assessed in the same manner as traffic infractions, as described under chapter 70.160 RCW. Any student, staff or faculty member who violates this section may also be subject to disciplinary action by the university.

Purpose: Adoption and amendment of the 2018 Washington State Energy Code, Residential, chapter 51-11R WAC; chapter 51-11C WAC, Appendix A, default heat loss coefficients.

Citation of Rules Affected by this Order: New 4; and amending 53.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.045, 19.27A.160.

Other Authority: Chapter 19.27 RCW.

Adopted under notice filed as WSR 19-16-137 on August 6, 2019.

Changes Other than Editing from Proposed to Adopted Version:

1.	Definition: Added a definition for <b>pilot light, continuously burning</b> , this will help clarify the prohibition for continuously burning pilot lights in Section R403.1.3.
2.	Definition: Added a definition for <b>pilot light, intermittent</b> , this will help clarify the prohibition for continuously burning pilot lights in Section R403.1.3.
3.	Definition: Added a definition for <b>pilot light, interrupted</b> , this will help clarify the prohibition for continuously burning pilot lights in Section R403.1.3.
4.	Definition: Added a definition for <b>pilot light, on-demand</b> , this will help clarify the prohibition for continuously burning pilot lights in Section R403.1.3.
5.	<b>Section R402.4.2.1</b> , the language for gas fireplace efficiency was revised to better correlate with the International Fuel Gas Code and the Canadian standard. The required efficiency was changed to 50 percent and decorative appliances were exempted. The proposed exemption was deleted as it was no longer necessary with the exemption of decorative appliances. Decorative fireplaces must also be labeled with their fireplace efficiency ratings even though they are not required to meet the 50 percent efficiency rating.
6.	<b>Section R403.1.3</b> , an exception was added to item 5 to clarify that certain types of ignition were still allowed for gas fireplaces.
7.	<b>Section R403.5.5</b> , the language for the requirement for insulation under electric water heaters was revised to specify a compressive strength for the required insulation.
8.	<b>Section R405.3</b> , coordinating with the reduction of credits needed for a Small Dwelling Unit, the percentage over code needed to comply with the performance path was reduced to 73 percent.
9.	<b>Table R405.3</b> , the metric for carbon emissions for electricity was changed to 0.8.

**WSR 20-01-047**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed December 9, 2019, 10:28 a.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

10.	<b>Table R406.2</b> , the credits assigned to System Type 4, zonal electric heat with ductless heat pump, was increased to 0.5.
11.	<b>Section R406.3</b> , the number of credit needed for Small Dwelling Unit was reduced to 3.0.
12.	<b>Table R406.3</b> , the credit value for Option 3.2 was increased to 1 credit; the credit value for Option 5.4 was increased to 1.5; the credit value for Option 5.5 was increased to 2.0; and the credit value for Option 5.6 was increased to 2.5. These values were all increased by 0.5 credits.

A final cost-benefit analysis is available by contacting Richard Brown, P.O. Box 41449, Olympia, WA 98504-1449, phone 360-407-9277, email Richard.brown@des.wa.gov, website sbcc.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 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 3, Amended 49, 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 53, Repealed 0.

Date Adopted: November 8, 2019.

Doug Orth  
Council Chair

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

**WAC 51-11C-610334 Section A103.3.4—Log wall.**

**A103.3.4 Log wall.** ((See Table A103.3.4.

**Table A103.3.4  
Log Walls**

	<b>Average Log Diameter, Inches</b>	<b>U-factor</b>
<b>NOTE:</b> R-value of wood:	—6	0.148
R-1.25 per inch thickness	—8	0.111
Average wall thickness	10	0.089
90% average log diameter	12	0.074
	14	0.063
	16	0.056))

U-factors for log walls shall be determined using ICC 400 Table 305.3.1.1, U-Factor of log wall ( $U_w$ ) by log thickness ( $W_L$ ) and specific gravity.

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

**WAC 51-11C-61041 Section A104.1—General.**

**A104.1 General.** Table A104.1 lists heat loss coefficients for below-grade walls and floors.

Coefficients for below-grade walls are given as U-factors (Btu/h • ft<sup>2</sup> • °F of wall area). Coefficients for below-grade slabs are listed as F-factors (Btu/h • ft • °F per lineal foot of slab perimeter).

Below-grade wall U-factors are only valid when used with the accompanying below-grade slab F-factor, and vice versa.

**Table A104.1**

Default Wall U-factors and Slab F-factors for Basements

	<b>(Below-Grade Wall U-factor</b>	<b>Below-Grade Slab F-factor</b>
<b>2 Foot Depth Below Grade</b>		
Uninsulated	0.350	0.59
R-11 Interior	0.066	0.68
R-11 Interior w/TB	0.070	0.60
R-19 Interior	0.043	0.69
R-19 Interior w/TB	0.045	0.61
R-10 Exterior	0.070	0.60
R-12 Exterior	0.061	0.60
<b>3.5 Foot Depth Below Grade</b>		
Uninsulated	0.278	0.53
R-11 Interior	0.062	0.63
R-11 Interior w/TB	0.064	0.57
R-19 Interior	0.041	0.64
R-19 Interior w/TB	0.042	0.57
R-10 Exterior	0.064	0.57
R-12 Exterior	0.057	0.57
<b>7 Foot Depth Below Grade</b>		
Uninsulated	0.193	0.46
R-11 Interior	0.054	0.56
R-11 Interior w/TB	0.056	0.42
R-19 Interior	0.037	0.57
R-19 Interior w/TB	0.038	0.43
R-10 Exterior	0.056	0.42
R-12 Exterior	0.050	0.42))



	<u>Below Grade Wall U-factor</u>	<u>Below Grade Slab F-factor</u>
<b>2 Foot Depth Below Grade</b>		
Uninsulated	<u>0.331</u>	<u>0.58</u>
R-11 Interior	<u>0.063</u>	<u>0.67</u>
R-11 Interior w/TB	<u>0.065</u>	<u>0.59</u>
R-19 Interior	<u>0.042</u>	<u>0.68</u>
R-19 Interior w/TB	<u>0.045</u>	<u>0.59</u>
R-21 Interior	<u>0.040</u>	<u>0.68</u>
R-21 Interior w/TB	<u>0.042</u>	<u>0.59</u>
R-21+R-5 ci Interior	<u>0.031</u>	<u>0.68</u>
R-21+R-5 Interior w/TB	<u>0.032</u>	<u>0.59</u>
R-21 plus R-7 ci Interior	<u>0.029</u>	<u>0.68</u>
R-21+R-7 Interior w/TB	<u>0.030</u>	<u>0.59</u>
R-10 Exterior	<u>0.089</u>	<u>0.56</u>
R-12 Exterior	<u>0.061</u>	<u>0.60</u>
<b>3.5 Foot Depth Below Grade</b>		
Uninsulated	<u>0.271</u>	<u>0.51</u>
R-11 Interior	<u>0.058</u>	<u>0.61</u>
R-11 Interior w/TB	<u>0.061</u>	<u>0.55</u>
R-19 Interior	<u>0.041</u>	<u>0.62</u>
R-19 Interior w/TB	<u>0.042</u>	<u>0.55</u>
R-21 Interior	<u>0.038</u>	<u>0.63</u>
R-21 Interior w/TB	<u>0.040</u>	<u>0.56</u>
R-21+R-5 Interior	<u>0.030</u>	<u>0.632</u>
R-21+R-5 Interior w/TB	<u>0.031</u>	<u>0.56</u>
R-21 plus R-7 ci	<u>0.027</u>	<u>0.63</u>
R-21 plus R-7 ci w/TB	<u>0.029</u>	<u>0.56</u>
R-10 Exterior	<u>0.075</u>	<u>0.52</u>
R-12 Exterior	<u>0.057</u>	<u>0.57</u>
<b>7 Foot Depth Below Grade</b>		
Uninsulated	<u>0.185</u>	<u>0.43</u>
R-11 Interior	<u>0.051</u>	<u>0.541</u>
R-11 Interior w/TB	<u>0.053</u>	<u>0.49</u>
R-19 Interior	<u>0.036</u>	<u>0.54</u>
R-19 Interior w/TB	<u>0.037</u>	<u>0.50</u>
R-21 Interior	<u>0.035</u>	<u>0.56</u>
R-21 Interior w/TB	<u>0.035</u>	<u>0.50</u>
R-21+R-5 Interior	<u>0.027</u>	<u>0.56</u>

	<u>Below Grade Wall U-factor</u>	<u>Below Grade Slab F-factor</u>
R-21+R-5 Interior w/TB	<u>0.028</u>	<u>0.51</u>
R-21+R-7 Interior	<u>0.025</u>	<u>0.57</u>
R-21+R-7 Interior w/TB	<u>0.026</u>	<u>0.51</u>
R-10 Exterior	<u>0.058</u>	<u>0.47</u>
R-12 Exterior	<u>0.050</u>	<u>0.42</u>

TB = R-5 Thermal Break

**Chapter 51-11R WAC**

**STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2015)) 2018 EDITION OF THE INTERNATIONAL ENERGY CONSERVATION CODE, RESIDENTIAL**

AMENDATORY SECTION (Amending WSR 17-17-160, filed 8/23/17, effective 10/1/17)

**WAC 51-11R-10100 Section R101—Scope and general requirements.**

**R101.1 Title.** This code shall be known as the *Washington State Energy Code-Residential*, and shall be cited as such. It is referred to herein as "this code."

**R101.2 Scope.** This code applies to *residential buildings* and the buildings sites and associated systems and equipment. This code shall be the maximum and minimum energy code for residential construction in each town, city and county. Residential *sleeping units*, Group I-1, Condition 2 assisted living facilities licensed by Washington state under chapter 388-78A WAC and Group I-1, Condition 2 residential treatment facilities licensed by Washington state under chapter 246-337 WAC shall utilize the commercial building sections of the energy code regardless of the number of stories of height above grade plane.

**R101.3 Intent.** This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.

**R101.4 Applicability.** Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern.

**R101.4.1 Mixed ((occupancy)) residential and commercial buildings.** Where a building includes both *residential building* and *commercial ((occupancies)) building portions*, each ((occupancy)) portion shall be separately considered

and meet the applicable provisions of the WSEC - Commercial (~~and~~) or WSEC - Residential Provisions.

**R101.5 Compliance.** *Residential buildings* shall meet the provisions of WSEC - Residential Provisions. *Commercial buildings* shall meet the provisions of WSEC - Commercial Provisions.

**R101.5.1 Compliance materials.** The *code official* shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-10200 Section R102—(~~Applicability—Duties and powers of the code official~~) Alternative materials, design and methods of construction and equipment.**

**R102.1 (~~Alternate materials, design and methods of construction and equipment~~) General.** The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code (~~, provided that any such alternative has been approved~~). The *code official* shall (~~be permitted~~) have the authority to approve an alternative material, design or method of construction (~~where~~) upon application of the owner or owner's authorized agent. The *code official* shall first find(~~s~~) that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, (~~at least~~) not less than the equivalent of that prescribed in this code for strength, effectiveness, fire resistance, durability and safety. Where the alternative material, design or method of construction is not approved, the code official shall respond in writing, stating the reason why the alternative was not approved.

AMENDATORY SECTION (Amending WSR 17-10-063, filed 5/2/17, effective 6/2/17)

**WAC 51-11R-10400 Section R104—Inspections.**

**R104.1 General.** Construction or work for which a permit is required shall be subject to inspection by the *code official* or his or her designated agent, and such construction or work shall remain (~~accessible and exposed~~) visible and able to be accessed for inspection purposes until *approved*. It shall be the duty of the permit applicant to cause the work to remain (~~accessible and exposed~~) visible and able to be accessed for inspection purposes. Neither the *code official* nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material, product, system or building component required to allow inspection to validate compliance with this code.

**R104.2 Required inspections.** The *code official* or his or her designated agent, upon notification, shall make the inspections set forth in Sections R104.2.1 through R104.2.5.

**R104.2.1 Footing and foundation inspection.** Inspections associated with footings and foundations shall verify compliance with the code as to *R*-value, location, thickness, depth of burial and protection of insulation as required by the code and approved plans and specifications.

**R104.2.2 Framing and rough-in inspection.** Inspections at framing and rough-in shall be made before application of interior finish and shall verify compliance with the code as to types of insulation and corresponding *R*-values and their correct location and proper installation; fenestration properties (*U*-factor and SHGC) and proper installation; and air leakage controls as required by the code and approved plans and specifications.

**R104.2.2.1 Wall insulation inspection.** The building official, upon notification, shall make a wall insulation inspection in addition to those inspections required in Section R109 of the International Residential Code. This inspection shall be made after all wall and cavity insulation is in place and prior to cover.

**R104.2.3 Plumbing rough-in inspection.** Inspections at plumbing rough-in shall verify compliance as required by the code and approved plans and specifications as to types of insulation and corresponding *R*-values and protection, and required controls.

**R104.2.4 Mechanical rough-in inspection.** Inspections at mechanical rough-in shall verify compliance as required by the code and approved plans and specifications as to installed HVAC equipment type and size, required controls, system insulation and corresponding *R*-value, system air leakage control, programmable thermostats, dampers, whole-house ventilation and minimum fan efficiency.

EXCEPTION: Systems serving multiple dwelling units shall be inspected in accordance with Section C104.2.4.

**R104.2.5 Final inspection.** The building shall have a final inspection and not be occupied until *approved*.

**R104.3 Reinspection.** A building shall be reinspected when determined necessary by the *code official*.

**R104.4 Approved inspection agencies.** The *code official* is authorized to accept reports of third-party inspection agencies not affiliated with the building design or construction, provided such agencies are *approved* as to qualifications and reliability relevant to the building components and systems they are inspecting.

**R104.5 Inspection requests.** It shall be the duty of the holder of the permit or their duly authorized agent to notify the *code official* when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

**R104.6 Reinspection and testing.** Where any work or installation does not pass an initial test or inspection, the necessary corrections shall be made so as to achieve compliance with this code. The work or installation shall then be resubmitted to the *code official* for inspection and testing.

**R104.7 Approval.** After the prescribed tests and inspections indicate that the work complies in all respects with this code, a notice of approval shall be issued by the *code official*.

**R104.7.1 Revocation.** The *code official* is authorized to, in writing, suspend or revoke a notice of approval issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure, premise, or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-20201 Section R202.1—A.**

**ABOVE-GRADE WALL.** A wall enclosing *conditioned space* that is not a below-grade wall. This includes between-floor spandrels, peripheral edges of floors, roof and basement knee walls, dormer walls, gable end walls, walls enclosing a mansard roof and skylight shafts.

**ACCESSIBLE.** Admitting close approach as a result of not being guarded by locked doors, elevation or other effective means (see "*Readily accessible*").

**ADDITION.** An extension or increase in the *conditioned space* floor area, number of stories or height of a building or structure.

**ADVANCED FRAMED WALLS.** Studs framed on 24-inch centers with double top plate and single bottom plate. Corners use two studs or other means of fully insulating corners, and one stud is used to support each header. Headers consist of double 2x material with R-10 insulation between the header and exterior sheathing. Interior partition wall/ exterior wall intersections are fully insulated in the exterior wall. (See **Standard Framing** and Appendix A, of this code.)

**AIR BARRIER.** ~~((Material(s) assembled and joined together to provide a barrier to air leakage through the building envelope. An air barrier may be a single material or a combination of materials))~~ One or more materials joined together in a continuous manner to restrict or prevent the passage of air through the building thermal envelope and its assemblies.

**AIR-IMPERMEABLE INSULATION.** An insulation that functions as an air barrier material.

**ALTERATION.** Any construction, retrofit or renovation to an existing structure other than repair or addition ~~((that requires a permit))~~. Also, a change in a building, electrical, gas, mechanical or plumbing system that involves an extension, addition or change to the arrangement, type or purpose of the original installation ~~((that requires a permit))~~.

**APPROVED.** ~~((Approval by))~~ Acceptable to the *code official* ((as a result of investigation and tests conducted by him or her, or by reason of accepted principles or tests by nationally recognized organizations)).

**APPROVED AGENCY.** An established and recognized agency that is regularly engaged in conducting tests or furnishing inspection services, ~~((when))~~ or furnishing product certification, where such agency has been approved by the *code official*.

**AUTOMATIC.** Self-acting, operating by its own mechanism when actuated by some impersonal influence, as, for exam-

ple, a change in current strength, pressure, temperature or mechanical configuration (see "Manual").

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-20202 Section R202.2—B.**

**BASEMENT WALL.** See *above-grade wall* and *below-grade wall*.

**BELOW-GRADE WALL.** That portion of a wall in the building envelope that is entirely below the finish grade and in contact with the ground.

**BUILDING.** Any structure used or intended for supporting or sheltering any use or occupancy, including any mechanical systems, service water heating systems and electric power and lighting systems located on the building site and supporting the building.

**BUILDING SITE.** A contiguous area of land that is under the ownership or control of one entity.

**BUILDING THERMAL ENVELOPE.** The *below-grade walls*, *above-grade walls*, floors, ceilings, roofs, and any other building element((s)) assemblies that enclose *conditioned space* or provides a boundary between *conditioned space* and exempt or unconditioned space.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-20203 Section R202.3—C.**

**C-FACTOR (THERMAL CONDUCTANCE).** The coefficient of heat transmission (surface to surface) through a building component or assembly, equal to the time rate of heat flow per unit area and the unit temperature difference between the warm side and cold side surfaces (Btu/h ft<sup>2</sup> × °F) [W/(m<sup>2</sup> × K)].

**CIRCULATING HOT WATER SYSTEM.** A specifically designed water distribution system where one or more pumps are operated in the service hot water piping to circulate heated water from the water-heating equipment to the fixture supply and back to the water-heating equipment.

**CLIMATE ZONE.** A geographical region based on climatic criteria as specified in this code.

**CODE OFFICIAL.** The officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

**COMMERCIAL BUILDING.** For this code, all buildings that are not included in the definition of "Residential buildings."

**CONDITIONED FLOOR AREA.** The horizontal projection of the floors associated with the *conditioned space*.

**CONDITIONED SPACE.** An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

CONNECTED THERMOSTAT. An internet enabled device that automatically adjusts heating and cooling temperature settings.

**CONTINUOUS AIR BARRIER.** A combination of materials and assemblies that restrict or prevent the passage of air through the building thermal envelope.

**CONTINUOUS INSULATION (c.i.).** Insulating material that is continuous across all structural members without thermal bridges other than fasteners and service openings. It is installed on the interior or exterior or is integral to any opaque surface of the building envelope.

**CURTAIN WALL.** Fenestration products used to create an external nonload-bearing wall that is designed to separate the exterior and interior environments.

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-20204 Section R202.4—D.**

**DEMAND RECIRCULATION WATER SYSTEM.** A water distribution system ~~((where pump(s) prime the service hot water piping with heated water upon demand for hot water))~~ having one or more recirculation pumps that pump water from a heated water supply pipe back to the heated water source through a cold water supply pipe.

**DUCT.** A tube or conduit utilized for conveying air. The air passages of self-contained systems are not to be construed as air ducts.

**DUCT SYSTEM.** A continuous passageway for the transmission of air that, in addition to ducts, includes duct fittings, dampers, plenums, fans and accessory air-handling equipment and appliances.

**DUCTLESS MINI-SPLIT HEAT PUMP SYSTEM.** A heating and cooling system that is comprised of one or multiple indoor evaporator/air-handling units and an outdoor condensing unit that is connected by refrigerant piping and electrical wiring. A ductless mini-split system is capable of cooling or heating one or more rooms without the use of a central ductwork system.

**DWELLING UNIT.** A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-20206 Section R202.6—F.**

**FENESTRATION.** Products classified as either vertical fenestration or skylights.

**VERTICAL FENESTRATION.** Windows (fixed or ~~((moveable))~~ operable), glazed doors, glazed block and combination opaque/glazed doors composed of glass or other transparent or translucent glazing materials and installed at a slope of ~~((at least))~~ not less than 60 degrees from horizontal. Opaque areas such as spandrel panels are not considered vertical fenestration.

**SKYLIGHT.** Glass or other transparent or translucent glazing material installed with a slope of less than 60 degrees from horizontal.

**FENESTRATION AREA.** Total area of the fenestration measured using the rough opening, and including the glazing, sash and frame.

**FENESTRATION PRODUCT, FIELD-FABRICATED.** A fenestration product whose frame is made at the construction site of standard dimensional lumber or other materials that were not previously cut, or otherwise formed with the specific intention of being used to fabricate a fenestration product or exterior door. Field fabricated does not include site-built fenestration.

**FENESTRATION PRODUCT, SITE-BUILT.** A fenestration designed to be made up of field-glazed or field-assembled units using specific factory cut or otherwise factory-formed framing and glazing units. Examples of site-built fenestration include storefront systems, curtain walls, and atrium roof systems.

**F-FACTOR.** The perimeter heat loss factor for slab-on-grade floors (Btu/h × ft × °F) [W/(m × K)].

**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 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-20208 Section R202.8—H.**

**HEATED SLAB-ON-GRADE FLOOR.** Slab-on-grade floor construction in which the heating elements, hydronic tubing, or hot air distribution system is in contact with, or placed within or under, the slab.

**HIGH-EFFICACY** ~~((LAMPS. Compact fluorescent lamps))~~ LIGHT SOURCES. Fixtures that use light emitting diodes (LED), T-8 or smaller diameter linear fluorescent lamps, or other lamps with a minimum efficacy of ~~((±~~

1. 60 lumens per watt for lamps over 40 watts;
2. 50 lumens per watt for lamps over 15 watts to 40 watts; and
3. 40 lumens per watt for lamps 15 watts or less)) 65 lumens per watt.

**HISTORIC BUILDINGS.** Buildings that are listed in or eligible for listing in the *National Register of Historic Places*, or designated as historic under an appropriate state or local law.

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-20212 Section R202.12—L.**

**LABELED.** Equipment, materials or products to which have been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, ~~((inspection))~~ approved agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and whose labeling indicates either that the equipment, material or product meets identified standards or has been tested and found suitable for a specified purpose.

**LISTED.** Equipment, materials, products or services included in a list published by an organization acceptable to the *code official* and concerned with evaluation of products or services that maintains periodic inspection of production of *listed* equipment or materials or periodic evaluation of services and whose listing states either that the equipment, material, prod-

uct or service meets identified standards or has been tested and found suitable for a specified purpose.

**LOG STRUCTURE.** A type of construction whose primary structural elements are formed by a system of logs.

**LOG WALL.** An assembly of individual structural logs for use as an exterior or interior load bearing wall, shear wall or non-load bearing wall.

**LOW-VOLTAGE LIGHTING.** A lighting system consisting of an isolating power supply, the low voltage luminaires, and associated equipment that are all identified for the use. The output circuits of the power supply operate at 30 volts (42.4 volts peak) or less under all load conditions.

**AMENDATORY SECTION** (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-20215 Section R202.15—O.**

**OPAQUE DOOR.** A door that is not less than 50 percent opaque in surface area.

**PILOT LIGHT, CONTINUOUSLY BURNING.** A small gas flame used to ignite gas at a larger burning. Once lit, a continuous pilot light remains in operation until manually interrupted. Pilot light ignition systems with the ability to switch between intermittent and continuous mode are considered continuous.

**PILOT LIGHT, INTERMITTENT.** A pilot which is automatically ignited when an appliance is called on to operate and which remains continuously ignited during each period of main burner operation. The pilot is automatically extinguished when each main burner operating cycle is completed.

**PILOT LIGHT, INTERRUPTED.** A pilot which is automatically ignited prior to the admission of fuel to the main burner and which is automatically extinguished after the main flame is established.

**PILOT LIGHT, ON-DEMAND.** A pilot which, once placed into operation, is intended to remain ignited for a predetermined period of time following an automatic or manual operation of the main burner gas valve.

**AMENDATORY SECTION** (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-20218 Section R202.18—R.**

**READILY ACCESSIBLE.** Capable of being reached quickly for operation, renewal or inspection without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders or access equipment (see "Accessible").

**REPAIR.** The reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.

**REEROOFING.** The process of recovering or replacing an existing roof covering. See "Roof recover" and "Roof replacement."

**RESIDENTIAL BUILDING.** For this code, includes detached one- and two-family dwellings (~~(and)~~), multiple single-family dwellings (townhouses) (~~(as well as)~~) and Group R-2, R-3 and R-4 buildings three stories or less in height above grade plane, as well as accessory structures thereto.

**ROOF ASSEMBLY.** A system designed to provide weather protection and resistance to design loads. The system consists of

a roof covering and roof deck or a single component serving as both the roof covering and the roof deck. A roof assembly includes the roof covering, underlayment(~~(;)) and~~ roof deck, and can also include a thermal barrier, an ignition barrier, insulation(~~(;)) or a vapor retarder (~~(and interior finish)~~).~~

**ROOF RECOVER.** The process of installing an additional roof covering over a prepared existing roof covering without removing the existing roof covering.

**ROOF REPAIR.** Reconstruction or renewal of any part of an existing roof for the purposes of its maintenance.

**ROOF REPLACEMENT.** The process of removing the existing roof covering, repairing any damaged substrate and installing a new roof covering.

**R-VALUE (THERMAL RESISTANCE).** The inverse of the time rate of heat flow through a body from one of its bounding surfaces to the other surface for a unit temperature difference between the two surfaces, under steady state conditions, per unit area ( $h \cdot \text{ft}^2 \cdot ^\circ\text{F}/\text{Btu}$ ) [ $(\text{m}^2 \cdot \text{K})/\text{W}$ ].

**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 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-30310 Section R303.1—Identification.**

**R303.1 Identification.** Materials, systems and equipment shall be identified in a manner that will allow a determination of compliance with the applicable provisions of this code.

**R303.1.1 Building thermal envelope insulation.** An *R*-value identification mark shall be applied by the manufacturer to each piece of *building thermal envelope* insulation 12 inches (305 mm) or greater in width. Alternately, the insulation installers shall provide a certification listing the type, manufacturer and *R*-value of insulation installed in each element of the *building thermal envelope*. For blown or sprayed insulation (fiberglass and cellulose), the initial installed thickness, settled thickness, settled *R*-value, installed density, coverage area and number of bags installed shall be *listed* on the certification. For sprayed polyurethane foam (SPF) insulation, the installed thickness of the areas covered and *R*-value of installed thickness shall be *listed* on the certification. For insulated siding, the *R*-value shall be labeled on the product's package and shall be listed on the certification. The insulation installer shall sign, date and post the certification in a conspicuous location on the job site.

**R303.1.1.1 Blown or sprayed roof/ceiling insulation.** The thickness of blown-in or sprayed roof/ceiling insulation (fiberglass or cellulose) shall be written in inches (mm) on markers that are installed at least one for every 300 square feet (28 m<sup>2</sup>) throughout the attic space. The markers shall be affixed to the trusses or joists and marked with the minimum initial installed thickness with numbers a minimum of 1 inch (25 mm) in height. Each marker shall face the attic access opening. Spray polyurethane foam thickness and installed *R*-value shall be *listed* on certification provided by the insulation installer.

**EXCEPTION:** For roof insulation installed above the deck, the *R*-value shall be labeled as required by the material standards specified in Table 1508.5 of the *International Building Code* or Table R906.2 of the *International Residential Code*.

**R303.1.2 Insulation mark installation.** Insulating materials shall be installed such that the manufacturer's *R*-value mark is readily observable upon inspection.

**R303.1.3 Fenestration product rating.** *U*-factors of fenestration products (windows, doors and skylights) shall be determined in accordance with NFRC 100.

**EXCEPTION:** Where required, garage door *U*-factors shall be determined in accordance with either NFRC 100 or ANSI/DASMA 105.

*U*-factors shall be determined by an accredited, independent laboratory, and labeled and certified by the manufacturer.

Products lacking such a labeled *U*-factor shall be assigned a default *U*-factor from Table R303.1.3(1), R303.1.3(2) or R303.1.3(4). The solar heat gain coefficient (SHGC) and visible transmittance (VT) of glazed fenestration products (windows, glazed doors and skylights) shall be determined in accordance with NFRC 200 by an accredited, independent laboratory, and labeled and certified by the manufacturer. Products lacking such a labeled SHGC or VT shall be assigned a default SHGC or VT from Table R303.1.3(3).

**EXCEPTIONS:**

1. Units without NFRC ratings produced by a *small business* may be assigned default *U*-factors from Table R303.1.3(5) for vertical fenestration.
2. Owner-built, nonoperable wood frame window consisting of a double pane unit with low-*e* (*E* = 0.04 or less), 1/2-inch air space with argon fill.

**R303.1.4 Insulation product rating.** The thermal resistance (*R*-value) of insulation shall be determined in accordance with the U.S. Federal Trade Commission *R*-value rule (C.F.R. Title 16, Part 460) in units of  $h \times ft^2 \times ^\circ F/Btu$  at a mean temperature of 75°F (24°C).

**R303.1.4.1 Insulated siding.** The thermal resistance (*R*-value) of insulated siding shall be determined in accordance with ASTM C1363. Installation for testing shall be in accordance with the manufacturer's installation instructions.

**AMENDATORY SECTION** (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-30311 Table R303.1.3(1)—Default glazed fenestration *U*-factor.**

**TABLE R303.1.3(1)**  
**DEFAULT GLAZED ((FENESTRATION)) WINDOW, GLASS DOOR AND SKYLIGHT *U*-FACTOR**

FRAME TYPE	SINGLE PANE	DOUBLE PANE	SKYLIGHT See Table R303.1.3(4)
Metal	1.20	0.80	
Metal with Thermal Break <sup>a</sup>	1.10	0.65	
Nonmetal or Metal Clad	0.95	0.55	
Glazed Block	0.60		

<sup>a</sup>Metal Thermal Break = A metal thermal break framed window shall incorporate the following minimum design characteristics:

- 1) The thermal conductivity of the thermal break material shall be not more than 3.6 Btu-in/h/ft<sup>2</sup>/°F;
- 2) The thermal break material must produce a gap in the frame material of not less than 0.210 inches; and
- 3) All metal framing members of the products exposed to interior and exterior air shall incorporate a thermal break meeting the criteria in a) and b) above.

**AMENDATORY SECTION** (Amending WSR 14-24-123, filed 12/3/14, effective 1/3/15)

**WAC 51-11R-30312 Table R303.1.3(2)—Default opaque door *U*-factors.**

**TABLE R303.1.3(2)**  
**DEFAULT OPAQUE DOOR *U*-FACTORS**

Door Type	No Glazed Fenestration	Single Glazing	Double Glazing with 1/4 in. Airspace	Double Glazing with 1/2 in. Airspace	Double Glazing with e = 0.10, 1/2 in. Argon
<b>SWINGING DOORS (Rough opening - 38 in. x 82 in.)</b>					
<b>Slab Doors</b>					
Wood slab in wood frame <sup>a</sup>	0.46				
6% glazed fenestration (22 in. x 8 in. lite)	-	0.48	0.47	0.46	0.44
25% glazed fenestration (22 in. x 36 in. lite)	-	0.58	0.48	0.46	0.42
45% glazed fenestration (22 in. x 64 in. lite)	-	0.69	0.49	0.46	0.39

Door Type	No Glazed Fenestration	Single Glazing	Double Glazing with 1/4 in. Airspace	Double Glazing with 1/2 in. Airspace	Double Glazing with e = 0.10, 1/2 in. Argon
More than 50% glazed fenestration	Use Table R303.1.3(1)				
Insulated steel slab with wood edge in wood frame <sup>a</sup>	0.16				
6% glazed fenestration (22 in. x 8 in. lite)	-	0.21	0.20	0.19	0.18
25% glazed fenestration (22 in. x 36 in. lite)	-	0.39	0.28	0.26	0.23
45% glazed fenestration (22 in. x 64 in. lite)	-	0.58	0.38	0.35	0.26
More than 50% glazed fenestration	Use Table R303.1.3(1)				
Foam insulated steel slab with metal edge in steel frame <sup>b</sup>	0.37				
6% glazed fenestration (22 in. x 8 in. lite)	-	0.44	0.42	0.41	0.39
25% glazed fenestration (22 in. x 36 in. lite)	-	0.55	0.50	0.48	0.44
45% glazed fenestration (22 in. x 64 in. lite)	-	0.71	0.59	0.56	0.48
More than 50% glazed fenestration	Use Table R303.1.3(1)				
Cardboard honeycomb slab with metal edge in steel frame <sup>b</sup>	0.61				
<b>Style and Rail Doors</b>					
Sliding glass doors/French doors	Use Table R303.1.3(1)				
<b>Site-Assembled Style and Rail Doors</b>					
Aluminum in aluminum frame	-	1.32	0.99	0.93	0.79
Aluminum in aluminum frame with thermal break	-	1.13	0.80	0.74	0.63

Note: Appendix A Tables A107.1(2) through A107.1(4) may also be used if applicable.

<sup>a</sup> Thermally broken sill (add 0.03 for nonthermally broken sill).

<sup>b</sup> Nonthermally broken sill.

**AMENDATORY SECTION** (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40100 Section R401—General.**

**R401.1 Scope.** This chapter applies to residential buildings.

**R401.2 Compliance.** Projects shall comply with one of the following:

1. Sections R401 through R404. In addition, dwelling units and sleeping units in a residential building shall comply with Section R406.

~~2. Section R405 ((and the provisions of Sections R401 through R404 labeled "Mandatory.")).~~ In addition, dwelling units and sleeping units in a residential building shall comply with Section R406.

3. Section R407.

**R401.3 Certificate ((Mandatory)).** A permanent certificate shall be completed by the builder or ((registered design professional)) other approved party and posted on a wall in the space where the furnace is located, a utility room, or an approved location inside the building. When located on an electrical panel, the certificate shall not cover or obstruct the

visibility of the circuit directory label, service disconnect label, or other required labels. The certificate shall list the predominant *R*-values of insulation installed in or on ceiling/roof, walls, foundation (slab, *below-grade wall*, and/or floor) and ducts outside conditioned spaces; *U*-factors for fenestration and the solar heat gain coefficient (SHGC) of fenestration (~~(, and)~~); the results from any required duct system and building envelope air leakage testing done on the building; and the results from the whole-house mechanical ventilation system flow rate test. Where there is more than one value for each component, the certificate shall list the value covering the largest area. The certificate shall list the types and efficiencies of heating, cooling, whole-house mechanical ventilation, and service water heating (~~(equipment)~~) appliances. Where a gas-fired unvented room heater, electric furnace, or baseboard electric heater is installed in the residence, the certificate shall list "gas-fired unvented room heater," "electric furnace" or "baseboard electric heater," as appropriate. An efficiency shall not be *listed* for gas-fired unvented room heaters, electric furnaces or electric baseboard heaters.

The code official may require that documentation for any required test results include an electronic record of the time, date, and location of the test. A date-stamped smart phone photo or air leakage testing software may be used to satisfy this requirement.

**AMENDATORY SECTION** (Amending WSR 17-10-063, filed 5/2/17, effective 6/2/17)

**WAC 51-11R-40210 Section R402.1—General.**

**R402.1 General ((~~P~~rescriptive))**. The *building thermal envelope* shall meet the requirements of Sections R402.1.1 through ~~((R402.1.5))~~ R402.1.6.

EXCEPTION: The following buildings, or portions thereof, separated from the remainder of the building by *building thermal envelope* assemblies complying with this code shall be exempt from the *building thermal envelope* provisions of this code.

1. Those with a peak design rate of energy usage less than 3.4 Btu/h ft<sup>2</sup> (10.7 W/m<sup>2</sup>) or 1.0 watt/ft<sup>2</sup> of floor area for space conditioning purposes.
2. Those that do not contain *conditioned space*.
3. Greenhouses isolated from any conditioned space and not intended for occupancy.

**R402.1.1 Insulation and fenestration criteria.** The *building thermal envelope* shall meet the requirements of Table R402.1.1 based on the climate zone specified in Chapter 3.

**R402.1.2 *R*-value computation.** Insulation *R*-value shall be determined as specified in Section R303.1.4. Insulation material used in layers, such as framing cavity insulation or continuous insulation, shall be summed to compute the corresponding component *R*-value. The manufacturer's settled *R*-value shall be used for blown insulation. Computed *R*-values shall not include an *R*-value for other building materials or air films. Where insulated siding is used for the purpose of complying with the continuous insulation requirements of Table R402.1.1, ~~((manufacturer must supply an ICC Report that the *R*-factor has been certified, or use R-5 per inch for~~

~~extruded polystyrene, and R-6 per inch for polyisocyanurate rigid insulation)) manufacturer's labeled *R*-value for insulated siding shall be reduced by R-0.6.~~

**R402.1.3 *U*-factor alternative.** An assembly with a *U*-factor equal to or less than that specified in Table R402.1.3 shall be permitted as an alternative to the *R*-value in Table R402.1.1. *U*-factors shall be determined as specified in Section R402.1.5.

**R402.1.4 Total UA alternative.** If the ~~((total))~~ proposed building thermal envelope UA ((sum of *U*-factor times assembly area)) is less than or equal to the ~~((total UA resulting from using the *U*-factors in Table R402.1.3 (multiplied by the same assembly area as in the proposed building))~~ target UA, the building shall be considered in compliance with Table R402.1.1. The proposed UA shall be calculated in accordance with Equation 2. The target UA shall be calculated in accordance with Equation 1. *U*-factors shall be determined as specified in Section R402.1.5.

**R402.1.5 *U*-factor reference and calculations.** The *U*-factors for typical construction assemblies are included in Appendix A in chapter 51-11C WAC. These values shall be used for all calculations. Where proposed construction assemblies are not represented in Appendix A, values shall be calculated in accordance with the ASHRAE *Handbook of Fundamentals* using the framing factors listed in Appendix A where applicable and shall include the thermal bridging effects of framing materials. The SHGC requirements shall be met in addition to UA compliance. ~~((When using RES-check, the *U*-factors calculated by the software based on component *R*-value descriptions are acceptable. For the base building UA calculation, the maximum glazing area is 15% of the floor area.~~

~~R402.1.5))~~ Fenestration *U*-factors shall comply with Section R303.1.3, Fenestration product rating.

**R402.1.6 Vapor retarder.** Wall assemblies in the building thermal envelope shall comply with the vapor retarder requirements of Section R702.7 of the *International Residential Code* or Section 1405.3 of the *International Building Code*, as applicable.



AMENDATORY SECTION (Amending WSR 17-10-063, filed 5/2/17, effective 6/2/17)

WAC 51-11R-40211 Table R402.1.1—Insulation and fenestration requirements by component.

TABLE R402.1.1  
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT<sup>a</sup>

((Climate Zone	Fenestration U-Factor <sup>b</sup>	Skylight <sup>b</sup> U-Factor	Glazed Fenestration- SHGC <sup>b,c</sup>	Ceiling R-Value <sup>k</sup>	Wood-Frame- Wall <sup>m,n</sup> R-Value	Mass Wall R-Value <sup>i</sup>	Floor R-Value	Below- Grade <sup>e,m</sup> Wall R-Value	Slab <sup>d</sup> R-Value & Depth
5 and Marine 4	0.30	0.50	NR	49	21 int	21/21	30	10/15/ 21int+TB	10, 2 ft))

Climate Zone	Fenestration U-Factor <sup>b</sup>	Skylight <sup>b</sup> U-Factor	Ceiling R-Value <sup>e</sup>	Wood-Frame- Wall <sup>g,h</sup> R-Value	Floor R-Value	Below-Grade <sup>e,h</sup> Wall R-Value	Slab <sup>d,f</sup> R-Value & Depth
5 and Marine 4	0.30	0.50	49	21 int	30	10/15/ 21int+5TB	10, 2 ft

For SI: 1 foot = 304.8 mm, ci = continuous insulation, int = intermediate framing.

<sup>a</sup> R-values are minimums. U-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the compressed R-value of the insulation from Appendix Table A101.4 shall not be less than the R-value specified in the table.

<sup>b</sup> The fenestration U-factor column excludes skylights. ((The SHGC column applies to all glazed fenestration.))

<sup>c</sup> "10/15/21+5TB" means R-10 continuous insulation on the exterior of the wall, or R-15 on the continuous insulation on the interior of the wall, or R-21 cavity insulation plus a thermal break between the slab and the basement wall at the interior of the basement wall. "10/15/21+5TB" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulation on the interior or exterior of the wall. "TB" means R-5 thermal break between floor slab and basement wall.

<sup>d</sup> R-10 continuous insulation is required under heated slab on grade floors. See Section R402.2.9.1.

((<sup>e</sup> There are no SHGC requirements in the Marine Zone.

<sup>f</sup> Reserved.

<sup>g</sup> Reserved.

<sup>h</sup> Reserved.

<sup>i</sup> The second R-value applies when more than half the insulation is on the interior of the mass wall.

<sup>j</sup> Reserved.

<sup>k</sup> For single rafter- or joist-vaulted ceilings, the insulation may be reduced to R-38.

<sup>l</sup> Reserved.

<sup>m</sup> Int. (intermediate framing) denotes standard framing 16 inches on center with headers insulated with a minimum of R-10 insulation.

<sup>n</sup> Log and solid timber walls with a minimum average thickness of 3.5 inches are exempt from this insulation requirement.))

<sup>e</sup> For single rafter- or joist-vaulted ceilings, the insulation may be reduced to R38 if the full insulation depth extends over the top plate of the exterior wall.

<sup>f</sup> R-7.5 continuous insulation installed over an existing slab is deemed to be equivalent to the required perimeter slab insulation when applied to existing slabs complying with Section R503.1.1. If foam plastic is used, it shall meet the requirements for thermal barriers protecting foam plastics.

<sup>g</sup> For log structures developed in compliance with Standard ICC 400, log walls shall meet the requirements for climate zone 5 of ICC 400.

<sup>h</sup> Int. (intermediate framing) denotes framing and insulation as described in Section A103.2.2 including standard framing 16 inches on center, 78 percent of the wall cavity insulated and headers insulated with a minimum of R-10 insulation.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-40213 Table R402.1.3—Equivalent U-factors.

TABLE R402.1.3  
EQUIVALENT U-FACTORS<sup>a</sup>

((Climate Zone	Fenestration U-Factor	Skylight U-Factor	Ceiling U-Factor	Frame Wall U-Factor	Mass Wall U-Factor <sup>b</sup>	Floor U-Factor	Below- Grade Wall U-Factor
5 and Marine 4	0.30	0.50	0.026	0.056	0.056	0.029	0.042))

<b>Climate Zone 5 and Marine 4</b>	
<b>Fenestration <i>U</i>-Factor</b>	<u>0.30</u>
<b>Skylight <i>U</i>-Factor</b>	<u>0.50</u>
<b>Ceiling <i>U</i>-Factor</b>	<u>0.026</u>
<b>Above-Grade Wall <i>U</i>-Factor</b>	<u>0.056</u>
<b>Floor <i>U</i>-Factor</b>	<u>0.029</u>
<b>Slab on Grade <i>F</i>-Factor</b>	<u>0.54</u>
<b>Below Grade 2' Depth</b>	
<b>Wall <i>U</i>-Factor</b>	<u>0.042</u>
<b>Slab <i>F</i>-Factor</b>	<u>0.59</u>
<b>Below Grade 3.5' Depth</b>	

<b>Climate Zone 5 and Marine 4</b>	
<b>Wall <i>U</i>-Factor</b>	<u>0.040</u>
<b>Slab <i>F</i>-Factor</b>	<u>0.56</u>
<b>Below Grade 7' Depth</b>	
<b>Wall <i>U</i>-Factor</b>	<u>0.035</u>
<b>Slab <i>F</i>-Factor</b>	<u>0.50</u>

<sup>a</sup> ((Nonfenestration)) *U*-factors or *F*-factors shall be obtained from measurement, calculation or an approved source or as specified in Section ((R402.1.3)) R402.1.5.

((<sup>b</sup> Reserved.

<sup>c</sup> Reserved.))

**NEW SECTION**

**WAC 51-11R-40215 Target/Proposed UA equations.**

**EQUATION 1 - GROUP R OCCUPANCY  
TARGET UA**

$$UA_T = U_W A_W + U_{BGW} A_{BGW} + U_{VG} A_{VG} + U_{OG} A_{OG} + U_F A_F + U_{RC} A_{RC} + U_D A_D + F_S P_S + F_{BGS} P_{BGS}$$

**Where:**

- $UA_T$  = The target combined thermal transmittance of the gross exterior wall, floor and roof/ceiling area.
- $U_W$  = The thermal transmittance value of the opaque above grade wall found in Table R402.1.3.
- $A_W$  = Opaque above grade wall area.
- $U_{BGW}$  = The thermal transmittance value of the below grade opaque wall found in Table R402.1.3.
- $A_{BGW}$  = Opaque below grade wall area.
- $U_{VG}$  = The thermal transmittance value of the fenestration found in Table R402.1.3.
- $A_{VG}$  = (a) The proposed glazing area; where proposed fenestration glazing area is less than 15 percent of the conditioned floor area, minus  $A_{OG}$   
(b) 15 percent of the conditioned floor area; where the proposed fenestration glazing area is 15 percent or more of the conditioned floor area, minus  $A_{OG}$
- $U_{OG}$  = The thermal transmittance value of the skylight glazing found in Table R402.1.3.
- $A_{OG}$  = Skylight glazing area (if the proposed  $A_{OG}$  exceeds 15 percent, the target  $A_{OG}$  shall be 15 percent of the total floor area of the conditioned space).
- $U_F$  = The thermal transmittance value of the floor found in Table R402.1.3.
- $A_F$  = Floor area over unconditioned space.
- $U_{RC}$  = The thermal transmittance value of the ceiling found in Table R402.1.3.
- $A_{RC}$  = Roof/ceiling area.
- $U_D$  = The thermal transmittance value of the fenestration found in Table R402.1.3.
- $A_D$  = Opaque door area.
- $F_S$  = Concrete slab on grade component *F*-factor found in Table R402.1.3.
- $P_S$  = Lineal ft. of concrete slab on grade perimeter.
- $F_{BGS}$  = Concrete below grade slab component *F*-factor found in Table R402.1.3.
- $P_{BGS}$  = Lineal ft. of concrete below grade slab perimeter.

## EQUATION 2 - GROUP R OCCUPANCY

## PROPOSED UA

$$UA = U_W A_W + U_{BGW} A_{BGW} + U_{VG} A_{VG} + U_{OG} A_{OG} + U_F A_F + U_{RC} A_{RC} + U_D A_D + F_S P_S + F_{BGS} P_{BGS}$$

**Where:**

- UA = The combined thermal transmittance of the gross exterior wall, floor and roof/ceiling assembly area.
- $U_W$  = The thermal transmittance of the opaque above grade wall area.
- $A_W$  = Opaque above grade wall area.
- $U_{BGW}$  = The thermal transmittance value of the below grade opaque wall.
- $A_{BGW}$  = Opaque below grade wall area.
- $U_{VG}$  = The thermal transmittance value of the fenestration glazing.
- $A_{VG}$  = Fenestration glazing area, including windows in exterior doors.
- $U_{OG}$  = The thermal transmittance value of the skylight glazing.
- $A_{OG}$  = Skylight glazing area.
- $U_F$  = The thermal transmittance of the floor.
- $A_F$  = Floor area over unconditioned space.
- $U_{RC}$  = The thermal transmittance of the ceiling.
- $A_{RC}$  = Ceiling area.
- $U_D$  = The thermal transmittance value of the opaque door area.
- $A_D$  = Opaque door area.
- $F_S$  = Concrete slab on grade component *F*-factor.
- $P_S$  = Lineal ft. of concrete slab on grade perimeter.
- $F_{BGS}$  = Concrete below grade slab component *F*-factor.
- $P_{BGS}$  = Lineal ft. of concrete below grade slab perimeter.

NOTE: Where more than one type of wall, window, roof/ceiling, door and skylight is used, the *U* and *A* terms for those items shall be expanded into subelements as:

$$U_{W1} A_{W1} + U_{W2} A_{W2} + U_{W3} A_{W3} + \dots \text{etc.}$$

NOTE: Below grade walls: The wall is assumed to extend from the slab upward to the top of the mud sill for the distance specified in Table A104.1, with 6 inches of concrete wall extending above grade. This will be calculated separately from above grade walls using the wall height that best describes the system.

**AMENDATORY SECTION** (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40220 Section R402.2—Specific insulation requirements.**

**R402.2 Specific insulation requirements ((~~Prescriptive~~)).** In addition to the requirements of Section R402.1, insulation shall meet the specific requirements of Sections R402.2.1 through R402.2.11.

**R402.2.1 Ceilings with attic spaces.** Where Section R402.1.1 would require R-49 in the ceiling, installing R-38 over 100 percent of the ceiling area requiring insulation shall be deemed to satisfy the requirement for R-49 wherever the full height of uncompressed R-38 insulation extends over the wall top plate at the eaves. This reduction shall not apply to

the *U*-factor alternative approach in Section R402.1.3 and the total UA alternative in Section R402.1.4.

**R402.2.1.1 Loose insulation in attic spaces.** Open-blown or poured loose fill insulation may be used in attic spaces where the slope of the ceiling is not more than 3 feet in 12 and there is at least 30 inches of clear distance from the top of the bottom chord of the truss or ceiling joist to the underside of the sheathing at the roof ridge.

**R402.2.3 Eave baffle.** For air permeable insulations in vented attics, a baffle shall be installed adjacent to soffit and eave vents. Baffles shall maintain an opening equal to or greater than the size of the vent. The baffle shall extend over the top of the attic insulation. The baffle shall be permitted to be any solid material.

**R402.2.4 Access hatches and doors.** Access doors from conditioned spaces to unconditioned spaces (e.g., attics and crawl spaces) shall be weatherstripped and insulated to a level equivalent to the insulation on the surrounding surfaces. Access shall be provided to all equipment that prevents damaging or compressing the insulation. A wood framed or equivalent baffle or retainer is required to be provided when loose fill insulation is installed, the purpose of which is to prevent the loose fill insulation from spilling into the living space when the attic access is opened, and to provide a permanent means of maintaining the installed *R*-value of the loose fill insulation.

EXCEPTION: Vertical doors that provide access from conditioned to unconditioned spaces shall be permitted to meet the fenestration requirements of Table R402.1.1.

**R402.2.5 Mass walls.** Mass walls (~~for the purposes of this chapter~~), where used as a component of the thermal envelope of a building, shall be (~~considered~~) one of the following:

1. Constructed of above-grade walls of concrete block, concrete, insulated concrete form ((ICF)), masonry cavity, brick ((~~other than~~) but not brick veneer), ((~~earth-~~)adobe, compressed earth block, rammed earth(~~-and~~)), mass timber, solid ((~~timber/logs, or~~) timber or solid logs.

2. Any other wall(s) having a heat capacity greater than or equal to 6 Btu/ft<sup>2</sup> x °F (123 kJ/m<sup>2</sup> x K).

**R402.2.6 Steel-frame ceilings, walls, and floors.** Steel-frame ceilings, walls, and floors shall (~~meet~~) comply with the *U*-factor requirements of Table R402.1.3.

**R402.2.7 Floors.** Floor framing cavity insulation shall be installed to maintain permanent contact with the underside of the subfloor decking. Insulation supports shall be installed so spacing is no more than 24 inches on center. Foundation vents shall be placed so that the top of the vent is below the lower surface of the floor insulation.

EXCEPTIONS:

1. The floor framing cavity insulation shall be permitted to be in contact with the topside of sheathing or continuous insulation installed on the bottom side of floor framing where combined with insulation that meets or exceeds the minimum Wood Frame Wall *R*-value in Table R402.1.1 and extends from the bottom to the top of all perimeter floor framing members.
2. When foundation vents are not placed so that the top of the vent is below the lower surface of the floor insulation, a permanently attached baffle shall be installed at an angle of 30° from horizontal, to divert air flow below the lower surface of the floor insulation.
3. Substantial contact with the surface being insulated is not required in enclosed floor/ceiling assemblies containing ducts where full *R*-value insulation is installed between the duct and the exterior surface.

**R402.2.8 Below-grade walls.** Below-grade exterior wall insulation used on the exterior (cold) side of the wall shall extend from the top of the below-grade wall to the top of the footing and shall be approved for below-grade use. Above-grade insulation shall be protected. Insulation used on the interior (warm) side of the wall shall extend from the top of the below-grade wall to the below-grade floor level and shall

include R-5 rigid board providing a thermal break between the concrete wall and the slab.

**R402.2.9 Slab-on-grade floors.** The minimum thermal resistance (*R*-value) of the insulation around the perimeter of unheated or heated slab-on-grade floors shall be as specified in Table C402.1.1. The insulation shall be placed on the outside of the foundation or on the inside of the foundation wall. The insulation shall extend downward from the top of the slab for a minimum distance as shown in the table or to the top of the footing, whichever is less, or downward to at least the bottom of the slab and then horizontally to the interior or exterior for the total distance shown in the table. A two-inch by two-inch (maximum) pressure treated nailer may be placed at the finished floor elevation for attachment of interior finish materials. Insulation extending away from the building shall be protected by pavement or by a minimum of 10 inches (254 mm) of soil.

**R402.2.9.1 Heated slab-on-grade floors ((Mandatory)).**

The entire area of a heated slab-on-grade floor shall be thermally isolated from the soil with a minimum of R-10 insulation. The insulation shall be an approved product for its intended use. If a soil gas control system is present below the heated slab-on-grade floor, which results in increased convective flow below the heated slab-on-grade floor, the heated slab-on-grade floor shall be thermally isolated from the sub-slab gravel layer. R-10 heated slab-on-grade floor insulation is required for all compliance paths.

**R402.2.10 Reserved.**

**R402.2.11 Masonry veneer.** Insulation shall not be required on the horizontal portion of the foundation that supports a masonry veneer.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40230 Section R402.3—Fenestration.**

**R402.3 Fenestration ((Prescriptive)).** In addition to the requirements of Section R402, fenestration shall comply with Sections R402.3.1 through R402.3.5.

**R402.3.1 *U*-factor.** An area-weighted average of fenestration products shall be permitted to satisfy the *U*-factor requirements.

**R402.3.2 Glazed fenestration SHGC.** An area-weighted average of fenestration products more than 50 percent glazed shall be permitted to satisfy the SHGC requirements.

**R402.3.3 Glazed fenestration exemption.** Up to 15 square feet (1.4 m<sup>2</sup>) of glazed fenestration per dwelling unit shall be permitted to be exempt from *U*-factor and SHGC requirements in Section R402.1.1. This exemption shall not apply to the *U*-factor alternative approach in Section R402.1.3 and the total UA alternative in Section R402.1.4.

**R402.3.4 Opaque door exemption.** One side-hinged opaque door assembly up to 24 square feet (2.22 m<sup>2</sup>) in area is exempted from the *U*-factor requirement in Section R402.1.1. This exemption shall not apply to the *U*-factor

alternative approach in Section R402.1.3 and the total UA alternative in Section R402.1.4.

### R402.3.5 Reserved.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

#### WAC 51-11R-40240 Section R402.4—Air leakage.

**R402.4 Air leakage ((Mandatory))**. The *building thermal envelope* shall be constructed to limit air leakage in accordance with the requirements of Sections R402.4.1 through R402.4.4.

**R402.4.1 Building thermal envelope.** The *building thermal envelope* shall comply with Sections R402.4.1.1 and R402.4.1.2. The sealing methods between dissimilar materials shall allow for differential expansion and contraction.

**R402.4.1.1 Installation.** The components of the *building thermal envelope* as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer's instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. Where required by the *code official*, an *approved* third party shall inspect all components and verify compliance.

**R402.4.1.2 Testing.** The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals). For this test only, the volume of the home shall be the conditioned floor area in ft<sup>2</sup> (m<sup>2</sup>) multiplied by 8.5 feet (2.6 m). Where required by the *code official*, testing shall be conducted by an *approved* third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the *code official*. Testing shall be performed at any time after creation of all penetrations of the *building thermal envelope*. Once visual inspection has confirmed sealing (see Table R402.4.1.1), operable windows and doors manufactured by *small business* shall be permitted to be sealed off at the frame prior to the test.

**EXCEPTION:** For dwelling units that are accessed directly from the outdoors, other than detached one family dwellings and townhouses, an air leakage rate not exceeding 0.4 cfm per square foot of the dwelling unit enclosure area shall be an allowable alternative. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals) in accordance with RESNET/ICC 380, ASTM E779 or ASTM E1827. For the purpose of this test only, enclosure area to be calculated as the perimeter of the dwelling unit, measured to the outside face of the exterior walls, and the centerline of party walls, times 8.5 feet, plus the ceiling and floor area. Doors and windows of adjacent dwelling units (including top and bottom units) shall be open to the outside during the test. This exception is not permitted for dwelling units that are accessed from corridors or other enclosed common areas.

During testing:

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed, beyond the intended weatherstripping or other infiltration control measures;

2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;

3. Interior doors, if installed at the time of the test, shall be open, access hatches to conditioned crawl spaces and conditioned attics shall be open;

4. Exterior ((~~openings~~)) or interior terminations for continuous ventilation systems and heat recovery ventilators shall be ((~~closed and~~)) sealed;

5. Heating and cooling systems, if installed at the time of the test, shall be turned off; and

6. Supply and return registers, if installed at the time of the test, shall be fully open.

**EXCEPTIONS:**

1. Additions less than 500 square feet of conditioned floor area.
2. Additions tested with the existing home having a combined maximum air leakage rate of 7 air changes per hour. To qualify for this exception, the date of construction of the existing house must be prior to the 2009 Washington State Energy Code.

**R402.4.2 Fireplaces.** New wood-burning fireplaces shall have tight-fitting flue dampers or doors, and outdoor combustion air. When using tight-fitting doors on factory-built fireplaces listed and labeled in accordance with UL 127, the doors shall be tested and listed for the fireplace. Where using tight-fitting doors on masonry fireplaces, the doors shall be listed and labeled in accordance with UL 907.

**R402.4.2.1 Gas fireplace efficiency.** All vented gas fireplace heaters rated to ANSI Z21.88 shall be listed and labeled with a fireplace efficiency (FE) rating of 50 percent or greater in accordance with CSA P.4.1. Vented gas fireplaces (decorative appliances) certified to ANSI Z21.50 shall be listed and labeled, including their FE ratings, in accordance with CSA P.4.1.

**R402.4.3 Air leakage of fenestration.** Windows, skylights and sliding glass doors shall have an air infiltration rate of no more than 0.3 cfm per square foot (1.5 L/s/m<sup>2</sup>), and swinging doors no more than 0.5 cfm per square foot (2.6 L/s/m<sup>2</sup>), when tested according to NFRC 400 or AAMA/WDMA/CSA 101/I.S.2/A440 by an accredited, independent laboratory and *listed and labeled* by the manufacturer.

**EXCEPTIONS:**

1. Field-fabricated fenestration products (windows, skylights and doors).
2. Custom exterior fenestration products manufactured by a small business provided they meet the applicable provisions of Chapter 24 of the *International Building Code*. Once visual inspection has confirmed the presence of a gasket, operable windows and doors manufactured by *small business* shall be permitted to be sealed off at the frame prior to the test.

**R402.4.4 Combustion air openings.** In Climate Zones 3 through 8, where open combustion air ducts provide combustion air to open combustion, space conditioning fuel burning appliances, the appliances and combustion air openings shall be located outside of the building thermal envelope, or enclosed in a room isolated from inside the thermal envelope. Such rooms shall be sealed and insulated in accordance with the envelope requirements of Table R402.1.1, where the walls, floors and ceilings shall meet the minimum of the

below-grade wall *R*-value requirement. The door into the room shall be fully gasketed and any water lines and ducts in the room insulated in accordance with Section R403. The combustion air duct shall be insulated where it passes through conditioned space to a minimum of R-8.

- EXCEPTIONS:
1. Direct vent appliances with both intake and exhaust pipes installed continuous to the outside.
  2. Fireplaces and stoves complying with Section R402.4.2 and Section R1006 of the *International Residential Code*.

**R402.4.5 Recessed lighting.** Recessed luminaires installed in the *building thermal envelope* shall be Type IC-rated and certified under ASTM E283 as having an air leakage rate not more than 2.0 cfm (0.944 L/s) when tested at a 1.57 psf (75 Pa) pressure differential and shall have a label attached showing compliance with this test method. All recessed luminaires shall be sealed with a gasket or caulk between the housing and the interior wall or ceiling covering.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40241 Table R402.4.1.1—Air barrier and insulation installation.**

**TABLE R402.4.1.1  
AIR BARRIER AND INSULATION INSTALLATION**

COMPONENT	AIR BARRIER CRITERIA <sup>a</sup>	INSULATION CRITERIA <sup>a</sup>
General requirements	A continuous air barrier shall be installed in the building envelope. Exterior thermal envelope contains a continuous air barrier. Breaks or joints in the air barrier shall be sealed.	Air-permeable insulation shall not be used as a sealing material.
Cavity insulation installation		All cavities in the thermal envelope shall be filled with insulation. The density of the insulation shall be at the manufacturers' product recommendation and said density shall be maintained for all volume of each cavity. Batt type insulation will show no voids or gaps and maintain an even density for the entire cavity. Batt insulation shall be installed in the recommended cavity depth. Where an obstruction in the cavity due to services, blocking, bracing or other obstruction exists, the batt product will be cut to fit the remaining depth of the cavity. Where the batt is cut around obstructions, loose fill insulation shall be placed to fill any surface or concealed voids, and at the manufacturers' specified density. Where faced batt is used, the installation tabs must be stapled to the face of the stud. There shall be no compression to the batt at the edges of the cavity due to inset stapling installation tabs. Insulation that upon installation readily conforms to available space shall be installed filling the entire cavity and within the manufacturers' density recommendation.
Ceiling/attic	The air barrier in any dropped ceiling/soffit shall be aligned with the insulation and any gaps in the air barrier sealed. Access openings, drop down stair or knee wall doors to unconditioned attic spaces shall be sealed.	The insulation in any dropped ceiling/soffit shall be aligned with the air barrier. Batt insulation installed in attic roof assemblies may be compressed at exterior wall lines to allow for required attic ventilation.

COMPONENT	AIR BARRIER CRITERIA <sup>a</sup>	INSULATION CRITERIA <sup>a</sup>
Walls	The junction of the foundation and sill plate shall be sealed. The junction of the top plate and top of exterior walls shall be sealed. Knee walls shall be sealed.	Cavities within corners and headers of frame walls shall be insulated by completely filling the cavity with a material having a thermal resistance of R-3 per inch minimum. Exterior thermal envelope insulation for framed walls shall be installed in substantial contact and continuous alignment with the air barrier.
Windows, skylights and doors	The space between window/door jambs and framing and skylights and framing shall be sealed.	
Rim joists	Rim joists shall include the air barrier.	Rim joists shall be insulated.
Floors (including above garage and cantilevered floors)	The air barrier shall be installed at any exposed edge of insulation.	Floor framing cavity insulation shall be installed to maintain permanent contact with the underside of subfloor decking or floor framing cavity insulation shall be permitted to be in contact with the topside of sheathing or continuous insulation installed on the underside of floor framing and extend from the bottom to the top of all perimeter floor framing members.
Crawl space walls	Exposed earth in unvented crawl spaces shall be covered with a Class I, black vapor retarder with overlapping joints taped.	Where provided instead of floor insulation, insulation shall be permanently attached to the crawlspace walls.
Shafts, penetrations	Duct shafts, utility penetrations, and flue shafts opening to exterior or unconditioned space shall be sealed.	
Narrow cavities		Batts in narrow cavities shall be cut to fit and installed to the correct density without any voids or gaps or compression, or narrow cavities shall be filled by insulation that on installation readily conforms to the available cavity space.
Garage separation	Air sealing shall be provided between the garage and conditioned spaces.	
Recessed lighting	Recessed light fixtures installed in the building thermal envelope shall be sealed to the <del>((dry-wall))</del> <u>finished surface</u> .	Recessed light fixtures installed in the building thermal envelope shall be air tight and IC rated.
Plumbing and wiring		Batt insulation shall be cut neatly to fit around wiring and plumbing in exterior walls. There shall be no voids or gaps or compression where cut to fit. Insulation that on installation readily conforms to available space shall extend behind piping and wiring.
Shower/tub on exterior wall	The air barrier installed at exterior walls adjacent to showers and tubs shall separate <del>((them))</del> <u>the wall</u> from the showers and tubs.	Exterior walls adjacent to showers and tubs shall be insulated.
Electrical/phone box on exterior wall	The air barrier shall be installed behind electrical or communication boxes or air sealed boxes shall be installed.	
HVAC register boots	HVAC <u>supply and return</u> register boots <del>((that penetrate building thermal envelope))</del> shall be sealed to the subfloor, wall covering or <del>((dry-wall))</del> <u>ceiling penetrated by the boot</u> .	

COMPONENT	AIR BARRIER CRITERIA <sup>a</sup>	INSULATION CRITERIA <sup>a</sup>
Concealed sprinklers	When required to be sealed, concealed fire sprinklers shall only be sealed in a manner that is recommended by the manufacturer. Caulking or other adhesive sealants shall not be used to fill voids between fire sprinkler cover plates and walls or ceilings.	

IC = insulation contact.

<sup>a</sup> In addition, inspection of log walls shall be in accordance with the provisions of ICC-400.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40250 Section R402.5—Maximum fenestration U-factor and SHGC.**

**R402.5 Maximum fenestration U-factor ((Mandatory)).** The area-weighted average maximum fenestration U-factor permitted using tradeoffs from Section R402.1.4 or R405 shall be 0.48 for vertical fenestration, and 0.75 for skylights.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40310 Section R403.1—Controls.**

**R403.1 Controls ((Mandatory)).** At least one thermostat shall be provided for each separate heating and cooling system.

**R403.1.1 Programmable or connected thermostat.** Where the primary heating system is a forced-air furnace, at least one thermostat per dwelling unit shall be Energy Star certified and capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day. The thermostat shall allow for, at a minimum, a 5-2 programmable schedule (weekdays/weekends) and be capable of providing at least two programmable setback/setup periods per day. This thermostat shall include the capability to set back, set up or temporarily operate the system to maintain zone temperatures down to 55°F (13°C) or up to 85°F (29°C). The thermostat shall initially be programmed by the manufacturer with a heating temperature set point no higher than 70°F (21°C) and a cooling temperature set point no lower than 78°F (26°C). The thermostat and/or control system shall have an adjustable deadband of not less than 10°F.

- EXCEPTIONS:
1. Systems controlled by an occupant sensor that is capable of shutting the system off when no occupant is sensed for a period of up to 30 minutes.
  2. Systems controlled solely by a manually operated timer capable of operating the system for no more than two hours.
  3. Ductless mini-split heat pump systems that have an integral proprietary thermostat.

**R403.1.2 Heat pump supplementary heat ((Mandatory)).** Unitary air cooled heat pumps shall include controls that minimize supplemental heat usage during start-up, set-up, and defrost conditions. These controls shall anticipate need for heat and use compression heating as the first stage of

heat. Controls shall indicate when supplemental heating is being used through visual means (e.g., LED indicators). Heat pumps equipped with supplementary heaters shall be installed with controls that prevent supplemental heater operation above 40°F. At final inspection the auxiliary heat lock out control shall be set to 35°F or less.

**R403.1.3 Continuously burning pilot lights.** The natural gas systems and equipment listed below are not permitted to be equipped with continuously burning pilot lights.

1. Fan-type central furnaces.
2. Household cooking appliances.

EXCEPTION: Household cooking appliances without electrical supply voltage connections and in which each pilot light consumes less than 150 Btu/hr.

3. Pool heaters.
4. Spa heaters.
5. Fireplaces.

EXCEPTION: Any fireplace with on-demand, intermittent or interrupted ignition (as defined in ANSI Z21.20) is not considered continuous.

AMENDATORY SECTION (Amending WSR 17-10-063, filed 5/2/17, effective 6/2/17)

**WAC 51-11R-40320 Section R403.3—Ducts.**

**R403.3 Ducts.** Ducts and air handlers shall be installed in accordance with Sections R403.3.1 through ~~((R403.3.5))~~ **R403.3.7.**

**R403.3.1 Insulation ((Prescriptive)).** Ducts outside the building thermal envelope shall be insulated to a minimum of R-8. Ducts within a concrete slab or in the ground shall be insulated to R-10 with insulation designed to be used below grade.

EXCEPTION: Ducts or portions thereof located completely inside the *building thermal envelope*. Ducts located in crawl spaces do not qualify for this exception.

**R403.3.2 Sealing ((Mandatory)).** Ducts, air handlers, and filter boxes shall be sealed. Joints and seams shall comply with either the *International Mechanical Code* or *International Residential Code*, as applicable.

EXCEPTIONS: 1. Air-impermeable spray foam products shall be permitted to be applied without additional joint seals.



2. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints and seams, and locking-type joints and seams of other than the snap-lock and button-lock types.

**R403.3.2.1 Sealed air handler.** Air handlers shall have a manufacturer's designation for an air leakage of no more than 2 percent of the design air flow rate when tested in accordance with ASHRAE 193.

**R403.3.3 Duct testing ((Mandatory)).** Ducts shall be leak tested in accordance with WSU RS-33, using the maximum duct leakage rates specified.

- EXCEPTIONS:
1. The total leakage or leakage to the outdoors test is not required for ducts and air handlers located entirely within the building thermal envelope. For forced air ducts, a maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts may be located outside the conditioned space. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool. Ducts located in crawl spaces do not qualify for this exception.
  2. A duct air leakage test shall not be required for ducts serving heat or energy recovery ventilators that are not integrated with the ducts serving heating or cooling systems.

A written report of the results shall be signed by the party conducting the test and provided to the *code official*.

**R403.3.4 Duct leakage ((Mandatory)).** The total leakage of the ducts, where measured in accordance with Section R403.3.3, shall be as follows:

1. Rough-in test: Total leakage shall be less than or equal to 4 cfm (113.3 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure. All registers shall be taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to 3 cfm (85 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area.

2. Postconstruction test: Leakage to outdoors shall be less than or equal to 4 cfm (113.3 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area or total leakage shall be less than or equal to 4 cfm (113.3 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test.

**R403.3.5 Building cavities ((Mandatory)).** Building framing cavities shall not be used as ducts or plenums. Installation of ducts in exterior walls, floors or ceilings shall not displace required envelope insulation.

**R403.3.6 Ducts buried within ceiling insulation.** Where supply and return air ducts are partially or completely buried in ceiling insulation, such ducts shall comply with all of the following:

1. The supply and return ducts shall have an insulation R-value not less than R-8.

2. At all points along each duct, the sum of the ceiling insulation R-value against and above the top of the duct, and against and below the bottom of the duct, shall be not less than R-19, excluding the R-value of the duct insulation.

EXCEPTION: Sections of the supply duct that are less than 3 feet (914 mm) from the supply outlet shall not be required to comply with these requirements.

**R403.3.6.1 Effective R-value of deeply buried ducts.** Where using a simulated energy performance analysis, sections of ducts that are: Installed in accordance with Section R403.3.6; located directly on, or within 5.5 inches (140 mm) of the ceiling; surrounded with blown-in attic insulation having an R-value of R-30 or greater and located such that the top of the duct is not less than 3.5 inches (89 mm) below the top of the insulation, shall be considered as having an effective duct insulation R-value of R-25.

**R403.3.7 Ducts located in conditioned space.** For ducts to be considered as being located inside a conditioned space, such ducts shall comply with the following:

1. All duct systems shall be located completely within the continuous air barrier and within the building thermal envelope.

2. All heating, cooling and ventilation system components shall be installed inside the conditioned space including, but not limited to, forced air ducts, hydronic piping, hydronic floor heating loops, convectors and radiators. Combustion equipment shall be direct vent or sealed combustion.

3. For forced air ducts, a maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts is permitted to be located outside the conditioned space, provided they are insulated to a minimum of R-8.

- 3.1. Metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic.

- 3.2. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool.

**AMENDATORY SECTION** (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40330 Section R403.4—Mechanical system piping insulation.**

**R403.4 Mechanical system piping insulation ((Mandatory)).** Mechanical system piping capable of carrying fluids above 105°F (41°C) or below 55°F (13°C) shall be insulated to a minimum of R-6.

EXCEPTION: Up to 200 feet of hydronic system piping installed within the conditioned space may be insulated with a minimum of 1/2-inch insulation with a *k* value of 0.28.

**R403.4.1 Protection of piping insulation.** Piping insulation exposed to weather shall be protected from damage, including that caused by sunlight, moisture, equipment maintenance, and wind, and shall provide shielding from solar radiation that can cause degradation of the material. Adhesive tape shall not be permitted.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40340 Section R403.5—Service hot water systems.**

**R403.5 Service hot water systems.** Energy conservation measures for service hot water systems shall be in accordance with Sections R403.5.1 through R403.5.5. Service water-heating equipment shall meet the requirements of DOE 10 C.F.R. Part 430 Uniform Energy Factor or the equipment shall meet the requirements of Section C404.2.

**R403.5.1 Heated water circulation and temperature maintenance system ~~((Mandatory))~~.** Heated water circulation systems shall be in accordance with Section R403.5.1.1. Heat trace temperature maintenance systems shall be in accordance with Section R403.5.1.2. Automatic controls, temperature sensors and pumps shall be accessible. Manual controls shall be readily accessible.

**R403.5.1.1 Circulation systems.** Heated water circulation systems shall be provided with a circulation pump. The system return pipe shall be a dedicated return pipe or a cold water supply pipe. Gravity and thermo-syphon circulation systems shall be prohibited. Controls for circulating hot water system pumps shall start the pump based on the identification of a demand for hot water within the occupancy. The controls shall automatically turn off the pump when the water in the circulation loop is at the desired temperature and when there is no demand for hot water.

**R403.5.1.2 Heat trace systems.** Electric heat trace systems shall comply with IEEE 515.1 or UL 515. Controls for such systems shall automatically adjust the energy input to the heat tracing to maintain the desired water temperature in the piping in accordance with the times when heated water is used in the occupancy.

**R403.5.2 Demand recirculation water systems.** ~~((A water distribution system having one or more recirculation pumps that pump water from a heated water supply pipe back to the heated water source through a cold water supply pipe shall be a demand recirculation water system. Pumps))~~ Demand recirculation water systems shall have controls that comply with both of the following:

1. The controls shall start the pump upon receiving a signal from the action of a user of a fixture or appliance, sensing the presence of a user of a fixture or sensing the flow of hot or tempered water to a fixture fitting or appliance.

2. The controls shall limit the temperature of the water entering the cold water piping to not greater than 104°F (40°C).

**R403.5.3 Hot water pipe insulation ~~((Prescriptive))~~.** Insulation for hot water pipe, both within and outside the conditioned space, shall have a minimum thermal resistance (*R*-value) of R-3.

EXCEPTION: Pipe insulation is permitted to be discontinuous where it passes through studs, joists or other structural members and where the insulated pipes pass other piping, conduit or vents, provided the insulation is installed tight to each obstruction.

**R403.5.4 Drain water heat recovery units.** Drain water heat recovery units shall comply with CSA 55.2 or IAPMO PS 92. Drain water heat recovery units shall be in accordance with CSA 55.1 or IAPMO IGC 346-2017. ~~((Potable water side pressure loss of drain water heat recovery units shall be less than 3 psi (20.7 kPa) for individual units connected to one or two showers. Potable water side pressure loss of drain water heat recovery units shall be less than 2 psi (13.8 kPa) for individual units connected to three or more showers.))~~

**R403.5.5 Electric water heater insulation.** All electric water heaters in ~~((unheated))~~ unconditioned spaces, or on concrete floors in conditioned spaces, shall be placed on an ~~((incompressible))~~ insulated surface with a minimum thermal resistance of R-10, and a minimum compressive strength of 40 psi or engineered to support the appliance.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40350 Section R403.6—Mechanical ventilation.**

**R403.6 Mechanical ventilation ~~((Mandatory))~~.** The building shall be provided with ventilation that meets the requirements of the *International Residential Code* or *International Mechanical Code*, as applicable, or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating.

**R403.6.1 Whole-house mechanical ventilation system fan efficacy.** Mechanical ventilation system fans shall meet the efficacy requirements of Table R403.6.1.

EXCEPTION: ~~((Where mechanical ventilation fans are integral to tested and listed HVAC equipment, they shall be powered by an electronically commutated motor.))~~ Where an air handler that is integral to the tested and listed HVAC equipment is used to provide whole-house ventilation, the air handler shall be powered by an electronically commutated motor.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40351 Table R403.6.1—Mechanical ventilation system fan efficacy.**

TABLE R403.6.1  
MECHANICAL VENTILATION SYSTEM FAN EFFICACY

Fan Location	Air Flow Rate Minimum (cfm)	Minimum Efficacy (cfm/watt)	Air Flow Rate Maximum (cfm)
HRV or ERV	Any	1.2 cfm/watt	Any
Range hoods	Any	2.8	Any
In-line fan	Any	2.8	Any
Bathroom, utility room	10	1.4	< 90
Bathroom, utility room	90	2.8	Any

For SI: 1 cfm = 28.3 L/min.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40360 Section R403.7—Equipment sizing.**

**R403.7 Equipment sizing and efficiency rating** ~~((Mandatory))~~. Heating and cooling equipment shall be sized in accordance with ACCA Manual S based on building loads calculated in accordance with ACCA Manual J or other *approved* heating and cooling calculation methodologies. The output capacity of heating and cooling equipment shall not be greater than that of the smallest available equipment size that exceeds the loads calculated, including allowable oversizing limits. ~~((New or replacement heating and cooling equipment shall have an efficiency rating equal to or greater than the minimum required by federal law for the geographic location where the equipment is installed.))~~ Equipment shall meet the minimum federal efficiency standards as referenced in Tables C403.2.3(1), C403.2.3(2), C403.2.3(3), C403.2.3(4), C403.2.3(5), C403.2.3(6), C403.2.3(7), C403.2.3(8) and C403.2.3(9) and tested and rated in accordance with the applicable test procedure.

**R403.7.1 Electric resistance zone heated units.** All detached one- and two-family dwellings and multiple single-family dwellings (townhouses) up to three stories in height above grade plane using electric zonal heating as the primary heat source shall install an inverter-driven ductless mini-split heat pump in the largest zone in the dwelling. Building permit drawings shall specify the heating equipment type and location of the heating system.

EXCEPTION: Total installed heating capacity of 2 kW per dwelling unit or less.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40370 Section R403.8—Systems serving multiple dwelling units.**

**R403.8 Systems serving multiple dwelling units** ~~((Mandatory))~~. Systems serving multiple dwelling units shall comply with Sections C403 and C404 of the WSEC—Commercial Provisions in lieu of Section R403.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40380 Section R403.9—Snow melt system controls.**

**R403.9 Snow melt system controls** ~~((Mandatory))~~. Snow and ice-melting systems, supplied through energy service to the building, shall include automatic controls capable of shutting off the system when the pavement temperature is above 50°F, and no precipitation is falling and an automatic or manual control that will allow shutoff when the outdoor temperature is above 40°F.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40390 Section R403.10—Pool and spa energy consumption.**

**R403.10 Pool and permanent spa energy consumption** ~~((Mandatory))~~. Pools and permanent spas shall comply with Sections R403.10.1 through R403.10.4.2.

**R403.10.1 Heaters.** The electric power to heaters shall be controlled by a *readily accessible* on-off switch that is an integral part of the heater mounted on the exterior of the heater, or external to and within 3 feet (914 mm) of the heater. Operation of such switch shall not change the settings of the heater thermostat. Such switches shall be in addition to a circuit breaker for the power to the heater. ~~((Gas-fired heaters shall not be equipped with constant burning pilot lights.))~~

**R403.10.2 Time switches.** Time switches or other control method that can automatically turn off and on according to a preset schedule shall be installed for heaters and pump motors. Heaters and pump motors that have built in time switches shall be deemed in compliance with this requirement.

EXCEPTIONS:

1. Where public health standards require 24-hour pump operation.
2. Pumps that operate solar- and waste-heat-recovery pool heating systems.

**R403.10.3 Covers.** Outdoor heated pools and outdoor permanent spas shall be provided with a vapor-retardant cover, or other *approved* vapor retardant means.

EXCEPTION: Where more than ~~((70))~~ 75 percent of the energy for heating, computed over an operating season of not less than three calendar months, is ~~((from site-recovered energy, such as))~~ from a heat pump or ~~((solar energy source))~~ on-site renewable energy system, covers or other vapor-retardant means shall not be required.

**R403.10.4 Residential pool pumps.** Pool pump motors may not be split-phase or capacitor start-induction run type.

**R403.10.4.1 Two-speed capability.**

1. Pump motors: Pool pump motors with a capacity of 1 hp or more shall have the capability of operating at two or more speeds with low speed having a rotation rate that is no more than one-half of the motor's maximum rotation rate.

2. Pump controls: Pool pump motor controls shall have the capability of operating the pool pump with at least two speeds. The default circulation speed shall be the lowest speed, with a high speed override capability being for a temporary period not to exceed one normal cycle.

**R403.10.4.2 Pump operation.** Circulating water systems shall be controlled so that the circulation pump(s) can be conveniently turned off, automatically or manually, when the water system is not in operation.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40391 Section R403.10—Other pools and spas.**

**R403.11 Portable spas (~~((Mandatory))~~).** The energy consumption of electric-powered portable spas shall be controlled by the requirements of APSP-14.

**R403.12 Residential pools and permanent residential spas.** Residential swimming pools and permanent residential spas that are accessory to detached one- and two-family dwellings and townhouses three stories or less in height above grade plane and that are available only to the household and its guests shall be in accordance with APSP-15.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40410 Section R404.1—Lighting equipment.**

**R404.1 Lighting equipment (~~((Mandatory))~~).** ((A minimum of 75)) Not less than 90 percent of lamps in permanently installed lighting fixtures shall be high-efficacy lamps.

**R404.1.1 Lighting equipment (~~((Mandatory))~~).** Fuel gas lighting systems shall not have continuously burning pilot lights.

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-40510 Section R405.1—Scope.**

**R405.1 Scope.** This section establishes criteria for compliance using simulated energy performance analysis. Such analysis shall include heating, cooling, mechanical ventilation, and service water heating energy only.

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-40520 Section R405.2—Mandatory requirements.**

**R405.2 Mandatory requirements.** Compliance with this section requires (~~(that the mandatory provisions identified in Section R401.2 be met)~~) compliance with those sections shown in Table R405.2. All supply and return ducts not completely inside the *building thermal envelope* shall be insulated to a minimum of R-8.

**TABLE R405.2**

**MANDATORY COMPLIANCE MEASURES FOR SIMULATED PERFORMANCE ALTERNATIVE**

<u>Section</u>	<u>Title</u>	<u>Comments</u>
<b><u>General</u></b>		
<u>R401.3</u>	<u>Certificate</u>	
<b><u>Envelope</u></b>		
<u>R402.4</u>	<u>Air leakage</u>	

<u>Section</u>	<u>Title</u>	<u>Comments</u>
<u>R402.5</u>	<u>Maximum fenestration U-factor</u>	
<b><u>Systems</u></b>		
<u>R403.1</u>	<u>Controls</u>	
<u>R403.1.2</u>	<u>Heat pump supplemental heat</u>	
<u>R403.3.2</u>	<u>Sealing</u>	
<u>R403.3.1</u>	<u>Equipment and system sizing</u>	
<u>R403.3.3</u>	<u>Duct testing</u>	
<u>R403.3.4</u>	<u>Duct leakage</u>	
<u>R403.3.5</u>	<u>Building cavities</u>	
<u>R403.4</u>	<u>Mechanical system piping insulation</u>	
<u>R403.5.1</u>	<u>Heated water circulation and temperature maintenance system</u>	
<u>R403.6</u>	<u>Mechanical ventilation</u>	
<u>R403.7</u>	<u>Equipment sizing and efficiency rating</u>	
<u>R403.8</u>	<u>Systems serving multiple dwelling units</u>	
<u>R403.9</u>	<u>Snow melt system controls</u>	
<u>R403.10</u>	<u>Pool and permanent spa energy consumption</u>	
<u>R403.11</u>	<u>Portable spas</u>	
<b><u>Electrical Power and Lighting</u></b>		
<u>R404.1</u>	<u>Lighting equipment</u>	
<u>R404.1.1</u>	<u>Lighting equipment</u>	
<u>R404.2</u>	<u>Electric readiness</u>	
<b><u>Other Requirements</u></b>		
<u>R406</u>	<u>Additional energy efficiency requirements</u>	

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40530 Section R405.3—Performance-based compliance.**

**R405.3 Performance-based compliance.** Compliance based on simulated energy performance requires that a proposed residence (*proposed design*) be shown to have an annual energy consumption based on ((site energy expressed in Btu and Btu)) carbon emissions of the fuels and energy use in the proposed building. Carbon emissions for both the standard reference design and the proposed design shall be calculated using Table R405.3. Energy use derived from simulation analysis shall be expressed in pounds of carbon and per square foot of *conditioned floor area* as follows:

- For structures less than 1,500 square feet of conditioned floor area, the annual ((~~energy consumption~~)) carbon

emissions shall be less than or equal to ~~((80))~~ 73 percent of the annual ~~((energy consumption))~~ carbon emissions of the standard reference design.

2. For structures 1,500 to 5,000 square feet of conditioned floor area, the annual ~~((energy consumption))~~ carbon emissions shall be no more than ~~((72))~~ 56 percent of the standard reference design.

3. For structures over 5,000 square feet of conditioned floor area, the annual ~~((energy consumption))~~ carbon emissions shall be no more than ~~((66))~~ 50 percent of the standard reference design.

((EXCEPTION: For structures serving Group R-2 occupancies, the annual energy consumption shall be less than or equal to 85 percent of the annual energy consumption of the standard reference design.))

4. For structures serving Group R-2 occupancies, the annual carbon emissions shall be less than or equal to 70 per-

cent of the annual energy consumption of the *standard reference design*.

**TABLE R405.3  
CARBON EMISSIONS FACTORS**

Type	CO <sub>2</sub> e (lb/unit)	Unit
Electricity	0.80	kWh
Natural gas	11.7	Therm
Oil	19.2	Gallon
Propane	10.5	Gallon
Other <sup>a</sup>	195.00	mmBtu
On-site renewable energy	0.00	

<sup>a</sup> District energy systems may use alternative emission factors supported by calculations approved by the code official.

**AMENDATORY SECTION** (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40551 Table R405.5.2(1)—Specifications for the standard reference and proposed designs.**

**TABLE R405.5.2(1)  
SPECIFICATIONS FOR THE STANDARD REFERENCE AND PROPOSED DESIGNS**

BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
Above-grade walls	Type: Mass wall if proposed wall is mass; otherwise wood frame. Gross area: Same as proposed U-factor: From Table R402.1.3 Solar absorptance = 0.75 Remittance = 0.90	As proposed As proposed As proposed As proposed As proposed
Below-grade walls	Type: Same as proposed Gross area: Same as proposed U-factor: From Table R402.1.3, with insulation layer on interior side of walls.	As proposed As proposed As proposed
Above-grade floors	Type: Wood frame Gross area: Same as proposed U-factor: From Table R402.1.3	As proposed As proposed As proposed
Ceilings	Type: Wood frame Gross area: Same as proposed U-factor: From Table R402.1.3	As proposed As proposed As proposed
Roofs	Type: Composition shingle on wood sheathing Gross area: Same as proposed Solar absorptance = 0.75 Emittance = 0.90	As proposed As proposed As proposed As proposed
Attics	Type: Vented with aperture = 1 ft <sup>2</sup> per 300 ft <sup>2</sup> ceiling area	As proposed
Foundations	Type: Same as proposed foundation wall area above and below-grade Soil characteristics: Same as proposed.	As proposed  As proposed
Opaque doors	Area: 40 ft <sup>2</sup> Orientation: North U-factor: Same as fenestration from Table R402.1.3.	As proposed As proposed As proposed

BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
Vertical fenestration other than opaque doors <sup>a</sup>	Total area <sup>b</sup> = (a) The proposed glazing area; where proposed glazing area is less than 15% of the conditioned floor area. (b) 15% of the conditioned floor area; where the proposed glazing area is 15% or more of the conditioned floor area.	As proposed
	Orientation: Equally distributed to four cardinal compass orientations (N, E, S & W).	As proposed
	<i>U</i> -factor: From Table R402.1.3	As proposed
	SHGC: From Table R402.1.1 except that for climates with no requirement (NR) SHGC = 0.40 shall be used.	As proposed
	Interior shade fraction: 0.92 - (0.21 × SHGC for the standard reference design) External shading: None	0.92 - (0.21 × SHGC as proposed) As proposed
Skylights	None	As proposed
Air exchange rate	Air leakage rate of 5 air changes per hour at a pressure of 0.2 inches w.g. (50 Pa). The mechanical ventilation rate shall be in addition to the air leakage rate and the same as in the proposed design, but no greater than $0.01 \times CFA + 7.5 \times (N_{br} + 1)$ where: <i>CFA</i> = conditioned floor area <i>N<sub>br</sub></i> = number of bedrooms - Energy recovery shall not be assumed for mechanical ventilation.	<del>((For residences that are not tested, the same air leakage rate as the standard reference design. For tested residences, the measured air exchange rate))</del> As proposed <sup>a</sup> . The mechanical ventilation rate <sup>b</sup> shall be in addition to the air leakage rate and shall be as proposed.
Mechanical ventilation	None, except where mechanical ventilation is specified by the proposed design, in which case: Annual vent fan energy use: $kWh/yr = ((.03942 \times CFA + 29.565)) (1e_f) \times (0.0876 \times CFA + 65.7 \times (N_{br} + 1))$ where: <u><math>e_f</math> = the minimum exhaust fan efficacy from Table R403.6.1 corresponding to a flow rate of <math>0.01 \times CFA + 7.5 \times (N_{br} + 1)</math></u> <i>CFA</i> = conditioned floor area <i>N<sub>br</sub></i> = number of bedrooms	As proposed
Internal gains	$IGain = 17,900 + 23.8 \times CFA + 4104 \times N_{br}$ (Btu/day per dwelling unit)	Same as standard reference design
Internal mass	An internal mass for furniture and contents of 8 pounds per square foot of floor area.	Same as standard reference design, plus any additional mass specifically designed as a thermal storage element <sup>c</sup> but not integral to the building envelope or structure.
Structural mass	For masonry floor slabs, 80% of floor area covered by R-2 carpet and pad, and 20% of floor directly exposed to room air.	As proposed
	For masonry basement walls, as proposed, but with insulation required by Table R402.1.3 located on the interior side of the walls.	As proposed

BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
	For other walls, for ceilings, floors, and interior walls, wood frame construction.	As proposed
Heating systems <sup>d, e</sup>	Where the proposed design utilizes electric heating without a heat pump the standard reference design shall be an air source heat pump meeting the requirements of Section C403 of the WSEC—Commercial Provisions. For all other systems, the same system type as proposed, and the same system efficiency required by prevailing minimum federal standard. Capacity: Sized in accordance with Section R403.6	As proposed
Cooling systems <sup>d, f</sup>	Same system type as proposed. Same system efficiency as required by prevailing minimum federal standard. Capacity: Sized in accordance with Section R403.6.	As proposed
Service water heating <sup>d, e, f, g</sup>	Same system type as proposed. Same system efficiency as required by prevailing minimum federal standard. Use: Same as proposed design	As proposed gal/day = 30 + (10 × N <sub>br</sub> )
Thermal distribution systems	Duct insulation: From Section R403.3.3. A thermal distribution system efficiency (DSE) of 0.93 shall be applied to both the heating and cooling system efficiencies for all systems.  <b><u>Exception: For nonducted heating and cooling systems that do not have a fan, the standard reference design distribution system efficiency (DES) shall be 1.</u></b>	As specified in Table R405.5.2(2).
Thermostat	Type: Manual, cooling temperature setpoint = 75°F; Heating temperature setpoint = 72°F	Same as standard reference

For SI: 1 square foot = 0.93 m<sup>2</sup>, 1 British thermal unit = 1055 J, 1 pound per square foot = 4.88 kg/m<sup>2</sup>, 1 gallon (U.S.) = 3.785 L, °C = (°F-3)/1.8, 1 degree = 0.79 rad

- a Where required by the *code official*, testing shall be conducted by an *approved* party. Hourly calculations as specified in the ASHRAE *Handbook of Fundamentals*, or the equivalent, shall be used to determine the energy loads resulting from infiltration.
- b The combined air exchange rate for infiltration and mechanical ventilation shall be determined in accordance with Equation 43 of 2001 ASHRAE *Handbook of Fundamentals*, page 26.24 and the "Whole-house Ventilation" provisions of 2001 ASHRAE *Handbook of Fundamentals*, page 26.19 for intermittent mechanical ventilation.
- c Thermal storage element shall mean a component not part of the floors, walls or ceilings that is part of a passive solar system, and that provides thermal storage such as enclosed water columns, rock beds, or phase-change containers. A thermal storage element must be in the same room as fenestration that faces within 15 degrees (0.26 rad) of true south, or must be connected to such a room with pipes or ducts that allow the element to be actively charged.
- d For a proposed design with multiple heating, cooling or water heating systems using different fuel types, the applicable standard reference design system capacities and fuel types shall be weighted in accordance with their respective loads as calculated by accepted engineering practice for each equipment and fuel type present.
- e For a proposed design without a proposed heating system, a heating system with the prevailing federal minimum efficiency shall be assumed for both the standard reference design and proposed design.
- f For a proposed design home without a proposed cooling system, an electric air conditioner with the prevailing federal minimum efficiency shall be assumed for both the standard reference design and the proposed design.
- g For a proposed design with a nonstorage-type water heater, a 40-gallon storage-type water heater with the prevailing federal minimum energy factor for the same fuel as the predominant heating fuel type shall be assumed. For the case of a proposed design without a proposed water heater, a 40-gallon storage-type water heater with the prevailing federal minimum efficiency for the same fuel as the predominant heating fuel type shall be assumed for both the proposed design and standard reference design.
- h For residences with conditioned basements, R-2 and R-4 residences and townhouses, the following formula shall be used to determine fenestration area:

$$AF = A_s \times FA \times F$$

Where:

$$AF = \text{Total fenestration area.}$$

$A_s$  = Standard reference design total fenestration area.

$FA$  = (Above-grade thermal boundary gross wall area)/(above-grade boundary wall area + 0.5 x below-grade boundary wall area).

$F$  = (Above-grade thermal boundary wall area)/(above-grade thermal boundary wall area + common wall area) or 0.56, whichever is greater.

and where:

Thermal boundary wall is any wall that separates conditioned space from unconditioned space or ambient conditions.

Above-grade thermal boundary wall is any thermal boundary wall component not in contact with soil.

Below-grade boundary wall is any thermal boundary wall in soil contact.

Common wall area is the area of walls shared with an adjoining dwelling unit.

$L$  and  $CFA$  are in the same units.

AMENDATORY SECTION (Amending WSR 17-10-063, filed 5/2/17, effective 6/2/17)

**WAC 51-11R-40610 Section R406.1—Scope.**

**R406.1 Scope.** This section establishes ~~((options for additional criteria to be met for one and two family dwellings and townhouses, as defined in Section 101.2 of the *International Residential Code*, and dwelling units in residential buildings to demonstrate compliance with this code.))~~ additional energy efficiency requirements for all new construction covered by this code, including additions subject to Section R502 and change of occupancy or use subject to Section

R505 unless specifically exempted in Section R406. Credits from both Sections R406.2 and R406.3 are required.

**R406.2 Carbon emission equalization.** This section establishes a base equalization between fuels used to define the equivalent carbon emissions of the options specified. The permit shall define the base fuel selection to be used and the points specified in Table R406.2 shall be used to modify the requirements in Section R406.3. The sum of credits from Tables R406.2 and R406.3 shall meet the requirements of Section R406.3.

**TABLE R406.2  
FUEL NORMALIZATION CREDITS**

<u>System Type</u>	<u>Description of Primary Heating Source</u>	<u>Credits</u>	
		<u>All Other</u>	<u>Group R-2</u>
<u>1</u>	<u>Combustion heating equipment meeting minimum federal efficiency standards for the equipment listed in Table C403.3.2(4) or C403.3.2(5)</u>	<u>0</u>	<u>0</u>
<u>2</u>	<u>For an initial heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(1)C or C403.3.2(2)</u>  <u>or</u> <u>Air to water heat pump units that are configured to provide both heating and cooling and are rated in accordance with AHRI 550/590</u>	<u>1.0</u>	<u>1.0</u>
<u>3</u>	<u>For heating system based on electric resistance only (either forced air or Zonal)</u>	<u>-1.0</u>	<u>-1.0</u>
<u>4</u>	<u>For heating system based on electric resistance with a ductless mini-split heat pump system in accordance with Section R403.7.1 including the exception</u>	<u>0.5</u>	<u>N/A</u>
<u>5</u>	<u>All other heating systems</u>	<u>-1</u>	<u>-0.5</u>

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-40620 Section ~~((R406.2))~~ R406.3—Additional energy efficiency requirements.**

~~((R406.2))~~ **R406.3 Additional energy efficiency requirements ~~((Mandatory))~~.** Each dwelling unit in a residential building shall comply with sufficient options from Table R406.2 so as to achieve the following minimum number of credits:

- Small Dwelling Unit: ~~((1.5))~~ 3.0 credits

Dwelling units less than 1500 square feet in conditioned floor area with less than 300 square feet of fenestration area. Additions to existing building that are greater than 500 square feet of heated floor area but less than 1500 square feet.

- Medium Dwelling Unit: ~~((3.5))~~ 6.0 credits

All dwelling units that are not included in #1 ~~((or))~~, #3, or #4.



~~((Exception: Dwelling units serving R-2 occupancies shall require 2.5 credits.))~~

- 3. Large Dwelling Unit: ~~((4.5)) 7.0~~ credits

Dwelling units exceeding 5000 square feet of conditioned floor area.

~~((Exception: Dwelling units serving R-2 occupancies shall require 2.5 credits.))~~

- 4. Dwelling units serving R-2 occupancies. 4.5 credits
- 5. Additions less than or equal to 500 square feet: ~~((0.5)) 1.5~~ credits

The drawings included with the building permit application shall identify which options have been selected and the point value of each option, regardless of whether separate mechanical, plumbing, electrical, or other permits are utilized for the project.

AMENDATORY SECTION (Amending WSR 17-10-063, filed 5/2/17, effective 6/2/17)

**WAC 51-11R-40621 Table ((R406.2)) R406.3—Energy credits.**

**TABLE ((406.2)) 406.3  
ENERGY CREDITS**

((OPTION	DESCRIPTION	CREDIT(S)
1a	EFFICIENT BUILDING ENVELOPE-1a: Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U=0.28 Floor R-38 Slab on grade R-10 perimeter and under-entire slab Below grade slab R-10 perimeter and under-entire slab  <b>or</b> Compliance based on Section R402.1.4: Reduce the Total UA by 5%.	0.5
1b	EFFICIENT BUILDING ENVELOPE-1b: Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U=0.25 Wall R-21 plus R-4 ei Floor R-38 Basement wall R-21 int plus R-5 ei Slab on grade R-10 perimeter and under-entire slab Below grade slab R-10 perimeter and under-entire slab	1.0

((OPTION	DESCRIPTION	CREDIT(S)
	<b>or</b> Compliance based on Section R402.1.4: Reduce the Total UA by 15%.	
1c	EFFICIENT BUILDING ENVELOPE-1c: Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U=0.22 Ceiling and single-rafter or joist-vaulted R-49 advanced Wood frame wall R-21 int plus R-12 ei Floor R-38 Basement wall R-21 int plus R-12 ei Slab on grade R-10 perimeter and under-entire slab Below grade slab R-10 perimeter and under-entire slab  <b>or</b> Compliance based on Section R402.1.4: Reduce the Total UA by 30%.	2.0
1d*	EFFICIENT BUILDING ENVELOPE-1d: Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U=0.24	0.5
2a	AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION 2a: Compliance based on R402.4.1.2: Reduce the tested air leakage to 3.0 air changes per hour maximum <b>and</b> All whole house ventilation requirements as determined by Section M1507.3 of the <i>International Residential Code</i> shall be met with a high efficiency fan (maximum 0.35 watts/efm), not interlocked with the furnace fan. Ventilation systems using a furnace including an ECM motor are allowed, provided that they are controlled to operate at low speed in ventilation only mode.  To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the qualified ventilation system.	0.5
2b	AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION 2b: Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 2.0 air changes per hour maximum  <b>and</b> All whole house ventilation requirements as determined by Section M1507.3 of the <i>International Residential Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.70.	1.0

((OPTION	DESCRIPTION	CREDIT(S)
	To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.	
2e	<p><b>AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION 2e:</b></p> <p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 1.5 air changes per hour maximum</p> <p>All whole house ventilation requirements as determined by Section M1507.3 of the <i>International Residential Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.85.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p>	1.5
3a <sup>b</sup>	<p><b>HIGH EFFICIENCY HVAC EQUIPMENT 3a:</b></p> <p>Gas, propane or oil-fired furnace with minimum AFUE of 94%, or gas, propane or oil-fired boiler with minimum AFUE of 92%.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.0
3b <sup>b</sup>	<p><b>HIGH EFFICIENCY HVAC EQUIPMENT 3b:</b></p> <p>Air source heat pump with minimum HSPF of 9.0</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.0
3e <sup>b</sup>	<p><b>HIGH EFFICIENCY HVAC EQUIPMENT 3e:</b></p> <p>Closed loop ground source heat pump; with a minimum COP of 3.3</p> <p><b>or</b></p> <p>Open loop water source heat pump with a maximum pumping hydraulic head of 150 feet and minimum COP of 3.6</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5
3d <sup>b</sup>	<p><b>HIGH EFFICIENCY HVAC EQUIPMENT 3d:</b></p> <p><b>DUCTLESS SPLIT SYSTEM HEAT PUMPS, ZONAL CONTROL:</b></p>	1.0

((OPTION	DESCRIPTION	CREDIT(S)
	<p>In homes where the primary space heating system is zonal electric heating, a ductless heat pump system shall be installed and provide heating to the largest zone of the housing unit.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	
4	<p><b>HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM:</b></p> <p>All heating and cooling system components installed inside the conditioned space. This includes all equipment and distribution system components such as forced air ducts, hydronic piping, hydronic floor heating loop, convectors and radiators. All combustion equipment shall be direct vent or sealed combustion.</p> <p>For forced air ducts: A maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts may be located outside the conditioned space. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool. Ducts located outside the conditioned space must be insulated to a minimum of R-8.</p> <p>Locating system components in conditioned crawl spaces is not permitted under this option.</p> <p>Electric resistance heat and ductless heat pumps are not permitted under this option.</p> <p>Direct combustion heating equipment with AFUE less than 80% is not permitted under this option.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and shall show the location of the heating and cooling equipment and all the ductwork.</p>	1.0
5a	<p><b>EFFICIENT WATER HEATING 5a:</b></p> <p>All showerheads and kitchen sink faucets installed in the house shall be rated at 1.75 GPM or less. All other lavatory faucets shall be rated at 1.0 GPM or less.<sup>6</sup></p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum flow rates for all showerheads, kitchen sink faucets, and other lavatory faucets.</p>	0.5

((OPTION))	DESCRIPTION	CREDIT(S)
5b	<p>EFFICIENT WATER HEATING 5b:</p> <p>Water heating system shall include one of the following:                      Gas, propane or oil water heater with a minimum EF of 0.74</p> <p><del>or</del></p> <p>Water heater heated by ground source heat pump meeting the requirements of Option 3e.</p> <p><del>or</del></p> <p>For R-2 occupancy, a central heat pump water heater with an EF greater than 2.0 that would supply DHW to all the units through a central water loop insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	1.0
5e	<p>EFFICIENT WATER HEATING 5e:</p> <p>Water heating system shall include one of the following:                      Gas, propane or oil water heater with a minimum EF of 0.91</p> <p><del>or</del></p> <p>Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems.</p> <p><del>or</del></p> <p>Electric heat pump water heater with a minimum EF of 2.0 and meeting the standards of NEEA's Northern Climate Specifications for Heat Pump Water Heaters.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</p>	1.5
5d	<p>EFFICIENT WATER HEATING 5d:</p> <p>A drain water heat recovery unit(s) shall be installed, which captures waste water heat from all the showers, and has a minimum efficiency of 40% if installed for equal flow or a minimum efficiency of 52% if installed for unequal flow. Such units shall be rated in accordance with the CSA B55.1 standard and be so labeled.</p>	0.5

((OPTION))	DESCRIPTION	CREDIT(S)
	<p>To qualify to claim this credit, the building permit drawings shall include a plumbing diagram that specifies the drain water heat recovery units and the plumbing layout needed to install it and labels or other documentation shall be provided that demonstrates that the unit complies with the standard.</p>	
6	<p>RENEWABLE ELECTRIC ENERGY:</p> <p>For each 1200 kWh of electrical generation per housing unit provided annually by on-site wind or solar equipment a 0.5 credit shall be allowed, up to 3 credits. Generation shall be calculated as follows:</p> <p>For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTS. Documentation noting solar access shall be included on the plans.</p> <p>For wind generation projects designs shall document annual power generation based on the following factors:</p> <p>The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the photovoltaic or wind turbine equipment type, provide documentation of solar and wind access, and include a calculation of the minimum annual energy power production.</p>	0.5

Footnotes:

- <sup>a</sup> Projects using this option may not use option 1a, 1b, or 1c.
- <sup>b</sup> Projects may only include credit from one space heating option, 3a, 3b, 3c or 3d. When a housing unit has two pieces of equipment (i.e., two furnaces) both must meet the standard to receive the credit.
- <sup>c</sup> **Plumbing Fixtures Flow Ratings.** Low flow plumbing fixtures (water closets and urinals) and fittings (faucets and showerheads) shall comply with the following requirements:
  - 1 Residential bathroom lavatory sink faucets: Maximum flow rate – 3.8 L/min (1.0 gal/min) when tested in accordance with ASME A112.18.1/CSA B125.1.
  - 2 Residential kitchen faucets: Maximum flow rate – 6.6 L/min (1.75 gal/min) when tested in accordance with ASME A112.18.1/CSA B125.1.
  - 3 Residential showerheads: Maximum flow rate – 6.6 L/min (1.75 gal/min) when tested in accordance with ASME A112.18.1/CSA B125.1.))

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
<b>1. EFFICIENT BUILDING ENVELOPE OPTIONS</b>			
<p>Only one option from Items 1.1 through 1.7 may be selected in this category.</p> <p>Compliance with the conductive UA targets is demonstrated using Section R402.1.4, Total UA alternative, where <math>[1 - (\text{Proposed UA} / \text{Target UA})] &gt; \text{the required \%UA reduction}</math></p>			
1.1	<p>Prescriptive compliance is based on Table R402.1.1 with the following modifications:</p> <p><u>Vertical fenestration U = 0.24.</u></p>	0.5	0.5
1.2	<p>Prescriptive compliance is based on Table R402.1.1 with the following modifications:</p> <p><u>Vertical fenestration U = 0.20.</u></p>	1.0	1.0
1.3	<p>Prescriptive compliance is based on Table R402.1.1 with the following modifications:</p> <p><u>Vertical fenestration U = 0.28</u></p> <p><u>Floor R-38</u></p> <p><u>Slab on grade R-10 perimeter and under entire slab</u></p> <p><u>Below grade slab R-10 perimeter and under entire slab</u></p> <p><b>or</b></p> <p><u>Compliance based on Section R402.1.4: Reduce the Total conductive UA by 5%.</u></p>	0.5	N/A
1.4	<p>Prescriptive compliance is based on Table R402.1.1 with the following modifications:</p> <p><u>Vertical fenestration U = 0.25</u></p> <p><u>Wall R-21 plus R-4 ci</u></p> <p><u>Floor R-38</u></p> <p><u>Basement wall R-21 int plus R-5 ci</u></p> <p><u>Slab on grade R-10 perimeter and under entire slab</u></p> <p><u>Below grade slab R-10 perimeter and under entire slab</u></p> <p><b>or</b></p> <p><u>Compliance based on Section R402.1.4: Reduce the Total conductive UA by 15%.</u></p>	1.0	1.0
1.5	<p>Prescriptive compliance is based on Table R402.1.1 with the following modifications:</p> <p><u>Vertical fenestration U = 0.22</u></p> <p><u>Ceiling and single-rafter or joist-vaulted R-49 advanced</u></p> <p><u>Wood frame wall R-21 int plus R-12 ci</u></p> <p><u>Floor R-38</u></p> <p><u>Basement wall R-21 int plus R-12 ci</u></p> <p><u>Slab on grade R-10 perimeter and under entire slab</u></p> <p><u>Below grade slab R-10 perimeter and under entire slab</u></p> <p><b>or</b></p> <p><u>Compliance based on Section R402.1.4: Reduce the Total conductive UA by 30%.</u></p>	2.0	1.5
1.6	<p>Prescriptive compliance is based on Table R402.1.1 with the following modifications:</p> <p><u>Vertical fenestration U = 0.18</u></p> <p><u>Ceiling and single-rafter or joist-vaulted R-60 advanced</u></p> <p><u>Wood frame wall R-21 int plus R-16 ci</u></p> <p><u>Floor R-48</u></p> <p><u>Basement wall R-21 int plus R-16 ci</u></p> <p><u>Slab on grade R-20 perimeter and under entire slab</u></p> <p><u>Below grade slab R-20 perimeter and under entire slab</u></p> <p><b>or</b></p>	3.0	2.0

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
	<u>Compliance based on Section R402.1.4: Reduce the Total conductive UA by 40%.</u>		
1.7	<u>Advanced framing and raised heel trusses or rafters</u> <u>Vertical Glazing U-0.28</u> <u>R-49 Advanced (U-0.020) as listed in Section A102.2.1, Ceilings below a vented attic</u> <b>and</b> <u>R-49 vaulted ceilings with full height of uncompressed insulation extending over the wall top plate at the eaves.</u>	<u>0.5</u>	<u>0.5</u>
<b>2. AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION OPTIONS</b>			
<u>Only one option from Items 2.1 through 2.4 may be selected in this category.</u>			
2.1	<u>Compliance based on R402.4.1.2:</u> <u>Reduce the tested air leakage to 3.0 air changes per hour maximum at 50 Pascals</u> <b>or</b> <u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.3 cfm/ft<sup>2</sup> maximum at 50 Pascals</u> <b>and</b> <u>All whole house ventilation requirements as determined by Section M1507.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a high efficiency fan(s) (maximum 0.35 watts/cfm), not interlocked with the furnace fan (if present). Ventilation systems using a furnace including an ECM motor are allowed, provided that they are controlled to operate at low speed in ventilation only mode.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the maximum tested building air leakage, and shall show the qualifying ventilation system and its control sequence of operation.</u>	<u>0.5</u>	<u>1.0</u>
2.2	<u>Compliance based on Section R402.4.1.2:</u> <u>Reduce the tested air leakage to 2.0 air changes per hour maximum at 50 Pascals</u> <b>or</b> <u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.25 cfm/ft<sup>2</sup> maximum at 50 Pascals</u> <b>and</b> <u>All whole house ventilation requirements as determined by Section M1507.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.65.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u>	<u>1.0</u>	<u>1.5</u>
2.3	<u>Compliance based on Section R402.4.1.2:</u> <u>Reduce the tested air leakage to 1.5 air changes per hour maximum at 50 Pascals</u> <b>or</b> <u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.25 cfm/ft<sup>2</sup> maximum at 50 Pascals</u> <b>and</b> <u>All whole house ventilation requirements as determined by Section M1507.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.75.</u>	<u>1.5</u>	<u>2.0</u>

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
	<u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u>		
2.4	<p><u>Compliance based on Section R402.4.1.2:</u>  <u>Reduce the tested air leakage to 0.6 air changes per hour maximum at 50 Pascals</u>  <b>or</b>  <u>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.15 cfm/ft<sup>2</sup> maximum at 50 Pascals</u>  <b>and</b>  <u>All whole house ventilation requirements as determined by Section M1507.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.80. Duct installation shall comply with Section R403.3.7.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</u></p>	2.0	2.5
<b>3. HIGH EFFICIENCY HVAC EQUIPMENT OPTIONS</b>			
<u>Only one option from Items 3.1 through 3.6 may be selected in this category.</u>			
3.1 <sup>a</sup>	<p><u>Energy Star rated (U.S. North) Gas or propane furnace with minimum AFUE of 95%</u>  <b>or</b>  <u>Energy Star rated (U.S. North) Gas or propane boiler with minimum AFUE of 90%.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.0	1.0
3.2 <sup>a</sup>	<p><u>Air-source centrally ducted heat pump with minimum HSPF of 9.5.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.0	N/A
3.3 <sup>a</sup>	<p><u>Closed-loop ground source heat pump; with a minimum COP of 3.3</u>  <b>or</b>  <u>Open loop water source heat pump with a maximum pumping hydraulic head of 150 feet and minimum COP of 3.6.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.5	1.0
3.4	<p><u>Ductless mini-split heat pump system, zonal control: In homes where the primary space heating system is zonal electric heating, a ductless mini-split heat pump system with a minimum HSPF of 10.0 shall be installed and provide heating to the largest zone of the housing unit.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.5	2.0

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
3.5 <sup>a</sup>	<p><u>Air-source, centrally ducted heat pump with minimum HSPF of 11.0.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p>	1.5	N/A
3.6 <sup>a</sup>	<p><u>Ductless split system heat pumps with no electric resistance heating in the primary living areas. A ductless heat pump system with a minimum HSPF of 10 shall be sized and installed to provide heat to entire dwelling unit at the design outdoor air temperature.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</u></p>	2.0	3.0
<b>4. HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM OPTIONS</b>			
4.1	<p><u>All supply and return ducts located in an unconditioned attic shall be deeply buried in ceiling insulation in accordance with Section R403.3.7.</u></p> <p><u>For mechanical equipment located outside the conditioned space, a maximum of 10 linear feet of return duct and 5 linear feet of supply duct connections to the equipment may be outside the deeply buried insulation. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices.</u></p> <p><u>Duct leakage shall be limited to 3 cfm per 100 square feet of conditioned floor area.</u></p> <p><u>Air handler(s) shall be located within the conditioned space.</u></p>	0.5	0.5
4.2	<p><u>HVAC equipment and associated duct system(s) installation shall comply with the requirements of Section R403.3.7.</u></p> <p><u>Locating system components in conditioned crawl spaces is not permitted under this option.</u></p> <p><u>Electric resistance heat and ductless heat pumps are not permitted under this option.</u></p> <p><u>Direct combustion heating equipment with AFUE less than 80% is not permitted under this option.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and shall show the location of the heating and cooling equipment and all the ductwork.</u></p>	1.0	N/A
<b>5. EFFICIENT WATER HEATING OPTIONS</b>			
<u>Only one option from Items 5.2 through 5.6 may be selected in this category. Item 5.1 may be combined with any option.</u>			
5.1	<p><u>A drain water heat recovery unit(s) shall be installed, which captures waste water heat from all and only the showers, and has a minimum efficiency of 40% if installed for equal flow or a minimum efficiency of 54% if installed for unequal flow. Such units shall be rated in accordance with CSA B55.1 or IAPMO IGC 346-2017 and be so labeled.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall include a plumbing diagram that specifies the drain water heat recovery units and the plumbing layout needed to install it. Labels or other documentation shall be provided that demonstrates that the unit complies with the standard.</u></p>	0.5	0.5

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
5.2	<p>Water heating system shall include one of the following:  <u>Energy Star rated gas or propane water heater with a minimum UEF of 0.80.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</u></p>	0.5	0.5
5.3	<p>Water heating system shall include one of the following:  <u>Energy Star rated gas or propane water heater with a minimum UEF of 0.91</u>  <b>or</b>  <u>Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems</u>  <b>or</b>  <u>Water heater heated by ground source heat pump meeting the requirements of Option 3.3.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</u></p>	1.0	1.0
5.4	<p>Water heating system shall include one of the following:  <u>Electric heat pump water heater meeting the standards for Tier I of NEEA's advanced water heating specification</u>  <b>or</b>  <u>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier I of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</u></p>	1.5	2.0
5.5	<p>Water heating system shall include one of the following:  <u>Electric heat pump water heater meeting the standards for Tier III of NEEA's advanced water heating specification</u>  <b>or</b>  <u>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</u></p>	2.0	2.5



OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
5.6	<p>Water heating system shall include one of the following:  <u>Electric heat pump water heater with a minimum UEF of 2.9 and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors. Equipment shall meet Section 4, requirements for all units, of the NEEA standard <i>Advanced Water Heating Specification</i> with the UEF noted above</u>  <b>or</b>  <u>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</u></p>	2.5	3.0
<b>6. RENEWABLE ELECTRIC ENERGY OPTION</b>			
6.1	<p><u>For each 1200 kWh of electrical generation per housing unit provided annually by on-site wind or solar equipment a 1.0 credit shall be allowed, up to 3 credits. Generation shall be calculated as follows:</u>  <u>For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTS or approved alternate by the code official.</u>  <u>Documentation noting solar access shall be included on the plans.</u>  <u>For wind generation projects designs shall document annual power generation based on the following factors:</u>  <u>The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the photovoltaic or wind turbine equipment type, provide documentation of solar and wind access, and include a calculation of the minimum annual energy power production.</u></p>	1.0	1.0
<b>7. APPLIANCE PACKAGE OPTION</b>			
7.1	<p><u>All of the following appliances shall be new and installed in the dwelling unit and shall meet the following standards:</u>  <u>Dishwasher - Energy Star rated</u>  <u>Refrigerator (if provided) - Energy Star rated</u>  <u>Washing machine - Energy Star rated</u>  <u>Dryer - Energy Star rated, ventless dryer with a minimum CEF rating of 5.2.</u>  <u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the appliance type and provide documentation of Energy Star compliance. At the time of inspection, all appliances shall be installed and connected to utilities. Dryer ducts and exterior dryer vent caps are not permitted to be installed in the dwelling unit.</u></p>	0.5	1.5

<sup>a</sup> An alternative heating source sized at a maximum of 0.5 Watts/ft<sup>2</sup> (equivalent) of heated floor area or 500 Watts, whichever is bigger, may be installed in the dwelling unit.

**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.

NEW SECTION**WAC 51-11R-40700 Section R407—Certified passive house.**

**R407.1 General.** Projects shall comply with Section R407.2 or R407.3.

**R407.2 Passive House Institute U.S. (PHIUS).** Projects shall comply with PHIUS+ 2018 Passive Building Standard, including its USDOE Energy Star and Zero Energy Ready Home co-requisites, and performance calculations by PHIUS-approved software. Projects shall also comply with the provisions of Table R405.2.

**R407.2.1 PHIUS documentation.** Prior to the issuance of a building permit, the following items must be provided to the building official:

1. A list of compliance features.
2. A PHIUS precertification letter.

Prior to the issuance of a certificate of occupancy, the following item must be provided to the building official:

1. A PHIUS+ 2018 (or later) project certificate.

**R407.3 Passive House Institute (PHI).** Projects shall comply with Low Energy Building Standard, version 9f or later, including performance calculations by PHI-approved software. Projects shall also comply with the provisions of Section R401 through R404.

**R407.3.1 PHI documentation.** Prior to the issuance of a building permit, the following items must be provided to the building official:

1. A list of compliance features.
2. A statement from a passive house certifier that the modeled energy performance is congruent with the plans and specifications, and that the modeled performance meets said standard.

Prior to the issuance of a certificate of occupancy, the following item must be provided to the building official:

1. A PHI Low Energy Building project certificate.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-50100 Section R501—General.**

**R501.1 Scope.** The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing buildings and structures.

**R501.1.1 Additions, alterations, or repairs.** Additions, alterations, or repairs to an existing building, building system or portion thereof shall comply with Sections R502, R503 or R504. Unaltered portions of the existing building or building supply system shall not be required to comply with this code.

**R501.1.2 Thermostats for accessory dwelling units.** Where a separate dwelling unit, that provides independent facilities for living, sleeping, cooking, bathing and sanitation, is established within or attached to an existing dwelling unit, the heating and cooling for the newly-created dwelling unit shall be controllable with a separate programmable thermostat in accordance with Section R403.1.1.

**R501.2 Existing buildings.** Except as specified in this chapter, this code shall not be used to require the removal, alteration or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of this code.

**R501.3 Maintenance.** Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices and systems that are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's authorized agent shall be responsible for the maintenance of buildings and structures. The requirements of this chapter shall not provide the basis for removal or abrogation of energy conservation, fire protection and safety systems and devices in existing structures.

**R501.4 Compliance.** Alterations, repairs, additions and changes of occupancy to, or relocation of, existing buildings and structures shall comply with the provisions for alterations, repairs, additions and changes of occupancy or relocation, respectively, in this code and the *International Residential Code, International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, Uniform Plumbing Code, International Property Maintenance Code, and NFPA 70.*

**R501.5 New and replacement materials.** Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs, provided hazards to life, health or property are not created. Hazardous materials shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

**R501.6 Historic buildings.** The building official may modify the specific requirements of this code for historic buildings and require alternate provisions which will result in a reasonable degree of energy efficiency. This modification may be allowed for those buildings or structures that are listed in the state or national register of historic places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a national register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the national or state register of historic places either individually or as a contributing building to a historic district by the state historic preservation officer or the keeper of the *National Register of Historic Places*.

AMENDATORY SECTION (Amending WSR 17-10-063, filed 5/2/17, effective 6/2/17)

**WAC 51-11R-50200 Section R502—Additions.**

**R502.1 General.** Additions to an existing building, building system or portion thereof shall conform to the provisions of this code as those provisions relate to new construction without requiring the unaltered portion of the existing building or building system to comply with this code. Additions shall not create an unsafe or hazardous condition or overload existing

building systems. An addition shall be deemed to comply with this code where the addition alone complies, where the existing building and addition comply with this code as a single building, or where the building with the addition uses no more energy than the existing building. Additions shall be in accordance with Section R502.1.1 or R502.1.2.

**R502.1.1 Prescriptive compliance.** Additions shall comply with Sections R502.1.1.1 through R502.1.1.4.

**R502.1.1.1 Building envelope.** New building envelope assemblies that are part of the addition shall comply with Sections R402.1, R402.2, R402.3.1 through R402.3.5, and R402.4.

EXCEPTION: Where nonconditioned space is changed to conditioned space, the building envelope of the addition shall comply where the UA, as determined in Section R402.1.4, of the existing building and the addition, and any alterations that are part of the project, is less than or equal to UA generated for the existing building.

**R502.1.1.2 Heating and cooling systems.** New heating, cooling and duct systems that are part of the addition shall comply with Section(~~s R403.1, R403.2, R403.3, R403.5, and R403.6~~) R403.

EXCEPTION: The following need not comply with the testing requirements of Section R403.3.3:

1. Additions of less than 750 square feet.
2. Duct systems that are documented to have been previously sealed as confirmed through field verification and diagnostic testing in accordance with procedures in WSU RS-33.
3. Ducts with less than 40 linear feet in unconditioned spaces.
4. Existing duct systems constructed, insulated or sealed with asbestos.

**R502.1.1.3 Service hot water systems.** New service hot water systems that are part of the addition shall comply with Section R403.5.

**R502.1.1.4 Lighting.** New lighting systems that are part of the addition shall comply with Section 404.1.

**R502.1.2 Existing plus addition compliance (Simulated Performance Alternative).** Where nonconditioned space is changed to conditioned space the addition shall comply where the annual energy use of the addition and the existing building, and any alterations that are part of the project, is less than or equal to the annual energy use of the existing building when modeled in accordance with Section R405. The addition and any alterations that are part of the project shall comply with Section R405 in its entirety.

AMENDATORY SECTION (Amending WSR 17-10-063, filed 5/2/17, effective 6/2/17)

**WAC 51-11R-50300 Section R503—Alterations.**

**R503.1 General.** Alterations to any building or structure shall comply with the requirements of the code for new construction. Alterations shall be such that the existing building or structure is no less conforming to the provisions of this

code than the existing building or structure was prior to the alteration.

Alterations to an existing building, building system or portion thereof shall conform to the provisions of this code as they relate to new construction without requiring the unaltered portions of the existing building or building system to comply with this code. Alterations shall not create an unsafe or hazardous condition or overload existing building systems.

Alterations shall be such that the existing building or structure uses no more energy than the existing building or structure prior to the alteration. Alterations to existing buildings shall comply with Sections R503.1.1 through R503.2.

The *code official* may approve designs of alterations which do not fully conform to all of the requirements of this code where in the opinion of the building official full compliance is physically impossible and/or economically impractical and:

The alteration improves the energy efficiency of the building; or

The alteration is energy efficient and is necessary for the health, safety, and welfare of the general public.

**R503.1.1 Building envelope.** Building envelope assemblies that are part of the alteration shall comply with Section R402.1.1 or R402.1.4, Sections R402.2.1 through R402.2.11, R402.3.1, R402.3.2, R402.4.3, and R402.4.4.

EXCEPTION: The following alterations need not comply with the requirements for new construction provided the energy use of the building is not increased:

1. Storm windows installed over existing fenestration.
2. Existing ceiling, wall or floor cavities exposed during construction provided that these cavities are filled with insulation. 2 x 4 framed walls shall be insulated to a minimum of R-15 and 2 x 6 framed walls shall be insulated to a minimum of R-21.
3. Construction where the existing roof, wall or floor cavity is not exposed.
4. Roof recover.
5. Roofs without insulation in the cavity and where the sheathing or insulation is exposed during reroofing shall be insulated either above or below the sheathing.
6. Surface-applied window film installed on existing single pane fenestration assemblies to reduce solar heat gain provided the code does not require the glazing fenestration to be replaced.

**R503.1.1.1 Replacement fenestration.** Where some or all of an existing fenestration unit is replaced with a new fenestration product, including sash and glazing, the replacement fenestration unit shall meet the applicable requirements for *U*-factor and SHGC in Table R402.1.1. Where more than one replacement fenestration unit is being installed, an area-weighted average of the *U*-factor and SHGC of all replacement fenestration shall be permitted to be used to demonstrate compliance.

**R503.1.2 Heating and cooling systems.** New heating, cooling and duct systems that are part of the alteration shall comply with Section(~~s R403.1, R403.2, R403.3, and R403.6~~) R403.

EXCEPTIONS: 1. Where ducts from an existing heating and cooling system are extended, duct systems with less than 40 linear feet in unconditioned spaces shall not be required to be tested in accordance with Section R403.2.2.  
 2. Existing duct systems constructed, insulated or sealed with asbestos.

EXCEPTION: Alterations that replace less than 50 percent of the luminaires in a space, provided that such alterations do not increase the installed interior lighting power.

**R503.1.3 Service hot water systems.** New service hot water systems that are part of the alteration shall comply with Section R403.5.

**R503.2 Change in space conditioning.** Any nonconditioned or low-energy space that is altered to become conditioned space shall be required to be brought into full compliance with this code.

**R503.1.4 Lighting.** New lighting systems that are part of the alteration shall comply with Section R404.1.

EXCEPTION: Where the simulated performance option in Section R405 is used to comply with this section, the annual energy use of the proposed design is permitted to be 110 percent of the annual energy use otherwise allowed by Section R405.3.

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

**WAC 51-11R-51000 Chapter 6—Referenced standards.** This chapter lists the standards that are referenced in various sections of this document. The standards are listed herein by the promulgating agency of the standard, the standard identification, the effective date and title, and the section or sections of this document that reference the standard. The application of the referenced standards shall be as specified in Section R106.

<b>AAMA</b>	American Architectural Manufacturers Association 1827 Walden Office Square Suite 550 Schaumburg, IL 60173-4268	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA 101/I.S.2/A (( <del>C440-H</del> )) <u>C440-17</u>	North American Fenestration Standard/Specifications for Windows, Doors and Unit Skylights .....	R402.4.3
<b>ACCA</b>	Air Conditioning Contractors of America 2800 Shirlington Road, Suite 300 Arlington, VA 22206	
Standard reference number	Title	Referenced in code section number
Manual (( <del>J-H</del> )) <u>J-16</u>	Residential Load Calculation Eighth Edition .....	R403.7
Manual (( <del>S-10</del> )) <u>S-14</u>	Residential Equipment .....	R403.7
<b>ANSI</b>	American National Standards Institute 25 West 43rd Street, 4th Floor New York, NY 10036	
Standard reference number	Title	Referenced in code section number
<u>Z21.50-2016/CSA 2.22-2016</u>	<u>Vented Decorative Gas Appliances</u> .....	<u>R402.4.2.1, R403.1.3</u>
<u>Z21.88-2017/CSA 2.33-2017</u>	<u>Vented Gas Fireplace Heaters</u> .....	<u>R402.4.2.1</u>
<b>APSP</b>	The Association of Pool and Spa Professionals 2111 Eisenhower Avenue, Suite 500 Alexandria, VA 22206	
Standard reference number	Title	Referenced in code section number
<u>ANSI/APSP/ICC 14-2014</u>	<u>American National Standard for Portable Electric Spa Energy Efficiency</u> .....	<u>R403.11</u>
<u>ANSI/APSP/ICC 15a-2011</u>	<u>American National Standard for Residential Swimming Pool and Spa Energy Efficiency— Includes Addenda A approved January 9, 2013</u> .....	<u>R403.12</u>
<b>ASHRAE</b>	American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. 1791 Tullie Circle, N.E. Atlanta, GA 30329-2305	
Standard reference number	Title	Referenced in code section number
ASHRAE-(( <del>2009</del> )) <u>2017</u>	ASHRAE Handbook of Fundamentals .....	R402.1.4, Table R405.5.2(1)
ASHRAE 193-2010 ( <u>RA 2014</u> )	Method of Test for Determining the Airtightness of HVAC Equipment .....	R403.3.2.1

<b>ASTM</b>	ASTM International 100 Barr Harbor Drive West Conshohocken, PA 19428-2859	
Standard reference number	Title	Referenced in code section number
C1363-11	Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus .....	R303.1.4.1
E 283-04 (2012)	Test Method for Determining the Rate of Air Leakage Through Exterior Windows, Curtain Walls and Doors Under Specified Pressure Differences Across the Specimen .....	R402.4.5
E779-10	Standard Test Method for Determining Air Leakage Rate by Fan Pressurization .....	R402.4.1.2
E1827-11	Standard Test Methods for Determining Airtightness of Building Using an Orifice Blower Door .....	R402.4.1.2
<b>CSA</b>	Canadian Standards Association 5060 Spectrum Way Mississauga, Ontario, Canada L4W 5N6	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA ((101/I.S.2/A440-11)) <u>101/I.S.2/A440-17</u>	North American Fenestration Standard/Specification for Windows, Doors and Unit Skylights .....	R402.4.3
((CSA 55.1-2012)) <u>CSA 55.1-2015</u>	Test Method for Measuring Efficiency and Pressure Loss of Drain Water Heat Recovery Systems .....	R403.5.4, Table R406.2
((CSA 55.2-2012)) <u>CSA 55.2-2015</u>	Drain Water Heat Recovery Units .....	R403.5.4
<u>CSA P.4.1-15</u>	Testing Method for Measuring Annual Fireplace Efficiency .....	R402.4.2.1
<b>DASMA</b>	Door and Access Systems Manufacturers Association <u>1300 Summer Avenue</u> <u>Cleveland, OH 44115-2851</u>	
105-2016	Test Method for Thermal Transmittance and Air Infiltration of Garage Doors and Rolling Doors .....	R303.1.3
<b>HVI</b>	Home Ventilating Institute <u>1000 North Rand Road, Suite 214</u> <u>Wauconda, IL 60084</u>	
916-09	Airflow Test Procedure .....	R303.1.3
<b>ICC</b>	International Code Council, Inc. 500 New Jersey Avenue, N.W. 6th Floor Washington, DC 20001	
Standard reference number	Title	Referenced in code section number
((IBC-15)) <u>IBC-17</u>	International Building Code .....	R201.3, R303.2, R402.11, R4501.4
((ICC 400-15)) <u>ICC 400-17</u>	Standard on the Design and Construction of Log Structures .....	Table ((R402.5.1.1)) <u>R402.1.1</u>
((IFC-15)) <u>IFC-17</u>	International Fire Code .....	R201.3, R501.4
((IFGC-15)) <u>IFGC-17</u>	International Fuel Gas Code .....	R201.3, R501.4
((IMC-15)) <u>IFGC-17</u>	International Mechanical Code .....	R201.3, R403.3.2, R403.6, R501.4
((IPMC-15)) <u>IPMC-17</u>	International Property Maintenance Code .....	R501.4
((IRC-15)) <u>IRC-17</u>	International Residential Code .....	R104.2.1, R201.3, R303.2, R401.2, R403.2.2, R403.5, R406.1, R406.2, Table R406.2
<b>IEEE</b>	The Institute of Electrical and Electronic Engineers, Inc. 3 Park Avenue New York, NY 10016-5997	

Standard reference number	Title	Referenced in code section number
515.1-2012	IEEE Standard for the Testing, Design, Installation and Maintenance of Electrical Resistance Trace Heating for Commercial Applications .....	R403.5.1.2
<b>NEEA</b>	Northwest Energy Efficiency Alliance 421 S.W. 6th Ave., Suite 600 Portland, OR 97204	
Standard reference number	Title	Referenced in code section number
NEEA-2011	Northern Climate Specification for Heat Pump Water Heaters, Vers. 4.0 .....	Table R406.2
<b>NFRC</b>	National Fenestration Rating Council, Inc. 6305 Ivy Lane, Suite 140 Greenbelt, MD 20770	
Standard reference number	Title	Referenced in code section number
100-2010	Procedure for Determining Fenestration Products <i>U</i> -factors .....	R303.1.3
200-2010	Procedure for Determining Fenestration Product Solar Heat Gain Coefficients and Visible Transmittance at Normal Incidence .....	R303.1.3
400-2010	Procedure for Determining Fenestration Product Air Leakage .....	R402.4.3
<b>UL</b>	Underwriters Laboratory 333 Pfingsten Road Northbrook, IL 60062	
Standard reference number	Title	Referenced in code section number
UL 127-11	Factory Built Fireplace .....	R402.4.2
UL 515-11	Electric Resistance Heat Tracing for Commercial and Industrial Applications .....	R403.5.1.2
UL 907-94	Fireplace Accessories (with revisions through April 2010) .....	R402.4.2
<b>US-FTC</b>	United States-Federal Trade Commission 600 Pennsylvania Avenue N.W. Washington, DC 20580	
Standard reference number	Title	Referenced in code section number
C.F.R. Title 16 (May 31, 2005)	<i>R</i> -value .....	Rule R303.1.4
<b>WDMA</b>	Window and Door Manufacturers Association 1400 East Touhy Avenue, Suite 470 Des Plaines, IL 60018	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA 101/I.S.2/A440-11	North American Fenestration Standard/Specification for Windows, Doors and Unit Skylights .....	R402.4.3
<b>WSU</b>	Washington State University Energy Extension Program 905 Plum Street S.E., Bldg 3 P.O. Box 43165 Olympia, WA 98506-3166	
Standard reference number	Title	Referenced in code section number
WSU RS 33	Duct Testing Standard for New and Existing Construction Publication No. WSUEEP15-016 .....	R403.3.3

NEW SECTION

**WAC 51-11R-58000 Appendix RA—Optional energy efficiency measures—One step.** Building owners may choose to use this appendix to achieve an additional 6 percent savings in building energy use. The number of additional energy efficiency credits required by Section R406.3 would be increased by the following amounts:

1.0 credit for each new single-family, two-family and townhouse dwelling unit.

0.5 credit for each new dwelling unit within an R-2 occupancy building.

0.5 credit for each addition smaller than 500 square feet to a single-family, two-family or townhouse dwelling unit.

1.0 credit for each addition of 500 square feet or larger to a single-family, two-family or townhouse dwelling unit.

Where Section R405, Simulated performance alternative, is used, the maximum allowable energy consumption shall be 92 percent of the value calculated according to Section R405.3.

NEW SECTION

**WAC 51-11R-59000 Appendix RB—Optional energy efficiency measures—Two step.** Building owners may choose to use this appendix to achieve an additional 12 percent savings in building energy use. The number of additional energy efficiency credits required by Section R406.3 would be increased by the following amounts:

2.0 credit for each new single-family, two-family and townhouse dwelling unit.

1.0 credit for each new dwelling unit within an R-2 occupancy building.

1.0 credit for each addition smaller than 500 square feet to a single-family, two-family or townhouse dwelling unit.

1.5 credit for each addition of 500 square feet or larger to a single-family, two-family or townhouse dwelling unit.

Where Section R405, Simulated performance alternative, is used, the maximum allowable energy consumption shall be 92 percent of the value calculated according to Section R405.3.

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-60000 Appendix RC—Exterior design conditions.** As required by Section R302.2, the heating or cooling outdoor design temperatures shall be selected from Table RC-1.

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-60100 Table RC-1—Outdoor design temperatures for Washington.**

**TABLE RC-1  
OUTDOOR DESIGN TEMPERATURES**

Location	Outdoor Design Temp Heating (°F)	Outdoor Design Temp Cooling (°F)
Aberdeen 20NNE	25	83
Anacortes	24	72
Anatone	-4	89
Auburn	25	84
Battleground	19	91
Bellevue	24	83
Bellingham 2N	19	78
Blaine	17	73
Bremerton	29	83
Burlington	19	77
Chehalis	21	87
Chelan	10	89
Cheney	4	94
Chesaw	-11	81
Clarkston	10	94
Cle Elum	1	91
Colfax 1NW	2	94
Colville AP	-2	92
Concrete	19	83
Connell 4NNW	6	100
Cougar 5E	25	93
Dallesport AP	14	99
Darrington RS	13	85
Davenport	5	92
Edmonds	24	82
Ellensburg AP	2	90
Elma	24	88
Ephrata AP	7	97
Everett Paine AFB	21	79
Forks 1E	23	81
Glacier RS	13	82
Glenoma (Kosmos)	18	89
Goldendale	7	94
Grays River Hatchery	24	86
Greenwater	1.4	84
Grotto	21	84
Hoquiam AP	26	79
Inchelium 2NW	0	92
John Day Dam	19	100

Location	Outdoor Design Temp Heating (°F)	Outdoor Design Temp Cooling (°F)
Kent	21	85
Kirkland	17	83
La Grande	23	88
Leavenworth	-3	93
Little Goose Dam	22	101
Long Beach 3NNE	25	77
Longview	24	87
Lower Granite Dam	14	98
Lower Monument Dam	18	103
Marysville	23	79
Metaline Falls	-1	89
Methow 2W	1	89
Nespelem 2S	-4	93
Newhalem	19	89
Newport	-5	92
Northport	2	92
Oak Harbor	16	74
Odessa	7	100
Olga 2SE	24	71
Olympia AP	17	85
Omak 2NW	3	90
Oroville	5	93
Othello	9	98
Packwood	16	90
Plain	-3	89
Pleasant View	16	98
Pomeroy	3	95
Port Angeles	28	75
Port Townsend	25	76
Prosser	12	97
Puyallup	19	86
Quilcene 2SW	23	83
Quinalt RS	25	84
Rainier, Longmire	15	85
Paradise RS	8	71
Raymond	28	81
Redmond	17	83
Republic	-9	87
Richland	11	101
Ritzville	6	99
Satus Pass	10	90

Location	Outdoor Design Temp Heating (°F)	Outdoor Design Temp Cooling (°F)
Seattle: SeaTac AP	24	83
Sedro Woolley 1E	19	78
Sequim	23	78
Shelton	23	85
Smyrna	8	102
Snohomish	21	81
Snoqualmie Pass	6	80
Spokane AP	4	92
Spokane CO	10	96
Stampede Pass	7	76
Stehekin 3NW	12	85
Stevens Pass	6	77
Tacoma CO	29	82
Tatoosh Island	31	63
Toledo AP	17	84
Vancouver	22	88
Vashon Island	28	78
Walla Walla AP	6	96
Waterville	1	88
Wellpinit	1	93
Wenatchee CO	10	92
Whidbey Island	11	71
Willapa Harbor	26	81
Wilson Creek	3	96
Winthrop 1WSW	-12	91
Yakima AP	11	94

**ABBREVIATIONS:**  
 AFB Air Force Base  
 AP Airport  
 CO City Office  
 RS Ranger Station  
 Typical: "4(miles)NE"

**WSR 20-01-048  
 PERMANENT RULES  
 OFFICE OF THE  
 INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2019-06—Filed December 9, 2019,  
 10:35 a.m., effective January 9, 2020]

Effective Date of Rule: Thirty-one days after filing.  
 Purpose: Update the references in Title 284 WAC to system for electronic rate and form filing general filing instructions.



Citation of Rules Affected by this Order: Amending WAC 284-38-100, 284-38-110, 284-44A-040, 284-44A-050, 284-46A-040, 284-46A-050, 284-58-025, and 284-58-030.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, 48.46.030.

Adopted under notice filed as WSR 19-20-110 on October 2, 2019.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, 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: December 9, 2019.

Mike Kreidler  
Insurance Commissioner

**AMENDATORY SECTION** (Amending WSR 14-05-017, filed 2/10/14, effective 3/15/14)

**WAC 284-38-100 Filing instructions that are incorporated into this chapter.** SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner must incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) ~~((The *Washington State SERFF Life and Disability Rate and Form Filing General Instructions* posted on the commissioner's web site, [www.insurance.wa.gov](http://www.insurance.wa.gov)))~~ State specific rate and form filing instructions posted on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)), including the: *Washington State SERFF Life and Disability Form Filing General Instructions*.

**AMENDATORY SECTION** (Amending WSR 14-05-017, filed 2/10/14, effective 3/15/14)

**WAC 284-38-110 General charitable gift annuity contract filing rules.** Filers and certificate holders must submit complete filings that comply with these rules:

(1) ~~((Filings must comply with the filing instructions and procedures in the *SERFF Industry Manual* available within the SERFF application and *Washington State SERFF Life and Disability Rate and Form Filing General Instructions*))~~ Filers must submit complete filings that comply with the

*SERFF Industry Manual* available within the SERFF application as well as state specific instructions applicable to the particular filing, as posted on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)), including the:

*Washington State SERFF Life and Disability Form Filing General Instructions*.

(2) Filers must submit every charitable gift annuity contract to the commissioner electronically using SERFF.

(a) Every charitable gift annuity contract filed in SERFF must be attached to the form schedule.

(b) All written correspondence related to a charitable gift annuity contract filing must be sent in SERFF.

(3) All filed contracts must be legible for both the commissioner's review and retention as a public record. Filers must submit new and replaced contracts to the commissioner for review in final printed form displayed in ten-point or larger type.

(4) Each contract must have a unique identifying number and a way to distinguish it from other editions of the same contract.

(5) Filers must submit a completed compliance checklist provided in the SERFF application with each new charitable gift annuity contract as supporting documentation. If the filing includes more than one new contract, the filer may:

(a) Complete a separate checklist for each charitable gift annuity contract; or

(b) Complete one checklist and submit an explanatory memorandum that lists any material differences between the filed contracts.

**AMENDATORY SECTION** (Amending WSR 12-01-103, filed 12/21/11, effective 1/21/12)

**WAC 284-44A-040 Filing instructions that are incorporated into this chapter.** SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) State specific rate and form filing instructions posted on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)), including the:

(a) *Washington State SERFF ((Health)) Life and Disability Form Filing General Instructions*; ~~((and))~~

(b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions*;

(c) *Washington State SERFF Health and Disability Form Filing General Instructions*; and

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions* (also called "plan management instructions").

AMENDATORY SECTION (Amending WSR 12-01-103, filed 12/21/11, effective 1/21/12)

**WAC 284-44A-050 General form and rate filing rules.** (1) Each form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

- (i) Be attached to the form schedule; and
- (ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and state specific instructions applicable to the particular filing, as revised from time to time and posted on the commissioner's web site (www.insurance.wa.gov) including the:

(a) Washington State SERFF ((~~Health~~) Life and Disability Form Filing General Instructions; ((~~or~~))

(b) Washington State SERFF Life, Health and Disability Rate Filing General Instructions;

(c) Washington State SERFF Health and Disability Form Filing General Instructions; and

(d) Washington State SERFF Health and Disability Binder Filing General Instructions (also called "plan management instructions").

(4) Filers must submit separate filings for each type of insurance.

AMENDATORY SECTION (Amending WSR 12-01-103, filed 12/21/11, effective 1/21/12)

**WAC 284-46A-040 Filing instructions that are incorporated into this chapter.** SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) State specific rate and form filing instructions posted on the commissioner's web site (www.insurance.wa.gov), including the:

(a) Washington State SERFF ((~~Health~~) Life and Disability Form Filing General Instructions; ((~~and~~))

(b) Washington State SERFF Life, Health and Disability Rate Filing General Instructions;

(c) Washington State SERFF Health and Disability Form Filing General Instructions; and

(d) Washington State SERFF Health and Disability Binder Filing General Instructions (also called "plan management instructions").

AMENDATORY SECTION (Amending WSR 12-01-103, filed 12/21/11, effective 1/21/12)

**WAC 284-46A-050 General form and rate filing rules.** (1) Each form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

- (i) Be attached to the form schedule; and
- (ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and state specific instructions applicable to the particular filing as revised from time to time and posted on the commissioner's web site (www.insurance.wa.gov), including the:

(a) Washington State SERFF ((~~Health~~) Life and Disability Form Filing General Instructions; ((~~or~~))

(b) Washington State SERFF Life, Health and Disability Rate Filing General Instructions;

(c) Washington State SERFF Health and Disability Form Filing General Instructions; and

(d) Washington State SERFF Health and Disability Binder Filing General Instructions (also called "plan management instructions").

(4) Filers must submit separate filings for each type of insurance.

AMENDATORY SECTION (Amending WSR 12-01-103, filed 12/21/11, effective 1/21/12)

**WAC 284-58-025 Filing instructions that are incorporated into this chapter.** SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) ((~~The~~)) State specific rate and form filing instructions posted on the commissioner's web site (www.insurance.wa.gov), including the:

(a) Washington State SERFF Life and Disability ((~~Rate and~~)) Form Filing General Instructions ((~~posted on the commissioner's web site (www.insurance.wa.gov))~~);

(b) Washington State Life, Health and Disability Rate Filing General Instructions;

(c) Washington State SERFF Health and Disability Form Filing General Instructions; and

(d) Washington State SERFF Health and Disability Binder Filing General Instructions (also called "plan management instructions").

AMENDATORY SECTION (Amending WSR 12-01-103, filed 12/21/11, effective 1/21/12)

**WAC 284-58-030 General form and rate filing rules.**

(1) Each credit, life or disability insurance form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must be attached to the form schedule.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and ~~((the *Washington State SERFF Life and Disability Rate and Form Filing General Instructions*))~~ state specific filing instructions applicable to the particular filing, as revised from time to time and posted on the commissioner's web site (www.insurance.wa.gov), including the:

(a) *Washington State SERFF Life and Disability Form Filing General Instructions*;

(b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions*;

(c) *Washington State SERFF Health and Disability Form Filing General Instructions*; and

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions (also called "plan management instructions")*.

(4) Filers must submit separate filings for each type of insurance. This section does not apply to:

(a) Credit insurance filings made under RCW 48.34.040; or

(b) Group insurance where different types of insurance are incorporated into a single certificate.

Launched by the North American Securities Administrators Association in 2014, EFD is an online system that has modernized and streamlined the process of submitting notice filings. It allows issuers to electronically submit Forms D concerning Rule 506 offerings to state securities regulators and pay filing fees. Currently, forty-seven jurisdictions either accept or mandate Rule 506 notice filings made through EFD. The EFD system is in wide use: In 2018, 68,438 new notice filings, 7,435 amendment filings, and 9,308 renewal filings for Rule 506 offerings were made through EFD in those jurisdictions utilizing the system. In Washington alone, the securities division received 3,412 Rule 506 notice filings through EFD in 2018, compared to 577 notice filings on paper.

Citation of Rules Affected by this Order: Amending WAC 460-44A-503.

Statutory Authority for Adoption: RCW 21.20.327, 21.20.450.

Adopted under notice filed as WSR 19-21-042 on October 9, 2019.

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 Non-governmental 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: December 10, 2019.

Charles Clark  
Director

**WSR 20-01-055**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Securities Division)

[Filed December 10, 2019, 10:42 a.m., effective January 10, 2020]

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

Purpose: The securities division hereby amends WAC 460-44A-503, which sets forth notice filing requirements for securities offerings made in reliance on federal Regulation D, Rule 506. The securities division amends WAC 460-44A-503 to require that notice filings and fees for securities offerings made in reliance on Rule 506 be submitted electronically through the North American Securities Administrators Association's online electronic filing depository (EFD) system. The securities division is also amending WAC 460-44A-503 to clarify that any amendments to previously filed notice filings concerning Rule 506 offerings must also be filed through EFD.

AMENDATORY SECTION (Amending WSR 19-04-084, filed 2/4/19, effective 3/7/19)

**WAC 460-44A-503 Filing of notice and payment of fee.** (1) An issuer offering or selling securities in reliance on WAC 460-44A-504 or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(b) and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506(b) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(c) and

RCW 21.20.327(2), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506(c) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(C) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

(D) For an offering in reliance on Securities and Exchange Commission Rule 147 or 147A and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147/Rule 147A and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, the initial notice on Securities and Exchange Commission Form D shall consist of the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 C.F.R. Part 232).

(c) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

(d) By filing for the exemption of WAC 460-44A-504, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

(c) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(5) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(b), or made in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(c), the issuer shall file notices and fees required by this section through the Electronic Filing Depository (EFD) system, operated by the North American Securities Administrators Association. Any amendments to previously filed notices of sales on Form D as permitted or otherwise required by this section shall be filed through EFD.

**WSR 20-01-063**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed December 10, 2019, 2:25 p.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

Purpose: This rule making is being proposed to update the Minimum Wage Act (MWA) exemptions for executive, administrative, professional (EAP), and outside salespersons. These proposed rules will:

- Provide definitions.
- Redefine duties test for an individual employed in an executive capacity.
- Redefine duties test for an individual employed in an administrative capacity.
- Redefine duties test for an individual employed in a professional capacity.
- Redefine duties test for outside salespersons.
- Redefine duties test and hourly rate for computer professionals.
- Establish salary thresholds for such exemptions.

Citation of Rules Affected by this Order: New WAC 296-128-505 and 296-128-545; and amending WAC 296-128-500, 296-128-510, 296-128-520, 296-128-530, 296-128-535, and 296-128-540.

Statutory Authority for Adoption: RCW 49.46.010 (3)(c).

Adopted under notice filed as WSR 19-12-102 [19-18-072] on June 4 [September 3], 2019.

Changes Other than Editing from Proposed to Adopted Version:

**WAC 296-128-530 Professional.**

- Subsection (2)(b), the department added language to this subsection to provide further clarity that "[t]he requirements of WAC 296-128-545 do not apply to the teaching professionals described in this subsection."

**WAC 296-128-535 Computer professionals.**

- Subsection (1)(c), the department added illustrative tables for the hourly threshold phase-in schedule provided in subsections (1)(c)(i)-(iii). These tables were added for clarity and ease of reference.
- Subsection (1)(c)(iv), the department added an additional alternative method to calculate employer size for purposes of the section. This methodology allows employers to use the rounded-average provided by employment security department for paid family and medical leave (PFML) purposes to comply with their MWA obligations. The department added this additional approach because it may reduce administrative burden for some employers.

**WAC 296-128-540 Outside salesperson.**

- Title: "Outside salesperson," the department updated the title of the subsection from "outside salesman" to "outside salesperson" to make the rule language gender neu-

tral and match the current wording of RCW 49.46.010 (3)(c).

- Subsection (4), the department added language to this subsection to provide further clarity that "the requirements of WAC 296-128-545 do not apply to the outside salespersons described in this subsection."

**WAC 296-128-545 Salary thresholds.**

- Subsections (1)-(9), for those EAP exemptions subject to salary threshold requirements, the department extended the implementation phase-in from six years to eight years. The department extended the salary threshold phase-in to give employers additional time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.
- Subsection (10), the department added an additional alternative method to calculate employer size for purposes of the section. This methodology allows employers to use the rounded-average provided by ESD for PFML purposes to comply with their MWA obligations. The department added this additional approach because it may reduce administrative burden for some employers.
- The department added illustrative tables for the salary threshold phase-in schedule provided in subsections (1)-(9). These tables were added for clarity and ease of reference.

A final cost-benefit analysis is available by contacting Ellen Saline, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-902-4597, fax 360-902-5300, email EAPRules@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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 6, 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: December 10, 2019.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 03-03-109, filed 1/21/03, effective 2/21/03)

**WAC 296-128-500 Purpose.** (1) This regulation is adopted in accordance with chapter 49.46 RCW to define the terms "bona fide executive, administrative, or professional capacity or in the capacity of outside ((salesman)) salesperson," to define salary basis and to establish a procedure for computing overtime pay.

(2) An employee who meets the definitions of executive, administrative, or professional and who is paid on a salary basis (except as provided for in WAC 296-128-510 (2)(b), 296-128-520 (1)(c) and (2)(b), 296-128-530((5)) (1)(b), (2)(b) and (3)(d), or 296-128-535 (1)(c)) is considered exempt from the requirements of chapter 49.46 RCW. A job title, or payment of a salary, does not in and of itself exempt a worker from ~~((the minimum wage and overtime))~~ these requirements.

#### NEW SECTION

**WAC 296-128-505 Definitions.** (1) "Customarily and regularly" means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

(2) "Educational establishment" means an elementary or secondary school system, an institution of higher education, or other educational institution.

(3) "Exclusive of board, lodging, or other facilities" means "free and clear" or independent of any claimed credit for noncash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging, or other facilities may not count towards the minimum salary amount required for an exemption.

(4) "Primary duty" means the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Because the burden of proving an exception to the definition of "employee" falls on the employer claiming the exception, the burden falls on the employer to demonstrate that the employees meet the primary duty requirement.

(a) Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Employees who spend more than fifty percent of their time performing exempt work will generally satisfy the primary duty requirement. Employees who do not spend more than fifty percent of their time performing exempt duties may meet the primary duty requirement if the other factors support such a conclusion. The burden falls on the employer to demonstrate that the employees meet the primary duty requirement.

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

**WAC 296-128-510 Executive.** (1) The term "individual employed in a bona fide executive ... capacity" in RCW 49.46.010 ~~((5))~~ (3)(c) shall mean any employee:

~~((1))~~ (a) Whose primary duty ~~((consists of the))~~ is management of the enterprise in which ~~((he))~~ the employee is employed or of a customarily recognized department or subdivision thereof; and

~~((2))~~ (b) Who customarily and regularly directs the work of two or more other employees ~~((therein))~~; and

~~((3))~~ (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring ~~((or))~~, firing ~~((and as to the))~~, advancement ~~((and))~~, promotion, or any other change of status of other employees ~~((will be))~~ are given particular weight; and

~~((4))~~ ~~Who customarily and regularly exercises discretionary powers; and~~

~~(5) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the work week to activities which are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this section: Provided, That this paragraph (5) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which he is employed; and~~

~~(6) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week exclusive of board, lodging, and other facilities: Provided, That an employee who is compensated on a salary rate of not less \$250 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.)~~ (d) Who is compensated on a salary basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide executive ... capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Who owns at least a bona fide twenty percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management; and

(b) The requirements of WAC 296-128-545 do not apply to the executive employees described in this subsection.

(3) For the purposes of this section:

(a) A "customarily recognized department or subdivision" must have a permanent status and a continuing function.

(i) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place.

(ii) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized department or subdivision of the enterprise.

(iii) Continuity of the same subordinate personnel is not essential to the existence of a recognized department or subdivision with a continuing function.

(b) "Management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

(c) "Two or more other employees" means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent. Hours worked by an employee cannot be credited more than once for different executives.

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

**WAC 296-128-520 Administrative.** (1) The term "individual employed in a bona fide ... administrative ... capacity" in RCW 49.46.010 ~~((5))~~ (3)(c) shall mean any employee:

~~((H))~~ (a) Whose primary duty ~~((consists of))~~ is the performance of office or nonmanual ~~((field))~~ work directly related to the management ~~((policies))~~ or general business operations of ~~((his))~~ the employer or ~~((his))~~ the employer's customers; ~~((or~~

~~(2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and~~

~~(3) Who customarily and regularly exercises)~~

(b) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance; and

~~((a) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in this regulation); or~~

~~(b) Who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; or~~

~~(e) Who executes under only general supervision special assignments and tasks; and~~

~~(4) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his hours worked in the work week to activities which are not directly and closely related to the performance of the work described in paragraphs (1) through (3) of this section; and~~

~~(a) Who is compensated for his services on a salary or fee basis at a rate of not less than \$155 per week exclusive of board, lodging, or other facilities; or~~

~~(b) Who, in the case of academic administrative personnel is compensated for his services as required by paragraph (4)(a) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he is employed. Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers; which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.)~~ (c) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide ... administrative ... capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof; and

(b) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which they are employed.

(3) For the purposes of this section:

(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer's customers. "Directly related to management or general business operations" means work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) "Discretion and independent judgment" means the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises. The exercise of discretion and independent judgment implies that the employee has the authority to make an independent choice, free from immediate direction or supervision. However, employees can exer-

cise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work.

(c) "Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

**WAC 296-128-530 Professional.** (1) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 ((5)) (3)(c) shall mean any employee:

((1)) (a) Whose primary duty consists of the performance of work:

((a)) (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction ((and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(b) Original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the intention, imagination, or talent of the employee; or

(e)); or

(ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor; and

(b) Who is compensated on a salary or fee basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) With a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in ((the school system or)) an educational establishment ((or institution)) by which ((he)) the employee is employed; and

((2) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(3) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(4) Who does not devote more than 20 percent of his hours worked in the work week to activities which are not an essential part of and necessarily incident to the work described in paragraphs (1) through (3) of this section; and

(5) Who is compensated for his services on a salary or fee basis at a rate of not less than \$170 per week exclusive of board, lodging, or facilities: Provided, That this paragraph (5) shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law, medicine, or dentistry and who is actually engaged in the practice thereof: Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.) (b) Who is compensated on a salary or fee basis. The requirements of WAC 296-128-545 do not apply to the teaching professionals described in the subsection.

(3) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) Who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; or

(b) Who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession. Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

(c) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(d) The requirements of WAC 296-128-545 do not apply to the law or medicine professionals described in this subsection.

(4) For the purposes of this section:

(a) "Customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The exemption is also available to employees who attained substantially the same advanced knowledge through a combination of work experience and intellectual instruction.

(b) "Field of science or learning" means the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various



types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status.

(c) "Recognized field of artistic or creative endeavor" includes such fields as music, writing, acting, and the graphic arts.

(d) "Work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

AMENDATORY SECTION (Amending WSR 98-02-027, filed 12/31/97, effective 2/1/98)

**WAC 296-128-535 ((~~Are professional computer employees exempt from the Washington Minimum Wage Act?~~) Computer professionals. ((1) Any employee who is a computer system analyst, computer programmer, software engineer, software developer or other similarly skilled worker will be considered a "professional employee" and will be exempt from the minimum wage and overtime provisions of the Washington Minimum Wage Act if:**

**(a) Their primary duty is of one of the following:**

**(i) Applying systems analysis techniques and procedures to determine hardware, software, or system functional specifications for any user of such services; or**

**(ii) Following user or system design specifications to design, develop, document, analyze, create, test or modify any computer system, application or program, including prototypes; or**

**(iii) Designing, documenting, testing, creating or modifying computer systems, applications or programs for machine operation systems; or**

**(iv) Any combination of the above primary duties whose performance requires the same skill level; and**

**(b) Their rate of pay is at least \$27.63 per hour.**

**(2) This professional exemption only applies to highly skilled employees who:**

**(a) Possess a high degree of theoretical knowledge and understanding of computer system analysis, programming and software engineering; and**

**(b) Have the ability to practically apply that theoretical knowledge and understanding to highly specialized computer fields; and**

**(c) Generally attain the necessary level of expertise and skill to qualify for an exemption through a combination of education and experience in the field; and**

**(d) Consistently exercise discretion and judgment in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and**

**(e) Engage in work that is predominantly intellectual and inherently varied in character as opposed to work that is routinely mental, manual, mechanical, or physical.**

**(3) While many employees who qualify for this exemption hold a bachelor's or higher degree, no degree is required for this exemption.**

**(4) This professional exemption does not apply to:**

**(a) Trainees or employees in entry level positions learning to become proficient in computer systems analysis, programming and software engineering; or**

**(b) Employees in computer systems analysis, programming and software engineering positions who have not attained a level of skill and expertise which allows them to generally work independently and without close supervision; or**

**(c) Employees engaged in the operation of computers; or**

**(d) Employees engaged in the manufacture, repair or maintenance of computer hardware and related equipment; or**

**(e) Employees covered by a collective bargaining agreement.) (1) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 (3)(c) shall also mean any employee:**

**(a) Who is a computer system analyst, computer programmer, software engineer, or other similarly skilled worker; and**

**(b) Whose primary duty consists of one of the following:**

**(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;**

**(ii) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;**

**(iii) The design, documentation, testing, creation or modification of computer programs related to machine operation systems; or**

**(iv) A combination of the aforementioned duties, the performance of which requires the same level of skills; and**

**(c) Who is compensated on a salary or fee basis, as provided in WAC 296-128-545, or on an hourly basis at a rate as follows:**

**(i) Beginning July 1, 2020, and through December 31, 2020:**

**(A) When the employee works for an employer with fifty or fewer employees, an amount not less than twenty-seven dollars and sixty-three cents per hour; and**

**(B) When the employee works for an employer with more than fifty employees, an amount not less than 2.75 times the minimum wage prescribed in RCW 49.46.020 per hour.**

**(ii) Beginning January 1, 2021, and through December 31, 2021:**

**(A) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.75 times the minimum wage prescribed in RCW 49.46.020 per hour; and**

**(B) When the employee works for an employer with more than fifty employees, an amount not less than 3.5 times the minimum wage prescribed in RCW 49.46.020 per hour.**

**(iii) Beginning January 1, 2022, and each following year, an amount not less than 3.5 times the minimum wage prescribed in RCW 49.46.020 per hour regardless of the size of the employer.**

**Table 1**

**Illustration of Hourly Basis Rates for Computer Professionals**

<u>Employer Size</u>	<u>July 1, 2020</u>	<u>January 1, 2021</u>	<u>January 1, 2022</u>
<u>1-50 Employees</u>	<u>\$27.63 per hour</u>	<u>Minimum wage x 2.75</u>	<u>Minimum wage x 3.5</u>
<u>51+ Employees</u>	<u>Minimum wage x 2.75</u>	<u>Minimum wage x 3.5</u>	<u>Minimum wage x 3.5</u>

Table 1 is provided for illustrative purposes only.

(iv) For the purposes of this section, the size of the employer is based solely on the number of Washington-based employees it employs at the time of the effective date for each subsection. Each Washington-based employee counts as an employee for the purposes of determining the size of the employer regardless of whether that employee works full-time or part-time. An employer classified as employing fewer than fifty employees under RCW 50A.10.030 (8)(c) may rely on that classification for purposes of determining the size of the employer under this section for the following calendar year.

(2) The exemption for employees in computer occupations does not include:

(a) Employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment; or

(b) Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in WAC 296-128-535 (1)(a).

AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

**WAC 296-128-540 Outside ~~((salesman))~~ salesperson.**

The term "individual employed in the capacity of outside ~~((salesman))~~ salesperson" in RCW 49.46.010 ~~((5))~~ (3)(c) shall mean any employee:

~~((1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business, as well as on the premises (where the employee regulates his own hours and the employer has no control over the total number of hours worked) in the following alternative activities:~~

~~(a) ~~(1)~~~~ (1) Whose primary duty is:

(a) Making sales; including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or

(b) ~~((1))~~ Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; or

(c) In demonstrating products or equipment for sale; or

(d) In the sale of services and performance of the service sold when the compensation to the employee is computed on a commission basis; and

(2) Whose hours of work of a nature other than that described in subsection (1)(a), (b), (c) and (d) of this section do not exceed 20 percent of the hours worked in the work week by nonexempt employees of the employer: Provided, that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work; ~~((and))~~

(3) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty; and

(4) Who is compensated by the employer on a guaranteed salary, commission or fee basis and who is advised of ~~((his))~~ the employee status as "outside ~~((salesman))~~ salesperson." The requirements of WAC 296-128-545 do not apply to the outside salespersons described in this section.

NEW SECTION

**WAC 296-128-545 Salary thresholds.** To qualify as an exempt employee under this section, an employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities, as follows:

(1) Beginning July 1, 2020, and through December 31, 2020, an amount not less than 1.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(2) Beginning January 1, 2021, and through December 31, 2021:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(3) Beginning January 1, 2022, and through December 31, 2022, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(4) Beginning January 1, 2023, and through December 31, 2023:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(5) Beginning January 1, 2024, and through December 31, 2024, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer.

(6) Beginning January 1, 2025, and through December 31, 2025:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(7) Beginning January 1, 2026, and through December 31, 2026, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer.

(8) Beginning January 1, 2027, and through December 31, 2027:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(9) Beginning January 1, 2026, and each following year, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer.

**Table 2**

**Illustration of Salary Threshold As Multipliers of Minimum Wage**

Effective Date	Employer Size	
	1-50 Employees	51+ Employees
July 1, 2020	1.25x	1.25x
January 1, 2021	1.5x	1.75x
January 1, 2022	1.75x	1.75x
January 1, 2023	1.75x	2.0x
January 1, 2024	2.0x	2.0x
January 1, 2025	2.0x	2.25x
January 1, 2026	2.25x	2.25x
January 1, 2027	2.25x	2.5x
January 1, 2028	2.5x	2.5x

Table 2 is provided for illustrative purposes only.

(10) For the purposes of this section, the size of the employer is based solely on the number of Washington-based employees it employs at the time of the effective date for each subsection. Each Washington-based employee counts as an employee for the purposes of determining the size of the employer regardless of whether that employee works full-time or part-time. An employer classified as employing fewer than fifty employees under RCW 50A.10.030 (8)(c) may rely on that classification for purposes of determining the size of the employer under this section for the following calendar year.

**WSR 20-01-070  
PERMANENT RULES  
OFFICE OF THE  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2019-08—Filed December 11, 2019, 10:54 a.m., effective January 11, 2020]

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

Purpose: Amend a rule that is intended to clarify the types of accounting records and accounting systems that are required by the state for insurance agencies.

Citation of Rules Affected by this Order: Amending WAC 284-12-080.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, 48.15.180, 48.17.480, and 48.17.600.

Other Authority: None.

Adopted under notice filed as WSR 19-20-113 on October 2, 2019.

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 Non-governmental 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: December 11, 2019.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-15-050, filed 7/16/12, effective 8/16/12)

**WAC 284-12-080 Requirements for separate accounts.** (1) The purpose of this section is to effectuate RCW 48.15.180, 48.17.600 and 48.17.480 with respect to the separation and accounting of premium funds by insurance producers, title insurance agents and surplus line brokers, collectively referred to in this section as "producers." Pursuant to RCW 48.30.010, the commissioner has found and hereby defines it to be an unfair practice for any producer, except as allowed by statute, to conduct insurance business without complying with the requirements of RCW 48.15.180, 48.17.600 and this section.

(2) All funds representing premiums as defined in RCW 48.18.170, which includes premium taxes and commissions, and return premiums received on Washington business by a producer in his or her fiduciary capacity on or after January 1, 1987, must be deposited in one or more identifiable separate accounts which may be interest bearing.

(a) A producer must not deposit funds other than premiums as defined in RCW 48.18.170, which includes premium

taxes and commissions and return premiums to the separate account except as follows:

- (i) Funds reasonably sufficient to pay bank charges;
- (ii) Funds a producer may deem prudent for advancing premiums, or establishing reserves for the paying of return premiums;
- (iii) Funds for contingencies as may arise in the business of receiving and transmitting premiums or return premiums; and
- (iv) Fees paid by insureds as permitted under RCW 48.17.270(2).

(b) A producer may commingle Washington premiums as defined in RCW 48.18.170, which includes premium taxes and commissions, and return premiums with those produced in other states, provided adequate records are maintained to identify the amounts for Washington business. There must be no commingling of any funds not permitted by this section.

(3)(a) The separate account funds must be:

(i) Deposited in a checking account, demand account, or a savings account in a bank, national banking association, savings and loan association, mutual savings bank, stock savings bank, credit union, or trust company located in the state of Washington. The account must be insured by an entity of the federal government; or

(ii) Invested in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States government is pledged for payment of principal and interest, and repurchase agreements collateralized by securities issued by the United States government. Insurers may, of course, restrict investments of separate account funds by their agent.

(b) A nonresident licensee, or a resident producer with affiliated operations under common ownership in two or more states, may utilize comparable accounts in another state provided such accounts otherwise meet the requirements of RCW 48.15.180, 48.17.600, 48.17.480 and this rule, and are accessible to the commissioner for purposes of examination or audit at the expense of the producer.

(4) Disbursements or withdrawals from a separate account must only be made for the following purposes, and in the manner stated:

(a) For charges imposed by a bank or other financial institution for operation of the separate account;

(b) For payments of premiums, directly to insurers or other producers entitled thereto;

(c) For payments of return premiums, which includes premium taxes, directly to the insureds or other persons entitled thereto;

(d) For payments of earned commissions and other funds belonging to the separate account's producer, directly to another account maintained by such producer as an operating or business account, but only to the extent that the premium funds for the policy or policies have actually been deposited into the separate premium account;

(e) For transfer of fiduciary funds, directly to another separate premium account which meets the requirements of this section;

(f) For payment of surplus line premium taxes to the state; and

(g) For payment of earned producer fees, but only to the extent that the fees were originally deposited in the separate premium account.

(5)(a) The funds deposited in the separate premium account must be paid promptly to the insurer or to another producer entitled thereto, in accordance with the terms of any applicable agreement between the parties.

(b) Return premiums received by a producer and the producer's share of any premiums required to be refunded, must be deposited promptly to the separate account. The funds must be paid promptly to the insured or person entitled thereto.

(6)(a) When a producer receives a premium payment in the form of an instrument, such as a check, which is made payable to an insurer, general agent or surplus line broker, the producer may forward the instrument directly to the payee if that can be done without endorsement or alteration. In this case, the producer's separate account is not involved because the producer has not "received" any funds.

(b) If the producer receives a premium payment in the form of cash or an instrument requiring endorsement by the producer, the premium must be deposited into the producer's separate account, unless the insurer entitled to such funds has established other procedures by written direction to a producer who is its appointed agent, which procedures:

(i) Recognize that the producer is receiving premiums directly on behalf of the insurer; and

(ii) Direct the producer to give adequate receipts on behalf of the insurer; and

(iii) Require deposit of the proceeds into the insurer's own account or elsewhere as permitted by the insurer's direction.

Thus, for example, an insurer may utilize the services of a licensed insurance producer, acting as a "captive agent," in the sale of its insurance and in the operation of its places of business, and directly receive payments intended for it without the payments being deposited into and accounted for through the licensed insurance producer's separate account. In these cases, for purposes of this rule, the insurer, as distinguished from the insurance producer, is actually "receiving" the funds and is immediately responsible therefor.

(c) When a producer receives premiums as a surplus line broker, licensed under chapter 48.15 RCW, after a binder or other written evidence of insurance has been issued to the insured, subject to the express written direction of the insurer involved, the premiums, except premium taxes, may be removed from the separate account.

(7) The commissioner recognizes the practical problems of accounting for the small amounts of interest involved spread over a large number of insurers and insureds. Therefore, absent any agreement between the producer and the insured or insurer to the contrary, interest earned on the deposits held in the separate account may be retained by the producer and used to offset bank charges, establish reserves, pay return premiums, or for any of the purposes listed in subsection (2) of this section, or the interest may be removed to the operating account.

(8) A producer must establish and maintain accounting records (~~and an appropriate accounting system~~) for all premiums as defined in RCW 48.18.170, which includes pre-

mium taxes and commissions, return premiums, and fees received by the producer, and must make the records available for inspection by the commissioner (~~(during regular business hours upon demand)~~) during the five years immediately after the date of the transaction.

(9) The accounting (~~(system used)~~) records must:

(a) Effectively isolate the separate premium account from any operating accounts (~~(and segment or identify)~~);

(b) Identify all Washington business from that of other states (~~(-All recordkeeping systems, whether manual or electronic must)~~);

(c) Provide an audit trail (~~(so that details)~~) to identify underlying (~~(the summary data, such as invoices, checks, and statements, may be identified and made available on request. The system must provide the means to trace any transaction back to its original source or forward to final entry, as is accomplished by a conventional double-entry bookkeeping system. When automatic data processing systems are used, a description of the system must be available for review by the commissioner. A balance forward system (as in an ordinary checking account) is not acceptable.)~~) documents; and

(d) Provide the origin and disposition of all premium transactions.

(10)(a) A producer that is a business entity may utilize one separate account for the funds received by its affiliated persons operating under its license, and the affiliated persons may deposit the funds they receive in this capacity directly into the separate account of their firm or corporation.

(b) Funds received by an insurance producer who is employed by and offices with another insurance producer may be deposited into and accounted for through the separate account of the employing insurance producer. This provision does not, however, authorize the insurance producer employee to represent an insurer as to which he or she has no appointment.

(11) Premium taxes deposited to the separate premium account are held in trust for the state and must be maintained in the account until paid to the state.

(12) The separate premium account is a fiduciary account and not the personal asset or account of the producer. A producer must not make withdrawals from the account except as provided in this section. The separate premium account must not be encumbered in any manner nor be pledged as collateral for a loan.

(13) For the purposes of this section, a commission is earned no earlier than when the policy is bound or effective.

**WSR 20-01-071  
PERMANENT RULES  
OFFICE OF THE**

**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2019-09—Filed December 11, 2019, 11:15 a.m., effective January 11, 2020]

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

Purpose: Amend WAC 284-43-5642 (3)(b)(i) to harmonize it with the requirement for the mental health/substance use disorder essential health benefits, and also the federal mental health parity requirement.

Citation of Rules Affected by this Order: Amending WAC 284-43-5642.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Other Authority: None.

Adopted under notice filed as WSR 19-20-111 on October 2, 2019.

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

Number of Sections Adopted at the Request of a Non-governmental 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: December 11, 2019.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-19-085, filed 9/20/16, effective 10/21/16)

**WAC 284-43-5642 Essential health benefit categories.** (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and outpatient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screening tests that are required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

(viii) Obesity or weight reduction or control other than:

(A) Covered nutritional counseling; and

(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as emergency medical ser-

vices the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations; and

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan must include hospitalization where mental illness is the primary diagnosis, and must classify these services under the mental health and substance use disorder benefits category.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

~~(i) (Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;~~

~~((ii))~~ Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

~~((iii))~~ (i) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

~~((iv))~~ (ii) Reversal of sterilizations; and

~~((v))~~ (iii) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

~~((e))~~ (d) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans:

(i) The base-benchmark plan allows a waiting period for transplant services; and

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services. Health plans must cover such services consistent with 42 U.S.C. 18116, Section 1557, section 15, chapter 33, Laws of 2019, RCW 48.30.300 and 49.60.040.

~~((f))~~ (e) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

~~((g))~~ (f) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, but nothing in this section requires an issuer to offer the benefit, consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment:

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, bereavement for children five years of age or younger, and gender dysphoria consistent with 42 U.S.C. 18116, Section 1557, RCW 48.30.300 and 49.60.040, unless this exclusion is preempted by federal law; and

(iii) Court-ordered mental health treatment which is not medically necessary.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.-292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits

imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures for women with reproductive capacity;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);



(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of

medically necessary health care services and health care devices designed to assist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X-ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X-ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multi-disciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an indi-

vidual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii)(A) Screening and tests for which the U.S. Preventive Services Task Force for Prevention and Chronic Care have issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in a recommendation or guideline, a plan may rely on the relevant evidence base and reasonable medical management techniques, based on necessity or appropriateness, to determine the frequency, method, treatment, or setting for the provision of a recommended preventive health service;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of nineteen, or covers dependent children age nineteen or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for a recommended preventive service, including providing multiple prevention and screening services at a single visit or across multiple visits.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan establishes specific limitations on services classified to the preventive services category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans.

Specifically, the base-benchmark plan excludes coverage for obesity or weight control other than covered nutritional counseling. Health plans must cover certain obesity-related services that are listed as A or B recommendations by

the U.S. Preventive Services Task Force, consistent with 42 U.S.C. 300gg-13 (a)(1) and 45 C.F.R. 147.130 (a)(1)(i).

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Section 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) This section applies to health plans that have an effective date of January 1, 2017, or later.

**WSR 20-01-074**  
**PERMANENT RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed December 11, 2019, 12:44 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The adopted amendments and new sections of rule implement relevant sections of EHB 1074 (chapter 15, Laws of 2019) that becomes effective January 1, 2020, regarding the legal age of sales for tobacco and vapor products. The adopted amendments and new sections of rule also implement relevant sections of E2SHB 1873 (chapter 445, Laws of 2019) regarding vapor taxation that became effective October 1, 2019.

Purpose: The adopted amendments and new sections added chapter 314-35 WAC, Vapor products, implement the directives of EHB 1074, regarding vapor product legal age for sales; and E2SHB 1873, regarding vapor taxation. The adopted rules increase the age of sale for vapor products; increase vapor product licensee record keeping requirements; clarify vapor product licensee requirements, including qualification, application denial, insurance requirements, license suspension and revocation; establish transportation requirements, establish the ability for the board to seize both cannabinoid vapor products and vapor products; establish forfeiture guidelines; and establish a penalty structure that aligns with the current board penalty reform framework. The adopted rules apply to existing and future vapor product distributors, retailers, and product delivery sellers.

Citation of Rules Affected by this Order: New WAC 314-35-015, 314-35-021, 314-35-023, 314-35-024, 314-35-025, 314-35-027, 314-35-045, 314-35-050, 314-35-053, 314-35-055, 314-35-060, 314-35-065, 314-35-070, 314-35-075, 314-35-080 and 314-35-085; and amending WAC 314-35-010, 314-35-020, 314-35-030, and 314-35-040.

Statutory Authority for Adoption: Chapter 70.345 RCW; RCW 82.24.250, 82.32.300.

Other Authority: EHB 1074 (chapter 15, Laws of 2019), E2SHB 1873 (chapter 445, Laws of 2019).

Adopted under notice filed as WSR 19-21-102 on October 16, 2019.

Changes Other than Editing from Proposed to Adopted Version: There were no changes other than minor editing from the proposed to adopted version.

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 7, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 9, Amended 4, Repealed 0.

Date Adopted: December 11, 2019.

Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-010 Vapor products—Introduction.**

This chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, delivery sales, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

NEW SECTION

**WAC 314-35-015 Definitions.**

The following definitions apply to this chapter in addition to the definitions provided in RCW 70.345.010, unless the context clearly indicates otherwise:

(1) "Control" means the direct power to order or direct the management of a licensee.

(2) "Domicile" means a person's true, fixed primary permanent home. It is the place where a person intends to remain and where the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(3) "Financial institution" means any bank, consumer loan company, credit union, savings bank, savings and loan association, trust company, or similar lending institution under the jurisdiction and registered with the department of financial institutions.

(4) "Profit" means the entire gross receipts from all sales and services made in, upon or from a licensed business.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-020 (~~Vapor product licenses required—Licensing requirements, denials, suspensions, and revocations.~~) Licensing requirements.** (1) ~~((The))~~

Vapor product license types are:

(a) Vapor product retailer's license~~((;))~~;

(b) Vapor product distributor's license~~((;))~~; and

(c) Vapor product delivery sale license. ~~((A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is))~~

(2) All vapor product license types are required to perform the functions ((of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not)) of the respective license type regardless of whether the vapor product contains nicotine.

~~((2) A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license cannot))~~ (3) A vapor product manufacturer must hold a vapor product distributor license if the manufacturer is engaged in the business of selling vapor products in Washington state,

and brings or causes to be brought into this state from outside the state any vapor products for sale consistent with RCW 70.345.010 (7) and (9).

~~(4) No vapor product license will be issued to a location that is a domicile or attached to a domicile, is not a fixed or stationary location, or both.~~

~~((3)) (a) The board will not approve any vapor product license for a location where board access without notice or cause is limited.~~

~~(b) The board may revoke any vapor product license that is issued to an attached structure or any other location inconsistent with this section.~~

~~(5) A person or entity must meet ((certain)) all qualifications ((to receive)) described in this chapter and chapter 70.345 RCW to be issued a vapor product license, and must continue to meet those qualifications to maintain the license.~~

~~((4) No more than)) (6) One license of each vapor product license type may be issued at a single location.~~

~~((5)) (7) A licensed location must be separated from other vapor product businesses, and not accessible through neighboring businesses.~~

~~((6)) (8) For the purpose of initial or renewal application review for a vapor product license, the board may conduct an investigation of all licenses it has issued to an applicant including, but not limited to, administrative violation history. The board reserves its discretion to issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the board.~~

~~(9) For the purpose of ((reviewing an)) initial or renewal application review for a vapor product license ((or considering the denial of a license application, the WSLCB)), the board may consider the applicant's prior criminal conduct ((of the applicant)) and criminal history record within the five years prior to the date the application is received by the ((WSLCB)) board. The ((WSLCB)) board uses the following point system to determine a person's qualification for a license((-The WSLCB will not normally issue a vapor product license to a person or entity that has accumulated eight or more points as determined in (a) through (c) of this subsection. If a case is pending for an alleged offense that would earn eight or more points in total for the applicant, the WSLCB will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the WSLCB may administratively close the application.));~~

(a) Felony conviction within the five years immediately prior to application: Twelve points.

(b) Gross misdemeanor conviction for violation of chapter 70.345, 82.24 or 82.26 RCW within the five years immediately prior to application: Twelve points.

(c) Other gross misdemeanor conviction within three years immediately prior to application: Five points.

(d) Misdemeanor conviction within three years immediately prior to application: Four points.

(e) Nondisclosure of any of the above: Four points each in addition to underlying points.

~~((7) For the purpose of reviewing an initial or renewal application for a vapor product license and considering the denial of a vapor product license application, the WSLCB~~

will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the WSLCB.

~~(8) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as provided in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.)~~ (10) The board may, at its discretion, issue a vapor product license to a person or entity that has accumulated eight or more points as described in this subsection.

(11) If an applicant has a pending case for an alleged offense that totals eight or more points, the board will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the board may administratively close the application.

(12) The board may conduct a final inspection of the proposed licensed premises to determine if the applicant has met the requirements of the licensure requested.

#### NEW SECTION

**WAC 314-35-021 Insurance requirements.** Vapor product licensees must obtain insurance coverage described in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the vapor product licensees. Vapor product licensees must furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance may result in license cancellation.

(1) Commercial general liability insurance: The licensee must at all times carry and maintain commercial general liability insurance or commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. The limits of liability insurance must not be less than one million dollars.

(a) This insurance must cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants.

(b) The insurance must also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section must be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance

policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The state and its employees, agents, and volunteers must be named as an additional insured on insurance policies required under this section. All policies must be primary over any other valid and collectable insurance.

#### NEW SECTION

**WAC 314-35-023 Vapor product license transfer and relocation.** (1) A license may not be transferred or relocated without prior approval of the board.

(a) A licensee must notify the board at least ten business days before any ownership changes or location changes of the licensed vapor products business. Failure to notify the board without applying for a separate license for a new location will be treated as operating without a license.

(b) If a licensee fails to notify the board prior to moving a location, the licensee may be suspended until the new location meets the requirements and qualifications for a vapor products license.

(c) License relocation may be requested by contacting board enforcement by email or telephone.

(2) As a condition of licensure, all vapor products licensees must:

(a) Keep premises where vapor products are stored, manufactured, and offered for sale in a clean and sanitary condition.

Examples of clean and sanitary conditions include, but are not limited to:

(i) Vapor product mixing areas separate from restroom;

(ii) Storage of cleaning agents separate from consumable vapor products;

(iii) Vapor products not in contact or stored with or near hazardous materials and products.

(b) Label all packages and containers that contain nicotine with the nicotine content of the product until the product is packaged and labeled in finished packaging for sale consistent with the packaging and labeling requirements described in RCW 70.345.075.

(c) Vapor product licensees may only purchase vapor products from board licensed vapor product locations.

#### NEW SECTION

**WAC 314-35-024 Vapor product packaging and labeling.** (1) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers must label the vapor product with all of the following:

(a) A warning regarding the harmful effects of nicotine;

(b) A warning to keep the vapor product away from children;

(c) A warning that vaping is illegal for those under the legal age to use the product; and

(d) Except as provided in WAC 314-35-023 of this section, the amount of nicotine in milligrams per milliliter of liquid along with the total volume of the liquid contents of the product expressed in milliliters.

(2) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers must comply

with any other packaging and labeling requirements including, but not limited to, specific warnings as mandated by the United States Food and Drug Administration, any other federal agency, or any agency of state of Washington including, but not limited to, the Washington state department of health.

NEW SECTION

**WAC 314-35-025 Vapor product applicant and licensee hearing rights.** (1) If the board denies a vapor product license application or renewal, or suspends or revokes a license for any of the reasons listed in this chapter or in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions of chapter 34.05 RCW.

(2) Appeals under this chapter will be conducted by a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

NEW SECTION

**WAC 314-35-027 Qualifying for a vapor product license.** A vapor product license must be issued in the name(s) of the true party(ies) of interest.

(1) True parties of interest must qualify to be listed on the license, consistent with RCW 70.345.020. For purposes of this chapter, "true party of interest" means:

Entity	True Party(ies) of Interest
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	All general partners and spouses. All limited partners and spouses.
Limited liability company	All members and spouses. All managers and spouses.
Privately held corporation	All corporate officers (or persons with equivalent title) and spouses. All stockholders.
Publicly held corporation	All corporate officers (or persons with equivalent title) and spouses. All stockholders.
Multilevel ownership structures	All persons and entities that make up the ownership structure.
Any entity or person(s) expecting or receiving profits, or part thereof, or exercising control over a licensed business	Any entity or person who is in receipt of, or has the right to receive profits, or part thereof, from the licensed business during any full or partial calendar or fiscal year.

Entity	True Party(ies) of Interest
Any entity or person(s) who exercise(s) control over the licensed business in exchange for money or expertise	Any entity(s) or person(s) and spouses who exercise(s) control over the licensed business in exchange for money or expertise.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) The board may conduct an investigation of any person or entity who exercises any control over the applicant's or licensee's business operations, including a financial investigation, a criminal history background check, or both. When an entity other than the owner controls daily business operations consistent with an agreement between the owner and the operating entity, the operating entity becomes a true party of interest. The operating entity must meet the same qualifications and requirements as a licensee.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-030 Vapor product licensee record-keeping requirements.** (1) Vapor product (~~((distributors and manufacturers))~~) licensed locations must keep complete, legible and accurate records, including itemized invoices, at each place of business for that place of business of vapor products held, purchased, manufactured, brought ~~((in))~~ into or caused to be brought ~~((in from without))~~ into the state from outside the state, or shipped or transported to ((retailers in this state, and of all sales of vapor products made. These)) locations in Washington state, or sold. The required records must show:

- (a) The names and addresses of purchasers((s));
- (b) The names and addresses of sellers;
- (c) The inventory of all vapor product((s)) (to include the description of the product, size (mL), brand); and
- (d) Other pertinent papers and documents relating to the purchase, sale, or disposition of vapor products. ((All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.))

(2) Vapor product licensees must render with each sale of vapor products to persons other than ultimate consumers itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, brand, size (mL), and all prices. ~~((Vapor product licensees must preserve legible copies of all such invoices for five years from the date of sale.))~~

(3) ~~((Every licensed))~~ Vapor product ((retailer)) licensees must ((procure)) obtain itemized invoices of all vapor products purchased. The invoices must show the seller's name and address, the date of purchase, brand, size (mL), and all prices and discounts.

~~(4) ((The licensed vapor product retailer must keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section must be preserved for five years from the date of purchase.)) Vapor product licensees must make all records available for inspection upon request of the board or its duly authorized agents or employees, and may not interfere with location inspection, record inspection, or both. The board or its duly authorized agents or employees may enter any vapor product licensed location at any time without a search warrant to inspect the premises for:~~

~~(a) Required invoices as described in this section; and~~

~~(b) Regulated products contained in the licensed location.~~

~~(5) All invoices, documents, or other records required under the provisions of this chapter must be legible, preserved, and retained for five years from the date of the invoices, documents, or other records at the place of the business where the vapor products are sold or stored.~~

~~(6) Vapor product licensees must provide the board, any of its agents or employees free, unhindered access to the vapor product licensed location.~~

~~(7) A licensed manufacturer with representatives who sell or distribute the manufacturer's vapor products must provide the board with a list of the names and addresses of all such representatives at an email address established by the board and maintained on the board's website. The licensed manufacturer must ensure that the list of representatives who sell or distribute its vapor products is kept current.~~

~~(a) A manufacturer's representative is not authorized to distribute or sell vapor products unless the manufacturer holds a valid distributor's license under chapter 70.345 RCW; and~~

~~(b) A manufacturer's representative must carry a copy of the hiring distributor's license at all times when selling or distributing the manufacturer's vapor products.~~

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-040 Age-restricted vapor products retailer licensed locations.** (1) Age-restricted vapor products retailer licensed locations must register as such with the ~~((WSLCB))~~ board by indicating at the time of application or within ten days prior to becoming an age-restricted location. A vapor product retail licensee must inform the ~~((WSLCB))~~ board in writing ten business days prior to a change in the age-restriction status. The board will make the appropriate age-restricted status form ~~((is))~~ available on ~~((the WSLCB))~~ its website.

~~((Holders of a))~~ Vapor product retailer ~~((license))~~ licensed locations where entry into the licensed premises is age-restricted to persons ~~((eighteen))~~ twenty-one years of age or older must post signs provided by the ~~((WSLCB))~~ board at each entrance point to indicate the premises is age-restricted. Such signs must not be removed at any time ~~((during opening hours of the licensed vapor products retail establishment)).~~

~~(3) All vapor product licensed locations that allow vapor products to be consumed on the premises, including vapor~~

product tastings as provided in RCW 70.345.100, must be restricted to persons age twenty-one and over at all times.

(4) Any restricted location as described above may not employ persons under the age of twenty-one.

#### NEW SECTION

**WAC 314-35-045 Vapor product licensee responsibilities.** (1) Vapor product licensees and their employees must conduct the licensed premises in compliance with all applicable statutes as they now exist or may later be amended including, but not limited to, Titles 9, 9A RCW, chapters 69.50, 70.155, 70.158, 70.345, 82.24, and 82.26 RCW.

(2) Licensees have the responsibility to control their conduct and the conduct of employees and patrons at all times. Except as otherwise provided by law, licensees and employees may not:

(a) Be disorderly, apparently intoxicated, or under the influence of a controlled substance, on the licensed premises;

(b) Permit any disorderly person to remain on the premises;

(c) Engage in or allow behavior that provokes conduct that may endanger public safety.

#### NEW SECTION

**WAC 314-35-050 Vapor product license suspensions and revocations.** (1) The board may revoke or suspend a retailer, distributor, or delivery seller license issued under chapter 70.345 RCW and this chapter upon sufficient cause showing a violation of chapter 70.345 RCW, this chapter, or both.

(2) Any retail location license issued under chapter 82.24 or 82.26 RCW to a person whose vapor product retailer license or licenses have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section and RCW 70.345.170.

(3) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of two years of the license or licenses, unless the license was revoked pursuant to RCW 70.345.180 (2)(e). The license or licenses may be approved by the board if it finds that the licensee has complied with the provisions of this chapter.

(4) A person whose license has been suspended or revoked may not sell vapor products or permit vapor products to be sold during the period of suspension or after revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form. If the suspension or revocation involves licenses issued under chapter 82.24 or 82.26 RCW, the person is prohibited from selling cigarette and tobacco products consistent with WAC 314-34-020 and RCW 26.28.080.

(5) On the date a vapor product license suspension goes into effect a board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the board due to a violation of a board law or rule.

(6) During the period of vapor product license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable vapor product laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises has been closed for any reason other than what is stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than what is stated in the board's suspension notice.

(7) During the period of vapor product license suspension:

(a) A vapor product licensee may operate their business provided there is no sale, delivery, service, consumption, removal, or receipt of vapor products.

(b) If a vapor product license is suspended, revoked, or both, the location's licenses under chapter 82.24 or 82.26 RCW if held are also revoked, consistent with subsection (4) of this section.

(8) If the board makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license for the reasons listed in this section, or as provided in this chapter or chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions described in chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

(9) Any determination and order by the board, and any order of suspension or revocation by the board of the license issued under chapter 70.345 RCW or this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal in the superior court of Thurston County. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

#### NEW SECTION

**WAC 314-35-053 Transportation.** (1) No person may transport or cause to be transported vapor products for sale, except:

(a) A licensed distributor under chapter 70.345 RCW;

(b) A licensed retailer under chapter 70.345 RCW;

(c) A seller with a valid delivery sale license under chapter 70.345 RCW; or

(d) A person who has given the board advance notice of the commencement of transportation of vapor products.

(2) When transporting vapor products for sale, the person must have, in their actual possession, invoices or delivery tickets for the vapor products that must show:

(a) The true name and address of the consignor or seller;

(b) The true name and address of the consignee or purchaser; and

(c) The number of items, size of each item in mL, and brands of the vapor products being transported.

(3) In any case where the board has knowledge or reasonable grounds to believe that any vehicle is transporting

vapor products in violation of this section or chapter 70.345 RCW, the board is authorized to stop the vehicle and to inspect for contraband vapor products.

#### NEW SECTION

**WAC 314-35-055 Seizure of cannabinoid vapor products.** (1) Any vapor product given or offered for sale containing cannabinoids is prohibited by RCW 70.345.030.

(2) Any vapor product offered for sale that is labeled or marketed as containing cannabinoid, synthetic cannabinoid, cathinone, or methcathinone may be seized without a warrant by an agent of the board and subject to forfeiture.

(3) It is prima facie evidence that the vapor product contains a cannabinoid if the packaging or labeling in which it is offered for sale contains language or depictions that the product is or contains a cannabinoid.

#### NEW SECTION

**WAC 314-35-060 Seizure of vapor products.** (1) Any vapor products in the possession of a person acting as a distributor or retailer of vapor products, and who is not licensed as required under this chapter, chapter 70.345 RCW or both, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the board. Any vapor products seized under this subsection are deemed forfeited.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, retailer, or a manufacturer's representative, and who transports vapor products for sale without having provided notice to the board as required under WAC 314-35-053, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of vapor products under this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the



board upon process issued by any superior court or district court having jurisdiction over the property.

(5) Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant; or

(b) The board has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(6) This section may not be construed to require the seizure of vapor products if the board's agent reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(7) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

**NEW SECTION**

**WAC 314-35-065 Forfeiture.** (1) In all cases of seizure of any vapor products made subject to forfeiture under this chapter, the board must proceed as provided in RCW 82.24.135.

(2) When vapor products are forfeited under this chapter, the board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the vapor products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board must require the purchaser to pay the proper amount of any tax due. The proceeds of the sale must be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody,

advertising, and court costs. The balance of the proceeds must be distributed consistent with chapter 70.345 RCW.

(3) The board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter.

**NEW SECTION**

**WAC 314-35-070 Penalty structure.** (1) The board determines if a penalty will be imposed. Penalties are based on the severity of the violation in the following categories:

(a) Category I: Violations that create a direct or immediate threat to public health, safety, or both;

(b) Category II: Violations that create a potential threat to public health, safety, or both; and

(c) Category III: Regulatory violations.

(2) For purposes of assessing penalties, only violations occurring in the three-year time period immediately preceding the date of the violation will be considered unless otherwise provided in the chapter.

(3) The board may, at its discretion, deviate from the prescribed penalties herein consistent with RCW 70.345.180. Such deviations will be determined on a case-by-case basis, considering mitigating or aggravating factors.

(a) Mitigating factors may result in a waiving or lowering of fines, civil penalties, imposition of a fine in lieu of suspension, or fewer days of suspension. Mitigating factors may include demonstrated business policies and practices that may reduce risk to public health and safety.

(b) Aggravating factors may result in increased days of suspension, increased monetary penalties, cancellation, or nonrenewal of a vapor products license. Aggravating factors may include obstructing an investigation, business operations, behaviors, or both, that increase risk to public health and safety.

**NEW SECTION**

**WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both.**

**Category I: Violations that create a direct or immediate threat to public health, safety, or both.**

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Sales to persons under twenty-one, allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting.  RCW 26.28.080 RCW 70.345.100 WAC 314-35-040	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years

<b>Violation Type</b>	<b>1st Violation in a three-year period</b>	<b>2nd Violation in a three-year period</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. RCW 70.345.030 WAC 314-35-055	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both. Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer. RCW 26.28.080	\$50 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty

NEW SECTION

**WAC 314-35-080 Category II—Violations that create a potential threat to public health, safety, or both.**

**Category II: Violations that create a potential threat to public health, safety, or both.**

<b>Violation Type</b>	<b>1st Violation in a three-year window</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Failure to comply with child resistant packaging requirements. RCW 70.345.130	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension

<b>Violation Type</b>	<b>1st Violation in a three-year window</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Failure to comply with product labeling requirements. RCW 70.345.075	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Vapor products purchased from an unlicensed source. WAC 314-35-023	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
True party of interest. RCW 70.345.020 WAC 314-35-020 WAC 314-35-027	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Operating without a valid license. RCW 70.345.030	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Transportation violations. WAC 314-35-053	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension

**NEW SECTION**

**WAC 314-35-085 Category III—Regulatory violations.**

**Category III: Regulatory Violations.**

<b>Violation Type</b>	<b>1st Violation in a three-year window</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
Noncompliance with record keeping requirements. WAC 314-35-020 WAC 314-35-030	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to post required signs. RCW 70.345.070 WAC 314-35-040	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Selling or distributing vapor products from self-serve displays or without the intervention of a store employee. RCW 70.345.080	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension

Violation Type	1st Violation in a three-year window	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Noncompliance with mail or internet sales requirements. RCW 70.345.090	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to verify age or accepting unpermitted forms of identification. RCW 70.345.120	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to comply with license suspension or revocation. WAC 314-35-050	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Giving or distributing vapor products without charge by coupon, unless exempted. RCW 70.345.110	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension

**WSR 20-01-075  
PERMANENT RULES  
HEALTH CARE AUTHORITY**

[Filed December 11, 2019, 12:48 p.m., effective January 11, 2020]

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

Purpose: The agency is amending these rules to align with ESHB 1109, section 211(14), 66th legislature, 2019 regular session. The agency is extending the date for rate enhancements to sole community hospitals from July 1, 2018, through June 30, 2021. During the time, the agency multiplies a hospital's specific conversion factor and per diem rates by 1.50. Starting July 1, 2021, the agency multiplies a hospital's specific conversion factor and per diem rates by 1.25.

Citation of Rules Affected by this Order: Amending WAC 182-550-3830 and 182-550-7500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESHB 1109, section 211(14), 66th legislature, 2019 regular session.

Adopted under notice filed as WSR 19-22-096 on November 6, 2019.

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 Non-governmental 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 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: December 11, 2019.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-09-022, filed 4/11/18, effective 5/12/18)

**WAC 182-550-3830 Adjustments to inpatient rates.**

(1) The medicaid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates at rebase:

- (a) Wage index adjustment;
- (b) Direct graduate medical education (DGME); and
- (c) Indirect medical education (IME).

(2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

(3) The agency does not update the statewide average DRG factor between rebasing periods, except:

- (a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and
- (b) When directed by the legislature.

(4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's website as of May 1st of the rate-setting year.

~~(7)(a) Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25 if the hospital meets the criteria in this subsection.~~

~~(b))~~ The agency considers an in-state hospital to qualify for ~~(the)~~ a rate enhancement if all of the following conditions apply. The hospital must:

~~((i))~~ (a) Be certified by CMS as a sole community hospital as of January 1, 2013;

~~((ii))~~ (b) Have a level III adult trauma service designation from the department of health as of January 1, 2014;

~~((iii))~~ (c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011; ~~(and~~

~~(iv))~~ (d) Be owned and operated by the state or a political subdivision(;

~~(v))~~; and

(e) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

(8) If an in-state hospital qualifies for the rate enhancement in subsection (7) of this section, effective:

(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25.

(b) July 1, 2018, through June 30, 2021, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.50.

(c) July 1, 2021, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25.

AMENDATORY SECTION (Amending WSR 18-16-059, filed 7/26/18, effective 8/26/18)

**WAC 182-550-7500 OPPS rate.** (1) The medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using all of the following:

(a) A base conversion factor established by the agency;

(b) An adjustment for direct graduate medical education (DGME); and

(c) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) when the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) Base conversion factors. The agency calculates the base enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its website.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion of the base rate by multiplying the base rate by the labor factor established by medicare; then

(b) Multiplying the amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS when the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) DGME. The agency obtains the DGME information from the hospital's most recently filed medicare cost report as available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency may remove the hospital's DGME adjustment.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

$$\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1\text{-DGME})$$

(6) The agency considers an in-state hospital a sole community hospital if all the following conditions apply. The hospital must:

(a) Be certified by CMS as a sole community hospital as of January 1, 2013.

(b) Have a level III adult trauma service designation from the department of health as of January 1, 2014.

(c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.

(d) Be owned and operated by the state or a political subdivision.

(7) If the hospital meets the agency's sole community hospital (SCH) criteria listed in subsection (6) of this section, effective:

(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor by 1.25;

(b) July 1, 2018, through June 30, (~~2019~~) 2021, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.50;

(c) July 1, (~~2019~~) 2021, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.25.

(8) The formula for calculating a sole community hospital's final conversion factor is:

$$[\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1-\text{DGME})] \times \text{SCH Factor}$$

**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 20-01-079**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed December 11, 2019, 4:05 p.m., effective January 11, 2020]

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

Purpose: To implement sections 307-309, chapter 295, Laws of 2019 (HB 1139) Educator Workforce Supply, relating to postretirement employment.

Citation of Rules Affected by this Order: Amending WAC 415-02-030, 415-02-325, 415-110-710, 415-112-525, and 415-113-300.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 19-20-118 on October 2, 2019.

Changes Other than Editing from Proposed to Adopted Version: WAC 415-112-525 (6)(a) describes newly enacted provisions that allow retirees to work in a nonadministrative position on or after May 8, 2019, while still receiving a retirement benefit based on the 2008 early retirement factors (ERF). Subsection (6)(b) describes prior statutory provisions that allowed a 2008 ERF retiree to work only in the capacity as a substitute teacher between June 10, 2016, and May 7, 2019, while receiving a retirement benefit. A stakeholder expressed concern that subsection (6)(b) could be mistakenly interpreted to mean that a 2008 ERF retiree could no longer receive their retirement benefit while working as a substitute teacher after May 7, 2019. WAC 415-112-525 (6)(b) has therefore been revised to clarify that substitute teaching after May 7, 2019, will continue to be allowed under the provisions of subsection (6)(a).

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 5, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: December 11, 2019.

Tracy Guerin  
Director

**AMENDATORY SECTION** (Amending WSR 16-17-047, filed 8/11/16, effective 9/11/16)

**WAC 415-02-030 Definitions.** This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is **not** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.-010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

(19) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(20) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(21) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(22) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(23) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(24) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(25) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(26) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(27) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work in a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(a) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or

(b) Does not evaluate staff.

(28) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

~~((28))~~ (29) **Participant** means an eligible employee who participates in a deferred compensation plan.

~~((29))~~ (30) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

~~((30))~~ (31) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

~~((31))~~ (32) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

~~((32))~~ (33) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

~~((33))~~ (34) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

~~((34))~~ (35) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

~~((35))~~ **(36) Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

~~((36))~~ **(37) Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

~~((37))~~ **(38) Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

~~((38))~~ **(39) PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((39))~~ **(40) Public record** is defined in RCW 42.17.020(41).

~~((40))~~ **(41) Restoration** is the process of restoring a member's service credit for prior periods.

~~((41))~~ **(42) Retirement system employer - See "employer."**

~~((42))~~ **(43) Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((43))~~ **(44) Separation date** is the date a member ends employment in a position eligible for retirement.

~~((44))~~ **(45) SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((45))~~ **(46) Split account** is the account the department establishes for a member or retiree's ex-spouse.

~~((46))~~ **(47) Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

~~((47))~~ **(48) Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((48))~~ **(49) Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

~~((49))~~ **(50) TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((50))~~ **(51) The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

~~((51))~~ **(52) WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

AMENDATORY SECTION (Amending WSR 17-04-050, filed 1/26/17, effective 2/26/17)

**WAC 415-02-325 2008 Early retirement factors. (1) What are the 2008 early retirement factors?** In chapter 491, Laws of 2007, the legislature created optional early retirement factors (ERFs) for members retiring on or after September 1, 2008. Referred to as the 2008 ERFs, these optional factors are available to Plan 2 and Plan 3 members of the following retirement systems: Public employees' retirement system (PERS); school employees' retirement system

(SERS); and teachers' retirement system (TRS). The 2008 ERFs provide a higher retirement benefit than the three percent ERFs, but impose stricter return to work rules.

**(2) If I retire before age sixty-five using the 2008 ERFs, how will my benefit be calculated?** Your normal (age sixty-five) retirement benefit will be multiplied by the factor shown in the following table, based on your age at the time of your early retirement.

Retirement Age	2008 Early Retirement Factor
55	0.80
56	0.83
57	0.86
58	0.89
59	0.92
60	0.95
61	0.98
62	1.00
63	1.00
64	1.00
65	1.00

**(3) Am I eligible for the 2008 ERFs?** Plan 2 and Plan 3 members of PERS, SERS, and TRS, who entered membership prior to May 1, 2013, must be at least age fifty-five and have at least thirty service credit years to be eligible for retirement using the 2008 ERFs.

**(4) What are the return to work rules if I retire under the 2008 ERFs?** The legislation that created the 2008 ERFs also established restrictions on retirees who return to an employer after selecting the 2008 ERF option. The 2008 ERF return to work restrictions are a broad prohibition to avoid incentives for early retirement while the member continues to collect payments from a public employer before reaching full retirement age. A retiree's benefit will stop if they retire under the 2008 ERFs and return to a DRS-covered employer, in any capacity for which they receive compensation, before age sixty-five.

**(5) What are the exceptions to the return to work rules if I retire from SERS or TRS under the 2008 ERFs?** Under legislation effective May 8, 2019, you may return to work in a nonadministrative position as defined in WAC 415-02-030 for a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school without suspension of your benefit until you exceed eight hundred sixty-seven hours in a calendar year.

**(6) What organizations are DRS-covered employers?** For the purpose of this section, a DRS-covered employer is any organization that employs one or more members of any retirement system administered by DRS. This includes, but is not limited to, public agencies, boards and commissions, counties, cities and towns, public schools and educational service districts, higher education institutions, libraries and utilities throughout the state. It also includes first class cities that maintain separate retirement systems but also employ



members of the law enforcement officers' and fire fighters' retirement system.

~~((6))~~ **(7) What types of compensation impact my benefit if I retire under the 2008 ERFs and return to work before age sixty-five?** The legislature defines "employment with an employer" for purposes of the 2008 ERF return to work restrictions as including "any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer." The phrase "any other similar compensated relationship with any employer" includes both employment with a DRS-covered employer and any other type of compensated relationship with a DRS-covered employer.

**Example:**

**Bob, an attorney for the city of Olympia, retires using the 2008 ERFs. Can Bob receive his pension if he subsequently provides legal services to Spokane County?** It depends on whether Bob's compensated relationship with Spokane County meets the definition of "employment with an employer." Below are examples of the different types of potential compensated relationships Bob could have, and whether those relationships would be considered "employment with an employer."

**Personal service contract.** If Bob has a personal service contract with Spokane County to provide legal services, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he provides this compensated service to Spokane County.

**Sole proprietorship or partnership. 2008 ERF retiree is sole proprietor or partner.** If Bob is a sole proprietor or a partner of a law firm; the firm contracts with Spokane County to provide services; and Bob or any other employee of the law firm provides legal services to Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he or his firm provides service to Spokane County under the contract.

**Corporation. 2008 ERF retiree is a shareholder of a publicly traded corporation.** If Bob is a shareholder of a publicly traded corporation and the corporation contracts with Spokane County to provide services, then Bob would not be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

**Corporation. ERF retiree is an employee of the corporation.** If Bob is working for the corporation solely on matters unrelated to the corporation's contract with Spokane County, Bob is not in a "similar compensated relationship" with Spokane County. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

If Bob is working for the corporation on matters that are related to the corporation's contract with Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer."

~~((7))~~ **(8) What is considered compensation?** Compensation is financial consideration for work performed, regardless of whether that consideration is paid as a salary, hourly amount, or flat dollar amount. A reimbursement is not considered compensation.

**Examples:**

~~(Basketball referee)~~ **Independent contractor** - A TRS Plan 2 member retires using the 2008 ERFs at age 62. He receives a \$2,500 monthly pension payment. When he is 64, he ~~(referees one high school basketball game)~~ enters a contract to provide training for school employees. He receives a flat dollar amount of \$50 ~~(for refereeing the game)~~ per trainee. Under the 2008 ERF return to work restrictions, he has ~~(returned to the employment of an employer and)~~ received compensation from a DRS-covered employer. Therefore, his \$2,500 pension benefit is forfeited for the month he ~~(earned the \$50 payment)~~ performed the services.

**Board/commission** - A PERS Plan 3 member retires using the 2008 ERFs at age 60. She receives a \$1,200 monthly pension payment. When she is 62, she is elected as a member of the local school board. As a school board member she does not receive a salary; however, she does receive reimbursements for travel and food. Under the 2008 ERF return to work restrictions, she is able to continue to receive her pension while receiving those reimbursements.

~~((8))~~ **(9) What are a DRS employer's responsibilities for determining whether an employee is a 2008 ERF retiree?** RCW 41.50.139 requires DRS employers to obtain, in writing, the retirement status of all new employees. If the employer fails to report a 2008 ERF retiree's retirement status to the department, the employer is liable for any overpayments that may occur.

~~((9))~~ **(10) What are a DRS employer's responsibilities for determining whether a contractor's employees are 2008 ERF retirees?** DRS employers who hire a contractor to perform services for their organization will need to inquire with the contractor and confirm with DRS to determine if any of the workers providing services to the DRS employer through the contractor retired using the 2008 ERFs, or if the company is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. See WAC 415-108-710 (PERS), 415-110-710 (SERS), and 415-112-525 (TRS).

**AMENDATORY SECTION** (Amending WSR 16-17-047, filed 8/11/16, effective 9/11/16)

**WAC 415-110-710 What are the return to work rules for SERS Plan 2 and Plan 3? (1) How soon can I return to work after I retire without impacting my SERS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your SERS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) Your only employment is as an elected official and you end your SERS membership under RCW 41.35.030 (2)(b).

(b) If you retire and then return to work sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your monthly retirement benefit will be reduced in accordance with RCW 41.35.060(1) until you remain absent for at least thirty consecutive calendar days.

(c) If you retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible or ineligible) for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your SERS retirement benefit until you reach your applicable hour limit.

**Example:** Amy's last day at work for the ABC school district is June 19, 2015, and her official retirement date is September 1, 2015, (when she starts getting her monthly benefit). She wants to return to work at the start of the new school year on September 8, 2015. She needs to wait thirty consecutive calendar days from her September 1st retirement date before returning to work. If she returns to work before October 1st, her benefit will be reduced until she meets the required thirty-day break from employment.

(2) **What is the annual hour limit?** Except as provided in subsection (5) of this section regarding the 2008 early retirement factors (ERFs), after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) **No limit.** You may work as many hours as you want without affecting your retirement benefit if you work:

- (i) In a position that is not eligible for membership in a DRS or higher education retirement plan;
- (ii) As an independent contractor;
- (iii) For a private employer; or
- (iv) If you end your SERS membership as an elected official under RCW 41.35.030 (2)(b).

(b) **Eight hundred sixty-seven-hour limit.** You may work up to eight hundred sixty-seven hours in a calendar year, in a position which is eligible for membership in a DRS or public institution of higher education retirement plan, before your retirement benefit is suspended.

(3) **What hours count toward the limit?**

(a) **Counted toward the eight hundred sixty-seven hour limit:** All compensated hours that are worked in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) **Not counted toward the hour limit:** Cashouts of unused sick and vacation leave.

(4) **What happens if I work more than the annual eight hundred sixty-seven hour limit?**

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the limit.

(b) Your retirement benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement benefit. See RCW 41.50.130.

**(5) ~~((What if I retired using the 2008 early retirement factors (ERFs)?~~**

~~(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:~~

~~(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.~~

~~(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.~~

~~(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.~~

~~(b) If you retire using the 2008 ERFs and then return to work at or after age sixty-five, you can work under the rules described in subsections (2) and (3) of this section.~~

**(6)) If you retire using the 2008 ERFs and return to work before age sixty-five except as described in subsection (6) of this section:**

(a)(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(b) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

**(6) As a 2008 ERF retiree, can I work and still receive my retirement benefit?**

(a) If you retire using the 2008 ERFs, effective May 8, 2019, you may return to work before age sixty-five in a non-administrative position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school and work up to eight hundred sixty-seven hours in a calendar year. If you work more than eight hundred sixty-seven hours, your benefit will be subject to suspension and restarting as described in subsection (4) of this section.

(b) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

**(7) Can I return to SERS membership?**

(a) If you retire from SERS, you have the option to return to membership if you are employed by a SERS employer and

meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.35.030(3).

(b) If you reenter SERS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. See WAC 415-110-830. You will be subject to the return to work rules in place at the time of your reretirement.

(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter SERS membership if you are eligible. See WAC 415-110-725. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.04.270 and 41.35.030.

**~~((7))~~ (8) What if I retired from SERS and another DRS retirement system?**

(a) If you retired from SERS using the 2008 ERFs and another DRS retirement system and are under age sixty-five:

(i) Your SERS retirement benefit will be impacted as described in subsections (5) and (6) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from SERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

**~~((8))~~ (9) Terms used.**

(a) 2008 Early retirement factors (ERFs) - RCW 41.35.420 (3)(b) for SERS Plan 2, or RCW 41.35.680 for SERS Plan 3.

(b) Accrual date - RCW 41.35.450, 41.35.640.

(c) Elected official - WAC 415-110-550.

(d) Eligible position - RCW 41.35.010; WAC 415-110-680 through 415-110-700.

(e) Ineligible position - RCW 41.35.010.

(f) Member - RCW 41.35.010.

(g) Month - Calendar month as defined in WAC 415-02-030.

(h) Nonadministrative position - WAC 415-02-030.

(i) Public institution of higher education - RCW 28B.10.400.

~~((+))~~ (j) SERS - School employees' retirement system.

**AMENDATORY SECTION** (Amending WSR 16-17-047, filed 8/11/16, effective 9/11/16)

**WAC 415-112-525 What are the return to work rules for TRS Plan 1, Plan 2, and Plan 3? (1) How soon can I return to work after I retire without impacting my TRS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your TRS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263.

(b) If you retire and then return to work for a public employer except as provided in (a) of this subsection, sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your retirement allowance will be reduced until you remain absent for at least thirty consecutive calendar days. See RCW 41.32.570 (TRS Plan 1), 41.32.802 (TRS Plan 2), or 41.32.862 (TRS Plan 3).

(c) If you retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible or ineligible) for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your TRS retirement benefit until you reach your applicable hour limit.

**(d) Examples:**

**(i) Return to work with no reduction**

Casey's last day of work is January 20th. Her accrual date (effective retirement date) is February 1st, and there are 28 days in February. If Casey wants to return to work for a public employer after she retires, she will need to wait until at least March 3rd to avoid the daily percentage reduction in her retirement allowance.

**(ii) Return to work before thirty day waiting period ends**

Brian's last day of work is September 1st. His accrual date (effective retirement date) is October 1st. Brian returns to work October 10 through October 17th. In November, Brian's retirement allowance will be reduced by 5.5% for every seven hours worked during October. Brian's new thirty day wait period would be October 18th through November 16th.

**(2) What is the annual hour limit?** Except as provided in subsection (5) of this section regarding the 2008 early retirement factors, after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) **No limit.** You may work as many hours as you want without affecting your retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, and:

(A) Your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263; or

(B) You go to work for a nonpublic educational institution.

(iv) You are a TRS Plan 2 or Plan 3 member working as an on-call substitute teacher.

(b) **Eight hundred sixty-seven-hour limit.** You may work up to eight hundred sixty-seven hours in a year (July through June for TRS Plan 1, January through December for TRS Plan 2 and Plan 3) before your retirement benefit is suspended.

**(3) What hours count toward the limit?**

(a) **Counted toward the eight hundred sixty-seven-hour limit:** All compensated hours that are worked in an eli-

gible position, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) **Not counted toward the hour limit:** Cashouts of unused sick and vacation leave.

**(4) What happens if I work more than the annual eight hundred sixty-seven-hour limit?**

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the limit.

(b) Your retirement benefit will be restarted beginning the next year (July for TRS Plan 1, January for TRS Plan 2 or Plan 3) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement benefit. See RCW 41.50.130.

**(5) What if I am a TRS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?**

(a) If you retire using the 2008 ERFs and ~~((then))~~ return to work before age sixty-five except as described in subsection (6) of this section:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(b) ~~((If you retire using the 2008 ERFs,))~~ Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

**(6) As a 2008 ERF retiree, can I work and still receive my retirement benefit?**

(a) If you retire using the 2008 ERFs, effective May 8, 2019, you may return to work before age sixty-five in a non-administrative position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school and work up to eight hundred sixty-seven hours in a calendar year. If you work more than eight hundred sixty-seven hours, your benefit will be subject to suspension and restarting described in subsection (4) of this section.

(b) If you retired using the 2008 ERFs and returned to work as a substitute teacher in a classroom between June 10, 2016, and May 7, 2019, you will continue to receive your retirement benefit for up to eight hundred sixty-seven hours in a calendar year. After May 7, 2019, (a) of this subsection will continue to allow the provisions of this section for substitute teachers.

(c) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

**(7) Can I return to TRS membership?**

(a) You may choose to return to membership if you are employed by a public educational institution and are otherwise eligible. Membership will be prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.32.044.

(b) If you reenter TRS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. You will be subject to the return to work rules in place at the time of your retirement.

(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter TRS membership if you are eligible. See WAC 415-112-546. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.04.270 and 41.35.030.

~~((7))~~ **(8) What if I retired from TRS and another DRS retirement system?**

(a) If you retired from TRS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:

(i) Your TRS retirement benefit will be impacted as described in subsections (5) and (6) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from TRS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

~~((8))~~ **(9) Terms used.**

(a) "Accrual date" - WAC 415-112-520; RCW 41.32.-795, 41.32.855.

(b) "Eligible position" - RCW 41.32.010.

(c) "Employer" - RCW 41.32.010.

(d) "Nonadministrative position" - WAC 415-02-030.

(e) "Year."

(i) For TRS Plan 1, a "year" is July 1st through June 30th.

(ii) For TRS Plan 2 and Plan 3, a "year" is January 1st through December 31st.

AMENDATORY SECTION (Amending WSR 16-17-047, filed 8/11/16, effective 9/11/16)

**WAC 415-113-300 How is my benefit affected if I return to work after retiring from multiple DRS retirement systems?**

~~(1) If you ((retired using the 2008 early retirement factors (ERFs) and return to work for a DRS employer before age sixty-five, your retirement benefit(s) based on the 2008 ERFs will be immediately suspended. Any benefit(s) not based on the 2008 ERFs will be subject to rules for that system.~~

~~(2) If you are retired from multiple DRS systems and return to work for a DRS employer, your benefits will be affected according to rules of each respective system with the following exception:))~~ are retired from multiple DRS systems

and return to work for a DRS employer, your benefits will be affected according to rules of each respective system.

(a) If your system and plan has an annual hourly limit, the annual hourly limit is based on the calendar year, except as described in subsection (b) of this section.

(b) If one of the systems you retired from is TRS Plan 1, your annual hourly limit for all your systems will be counted using a fiscal year (July through June).

See WAC 415-108-710 (PERS), 415-110-710 (SERS), ((415-112-541 (TRS Plan 1), 415-112-541 (TRS Plan 2 and Plan 3))) 415-112-525 (TRS), 415-106-700 (PSERS), RCW 41.26.500 (LEOFF Plan 2), 43.43.130 (WSPRS).

((3)) (2) Term used.

Employer - See WAC 415-02-030.

## WSR 20-01-082

### PERMANENT RULES

#### HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin # 2019-02—Filed December 12, 2019, 9:08 a.m., effective January 12, 2020]

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

Purpose: The health care authority (HCA) continues to develop rules to implement legislation that created the new school employees' benefits board (SEBB) program. The purpose of this proposal is to amend some of the special open enrollment (SOE) rules. HCA originally filed this proposed rule making under WSR 19-20-040 and held a public hearing on November 5, 2019. As a result of a stakeholder comment, HCA revised *public school* in WAC 182-30-090 (2)(d) and 182-30-100 (3)(a)(xvi) to read as *public school district*. This is the only change that was made.

Making technical amendments to:

- Amend WAC 182-30-090 to add a new SOE that allows a subscriber who is changing employment from a SEBB organization to a public school district that straddles county lines or is in a county that borders Idaho or Oregon to be able to make new elections. Also adding a SOE that states if the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan.
- Amend WAC 182-30-100 to add a new SOE that allows a subscriber who is changing employment from a SEBB organization to a public school district that straddles county lines or is in a county that borders Idaho or Oregon they may [to] be able to make new elections.

Citation of Rules Affected by this Order: Amending WAC 182-30-090 and 182-30-100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESSB 6241 [2018].

Adopted under notice filed as WSR 19-22-095 on November 6, 2019.

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 Non-governmental 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 2, Repealed 0.

Date Adopted: December 12, 2019.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

**WAC 182-30-090 When may a subscriber change health plans?** A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the school employees benefits board (SEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change their health plan. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than an employee gaining initial eligibility for SEBB benefits. The change in enrollment must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the required enrollment forms. The forms must be received no later than sixty days after the event occurs. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption

of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for the employer contribution toward their employer-based group health plan;

(d) Subscriber has a change in employment from a SEBB organization to a public school district that straddles county lines or is in a county that borders Idaho or Oregon, which results in the subscriber having different medical plans available. The subscriber may change their election if the change in employment causes:

(i) The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or

(ii) The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.

(iii) As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

**Note:** As used in (d) of this subsection special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

~~((e))~~ (f) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan, otherwise there will be limited network providers and covered services;

**Exception:** A dental plan is considered available if a provider is available within 50 miles of the new address.

~~((f))~~ (g) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

~~((g))~~ (h) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

~~((h))~~ (i) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

~~((i))~~ (j) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-30-085(1);

(k) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

~~((j))~~ (l) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment that could function as a reduction in benefits for the subscriber or the subscriber's dependent. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period; or

(v) Treatment for a high-risk pregnancy.

(3) If the school employee is having premiums taken from payroll on a pretax basis, a health plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

**WAC 182-30-100 When may a school employee enroll or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)?** A school employee who is eligible to participate in the salary reduction plan as described in WAC 182-31-060 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-31-040 and enrolling as described in WAC 182-30-080(1).

(2) **During annual open enrollment:** An eligible school employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their school employees benefits board (SEBB) organization. An eligible school employee may elect to enroll or reenroll in the medical FSA, DCAP, or both during the annual open enrollment by submitting the required forms to their SEBB organization, the

HCA or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

**Note:** School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect both will only be enrolled in the HDHP with a HSA.

(3) **During a special open enrollment:** A school employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the school employee must submit the required form to their SEBB organization. The SEBB organization must receive the required form and evidence of the event that created the special open enrollment no later than sixty days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A school employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;

- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The school employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution toward their employer-based group health plan;

**Exception:** For the purposes of special open enrollment, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) School employee or a school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(vii) School employee or a school employee's dependent has a change in residence that affects health plan availability;

(viii) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States, and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) School employee or a school employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) School employee or a school employee's dependent becomes entitled to coverage under medicare or the school employee or a school employee's dependent loses eligibility for coverage under medicare;

(xiii) School employee or a school employee's dependent's current health plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the school employee or a school employee's dependent is no longer eligible for a HSA;

(xiv) School employee or a school employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the school employee or a school employee's dependent. The

school employee may not change their health plan election if the school employee's or dependent's physician stops participation with the school employee's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy;
- Treatment following a recent organ transplant;
- A scheduled surgery;
- Recent major surgery still within the postoperative period; or
- Treatment for a high-risk pregnancy.

(xv) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

(xvi) Subscriber has a change in employment from a SEBB organization to a public school district that straddles county lines or is in a county that borders Idaho or Oregon, which results in the subscriber having different medical plans available. The subscriber may change their election if the change in employment causes:

- The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or
- The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.
- As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

If the subscriber is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical FSA.** A school employee may enroll or revoke their election and make a new election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for the medical FSA;

(v) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) School employee or a school employee's dependent becomes entitled to coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) School employee or a school employee's dependent becomes entitled to coverage under medicare.

(c) **DCAP.** A school employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the state registered domestic partner qualifies as a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) School employee or school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;



(iv) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) School employee or school employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) School employee's dependent care provider imposes a change in the cost of dependent care; school employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the school employee as defined in IRC 26 U.S.C. Sec. 152.

### WSR 20-01-087

#### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed December 12, 2019, 11:09 a.m., effective January 12, 2020]

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

Purpose: The employment security department (ESD) is responsible for implementing the paid family and medical leave (PFML) program in accordance with Title 50A RCW. Rule making is being done on an ongoing basis. In this rule making, ESD includes rules regarding clarification of definitions, assessing and collecting premiums, voluntary plans, penalties and audits, small business assistance, dispute resolution, claim determinations, overpayment of benefits, collections and recovery of overpayments, employment restoration, and public disclosure and privacy for PFML.

Citation of Rules Affected by this Order: New WAC 192-500-185, 192-700-020, 192-810-010, 192-810-020, 192-810-030 and 192-810-040; and amending WAC 192-500-080, 192-500-170, 192-510-010, 192-510-020, 192-510-025, 192-510-040, 192-510-050, 192-510-060, 192-510-065, 192-510-085, 192-530-040, 192-550-010, 192-550-020, 192-550-040, 192-560-020, 192-570-020, 192-630-010, 192-640-005, 192-650-015, 192-700-005, and 192-700-010.

Statutory Authority for Adoption: RCW 50A.05.60 [50A.05.060] and 50A.25.030.

Adopted under notice filed as WSR 19-21-095 on October 15, 2019.

Changes Other than Editing from Proposed to Adopted Version: WAC 192-500-185 Waiting period, the proposed rule and the final rule differ only in subsection (6) of this rule. The final rule makes it clear that a waiting period does not apply for leave taken for bonding after a child's birth or placement. The proposed rule could have led to the conclusion that having a child would qualify as family leave instead of correctly being medical leave where a waiting week is required. This change provides that clarification that a waiting period is not required only for leave for bonding after the birth or placement of a child.

WAC 192-700-020 When does an employer need to provide a continuation of benefits to an employee who is on paid family or medical leave?, this proposed rule has been removed from this rule making based on stakeholder feedback. PFML will be giving this regulation further consideration before promulgating the concept.

WAC 192-810-030 How do individuals and entities request records from the department?, the proposed rule and the final rule differ in two ways. First, the final rule requires public disclosure requests to be sent to the public records officer whereas the draft rule used permissive language indicating that public disclosure requests "may" be sent to the public records officer. Second, the final rule lists the contact information for the public records officer. This information was not present in the draft rule.

A final cost-benefit analysis is available by contacting Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-791-6710, TTY WA Relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email [cstreuli@esd.wa.gov](mailto:cstreuli@esd.wa.gov), website [https://www.peakdemocracy.com/portals/289/forum\\_home?phase=open](https://www.peakdemocracy.com/portals/289/forum_home?phase=open).

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 5, Amended 21, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: December 12, 2019.

April Amundson  
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-500-080 Qualifying event.** A "qualifying event" is:

(1) For family leave, events described in RCW ((~~50A.04.010~~)) 50A.05.010(9).

(2) For medical leave, events described in RCW ((~~50A.04.010~~)) 50A.05.010(14).

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

**WAC 192-500-170 Self-employed.** (1) A "self-employed" person is:

(a) A sole proprietor;

(b) A joint venturer or a member of a partnership that carries on a trade or business, contributes money, property, labor or skill and shares in the profits or losses of the business;

(c) A member of a limited liability company;

(d) An independent contractor who works as described in RCW ((~~50A.04.010~~)) 50A.05.010 (7)(b)(ii); or

(e) Otherwise in business for oneself as indicated by the facts and circumstances of the situation, including a part-time business.

(2) A corporate officer is an employee and not self-employed.

#### NEW SECTION

**WAC 192-500-185 Waiting period.** (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) Subject to subsection (6) of this section, an employee must only meet the requirement of one waiting period in a claim year.

(5) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

(6) The waiting period does not apply to family leave taken for bonding after the child's birth or placement.

(7) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-510-010 Election, withdrawal, and cancellation of coverage.** (1) Self-employed persons as defined in RCW ((50A.04.105)) 50A.10.010(1) and federally recognized tribes as defined in RCW ((50A.04.110)) 50A.10.020 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(4) A period of coverage is defined as:

(a) Three years following the first day of elective coverage or any gap in coverage; and

(b) Each subsequent year.

(5) Any self-employed person or federally recognized tribe may file a notice of withdrawal within thirty calendar days after the end of each period of coverage.

(6) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(7) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

**WAC 192-510-020 Election of coverage for federally recognized tribes.** (1) Federally recognized tribes electing coverage are employers as defined in RCW ((50A.04.010)) 50A.05.010 and are subject to all rights and responsibilities under Title 50A RCW.

(2) Employees of federally recognized tribes that elect coverage are employees as defined in RCW ((50A.04.010)) 50A.05.010 and are subject to all the rights and responsibilities under Title 50A RCW.

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

**WAC 192-510-025 What wages are reportable to the department for premium assessment purposes?** (1) Examples of wages reportable to the department for premium assessment purposes include, but are not limited to:

- (a) Salary or hourly wages;
- (b) Cash value of goods or services given in the place of money;
- (c) Commissions or piecework;
- (d) Bonuses;
- (e) Cash value of gifts or prizes;
- (f) Cash value of meals and lodging when given as compensation;
- (g) Holiday pay;
- (h) Paid time off, including vacation leave and sick leave, as well as associated cash outs, unless these wages are considered supplemental benefit payments provided by the employer;
- (i) (~~Bereavement leave;~~
- (j)) Separation pay including, but not limited to, severance pay, termination pay, and wages in lieu of notice;
- ((~~h~~)) (j) Value of stocks at the time of transfer to the employee if given as part of a compensation package;
- ((~~h~~)) (k) Compensation for use of specialty equipment, performance of special duties, or working particular shifts; and

((~~m~~)) (l) Stipends/per diems unless provided to a past or future cost incurred by the employee as a result of the performance of the employee's expected job functions.

(2) Examples of what the department will not consider wages include, but are not limited to:

(a) A payment from an employer benefit that is not part of the employee's standard compensation.

**Example:** While on paid medical leave, an employee receives sixty-one percent of the employee's typical weekly wage from the state. Through an internal short-term disability benefit, the employer pays the employee the remaining thirty-nine percent of the employee's typical weekly wage as a supplemental benefit payment, bringing the employee's total benefit to one hundred percent of the employee's typical weekly wage. Since this supplemental benefit payment is not part of the employee's standard compensation, it is not considered a wage, and should not be reported on either the employee's weekly claim or the employer's quarterly report.

(b) Any payment made to an employee to cover a past or future cost incurred by the employee related to the perfor-

mance of the employee's expected job functions. Such costs include, but are not limited to, costs of meals and travel.

**Example:** An employer pays a per diem to an employee on a business trip to cover the cost of local travel and meals. This amount is not considered a wage, even if the per diem exceeds the actual cost incurred.

(c) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment) to, or on behalf of, an individual or the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for the employer (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

- (i) Retirement;
- (ii) ~~((Sickness or accident))~~ Short-term or long-term disability;
- (iii) Medical or hospitalization expenses in connection with sickness or accident disability; or
- (iv) Death.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

**WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants?** (1) To assess premiums and determine eligibility for small business assistance grants, the department must determine the size of each applicable employer. The department will only count the number of in-state employees as defined in RCW ~~((50A.04.010))~~ 50A.05.010(4) when calculating employer size.

(2) If the department determines that the employer's status has changed as it relates to premium liability, the department will notify the employer. This notification will include the following information:

(a) If the employer was determined to have fifty or more employees for the preceding calendar year, and the employer is then determined to have fewer than fifty employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year; or

(b) If the employer was determined to have fewer than fifty employees for the preceding calendar year, and the employer is then determined to have fifty or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the next calendar year.

**Example:** On September 30, 2018, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2017, through June 30, 2018. The employer is liable for the employer portion of premiums for 2019. On September 30, 2019, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2018, through June 30, 2019. The employer is no longer liable for the employer share of premiums for 2020.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

**WAC 192-510-050 How will the department assess the size of new employers?** An employer that has not been in business in Washington long enough to report four calendar quarters by September 30th will have its size calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists. Premium assessment based on this determination will begin on this reporting date. This size determination remains in effect until the following September 30th pursuant to RCW ~~((50A.04.115))~~ 50A.10.030 (8)(c).

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

**WAC 192-510-060 When are employer premium payments due?** (1) Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which premiums are being paid.

(2) Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the premium payment must be postmarked by the next business day.

(3) Premium payments are due within ten calendar days when a business is dissolved or the account is closed by the department. Premiums not paid timely are delinquent and subject to interest under RCW ~~((50A.04.140))~~ 50A.45.025.

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-510-065 When can an employer deduct premiums from employees?** (1) An employer may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.

(2) If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under RCW ~~((50A.04.115))~~ 50A.10.030 (3)(d) for that pay period. The employer cannot deduct this amount from a future paycheck of the employee for a different pay period.

(3) Subsections (1) and (2) of this section do not apply if an employer was unable to deduct the maximum allowable employee share of the premium for a pay period due to a lack of sufficient employee wages for that pay period.

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-510-085 How will the department assess premiums when a conditional premium waiver expires?** (1) If an employee who is exempt from premiums under a conditional waiver works eight hundred twenty hours in any period of four consecutive quarters, the waiver will be determined to have expired.

(2) Upon expiration of a conditional premium waiver, the department will assess and notify:

(a) The employer of all the owed employer premiums; and

(b) The employee of all the owed employee premiums.

(3) Payment will be due upon receipt of the assessment.

(4) Failure to pay the assessment by the required date will result in the accrual of interest under RCW ((50A.04-140)) 50A.45.025.

(5) Upon payment of the employee premiums, the employee will be credited for the hours worked and will be eligible for benefits under Title 50A RCW as if the premiums were originally paid.

(6) Nothing in this section prevents the employer from paying part or all of the employee's share of the premiums.

AMENDATORY SECTION (Amending WSR 18-12-032, filed 5/29/18, effective 6/29/18)

**WAC 192-530-040 Voluntary plans—Notice requirements under RCW ((50A.04.075)) 50A.20.020.** (1) The department will provide a notice that meets the requirements of RCW ((50A.04.075)) 50A.20.020 to employers with approved voluntary plans if requested.

(2) Employers may create their own notices that meet the requirements of RCW ((50A.04.075)) 50A.20.020. Each employer must provide a copy of its voluntary plan notice to the department for approval. The notice must be submitted online or in another format approved by the department and must contain at least the same information as the state notice.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

**WAC 192-550-010 What happens if an employer fails to submit required reports?** (1) An employer that willfully fails to file a complete and timely report under WAC 192-540-030 through 192-540-050 is subject to penalties under RCW ((50A.04.090)) 50A.45.010.

(2) The department will send a warning letter for an employer's first incomplete or untimely report. For a second or subsequent occurrence within five years of the date of the last occurrence, the department will assess penalties under the following schedule:

(a) 2nd occurrence: \$75.00

(b) 3rd occurrence: \$150.00

(c) 4th and subsequent occurrences: \$250.00

(3) After five years without a warning letter or occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

**WAC 192-550-020 What happens if an employer willfully fails to remit required payments?** (1) An employer that willfully fails to remit payment for premiums in full when due is subject to penalties under RCW ((50A.04.090)) 50A.45.010 in addition to accruing interest under WAC 192-550-030.

(2) The total amount of the penalty will be equal to the entire balance of premiums not remitted and any interest accrued on those delinquent premiums.

**Example:** If an employer owes \$300 in premium payments and \$20 in interest, the penalty for willfully failing to remit payment will equal \$320, for a sum total due and owing of \$640.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

**WAC 192-550-040 Can employer interest be waived?**

(1) An employer may submit to the department an interest waiver request that includes all relevant facts, including all available proof, as to why it is requesting a waiver under RCW ((50A.04.140)) 50A.45.025.

(2) At its discretion, the department may waive interest if it finds that the interest was caused by the department's own error or the department's inability to decide the issue.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

**WAC 192-560-020 What is the application process for a small business assistance grant?** (1) Applications for small business assistance grants must be submitted online or in another format approved by the department. To be approved, an application must contain:

(a) The name and Social Security number or individual taxpayer identification number of the employee taking leave;

(b) The amount and type of grant being requested;

(c) An explanation summarizing any personnel or significant additional wage-related costs that were taken because of an employee taking leave; and

(d) Written documentation including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of leave.

(2) Incomplete applications will not be reviewed and will not count against an employer's limit of ten applications per year under RCW ((50A.04.230)) 50A.24.010(4).

(3) The department will deny the application for reasons including, but not limited to, the employer's failure to demonstrate that:

(a) It hired a temporary worker or incurred any significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related cost incurred was not due to an employee's use of family or medical leave.

(4) If a grant application is denied, the application will count against an employer's limit of ten applications per year.

(5) The denial of a grant application is appealable.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

**WAC 192-570-020 Complaints regarding unlawful acts.** (1) It is unlawful for an employer to discriminate against any employee for a reason specified in RCW ((50A.04.085)) 50A.40.010. When the department receives

notification from an employee that discrimination may have occurred the department will investigate the allegation and issue a determination. The determination will include any remedies available under RCW ((50A.04.100)) 50A.40.030.

(2) Nothing in the chapter shall be construed to prohibit a private right of action under all applicable laws.

**AMENDATORY SECTION** (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

**WAC 192-630-010 What happens if an interested party does not respond to the department's request for information?** (1) If an interested party fails to respond by the due date on the notice provided under WAC 192-630-005, the department will make a determination based on available information.

(2) Subject to RCW ((50A.04.510)) 50A.50.030, if benefits are denied because the employee did not respond to a request for information, the denial will remain in effect until the employee provides sufficient information to establish that the employee is qualified for paid family or medical leave.

**AMENDATORY SECTION** (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

**WAC 192-640-005 Definitions.** For purposes of this chapter:

(1) "Overpayment" means any or all of the following:

(a) Payment of any paid family or medical leave benefits to which the department determines the employee is not entitled;

(b) Penalties assessed under RCW ((50A.04.045)) 50A.15.060; or

(c) Interest accrued under RCW ((50A.04.065)) 50A.15.090.

(2) "Equity and good conscience" means fairness as applied to each individual case after considering the totality of the circumstances.

**AMENDATORY SECTION** (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

**WAC 192-650-015 Are negotiated settlements of overpayments permitted?** (1) The department can accept a negotiated settlement to repay a debt of overpayment under RCW ((50A.04.185)) 50A.45.070. Except as provided in subsection (3) of this section, a negotiated settlement of the overpayment for less than the full amount owed will be considered when requiring an employee to repay the full amount would be against equity and good conscience as defined in WAC 192-640-005.

(2) In considering settlement offers, the department will first consider whether it is financially advantageous to the department to collect the debt. The department may also consider:

(a) The age and amount of the overpayment;

(b) The number of prior contacts with the employee;

(c) If the employee previously made good faith efforts to pay the debt;

(d) The ability to enforce collection; or

(e) Other information relevant to the employee's ability to repay the debt.

(3) Except in unusual circumstances, a settlement offer will not be accepted when the employee's overpayment is the result of fraud. Unusual circumstances that may warrant a negotiated settlement of the overpayment and associated penalties include, but are not limited to, long-term or terminal illness, severe permanent disability, or other circumstances that seriously impair the employee's long-term ability to generate income.

(4) The department's decision to accept or reject a settlement offer is not subject to appeal. If the department rejects the settlement offer, the employee is permitted to make another offer if the employee's circumstances change.

**AMENDATORY SECTION** (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

**WAC 192-700-005 When is an employee entitled to employment restoration after leave ends?** (1) Subject to RCW ((50A.04.025)) 50A.35.010(3), an employee who meets the criteria listed in RCW ((50A.04.025)) 50A.35.010 (6)(a) who takes leave under Title 50A RCW is entitled, on return from the leave, to be restored by the employer to:

(a) The position of employment held by the employee when the leave commenced; or

(b) An equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(i) "Equivalent position" means a position that is nearly identical to the employee's former position as if the employee did not take extended leave. This includes pay, benefits and working conditions, privileges, perks, location, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(ii) "Employment benefits" includes all benefits provided or made available to employees by an employer such as:

(A) Insurance;

(B) Paid time off;

(C) Educational benefits; or

(D) Retirement benefits.

(2) An employee is entitled to such reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence unless the employer can demonstrate the circumstances fall within WAC 192-700-010(1).

(3) The protections provided in RCW ((50A.04.025)) 50A.35.010 and this section apply to the employee beginning with the date the employee starts taking leave.

**AMENDATORY SECTION** (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

**WAC 192-700-010 Can an employer deny employment restoration?** (1) An employee is not entitled to employment protection under Title 50A RCW if:

(a) An employer exercises its right to deny restoration under RCW ((50A.04.025)) 50A.35.010 (6)(b) and the employee has elected not to return to employment after receiving notice under subsection (2) of this section; or

(b) The employer is able to show that an employee would not otherwise have been employed at the time of reinstatement.

(2) An employer that chooses to deny restoration under subsection (1)(a) or (b) of this section to an employee on paid medical or family leave must notify the employee in writing as soon as the employer decides to deny restoration. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

(a) A statement that the employer intends to deny employment restoration when the leave has ended;

(b) The reasons behind the decision to deny restoration;

(c) An explanation that health benefits will still be paid for the duration of the leave; and

(d) The date in which eligibility for employer-provided health benefits ends.

(3) Employers that choose to deny restoration are required to adhere to the continuation of health benefits in RCW ((50A.04.245)) 50A.35.020 for the remainder of the employee's approved leave.

## Chapter 192-810 WAC

### PUBLIC DISCLOSURE AND PRIVACY FOR PAID FAMILY AND MEDICAL LEAVE

#### NEW SECTION

**WAC 192-810-010 Definitions.** (1) The definitions set forth in RCW 42.56.010 apply to this chapter unless context clearly requires otherwise.

(2) "Public records officer" means the departmental employee responsible for responses to requests for public records or that person's designee.

(3) "Department" means the employment security department.

(4) An employer's "own records" as used in RCW 50A.25.040 means records and information provided to the department by the employer or the employer's predecessor in interest.

#### NEW SECTION

**WAC 192-810-020 Purpose.** The purpose of this chapter is to provide rules for the paid family and medical leave program in implementing chapter 42.56 RCW relating to public records and chapter 50A.25 RCW relating to records and information deemed private and confidential by the paid family and medical leave program.

#### NEW SECTION

**WAC 192-810-030 How do individuals and entities request records from the department?** (1) The department will manage all records requests consistent with the provisions of chapter 42.56 RCW.

(2) Requests for public records shall be submitted to the public records officer. Contact the public records officer at:

Public Records Officer  
P.O. Box 9046  
Olympia, WA 98507-9046  
Phone: 1-844-766-8930  
Email: Recordsdisclosure@esd.wa.gov

(3) If an individual requests records or information concerning that individual held by the department under RCW 50A.25.040(1), those records must be released only to the requesting individual.

(4) If an individual submits a records request and asks that the requested records be sent to a third party directly, the individual must follow the provisions of RCW 50A.25.-040(3).

#### NEW SECTION

**WAC 192-810-040 Misuse or unauthorized disclosure.** (1) If misuse or an unauthorized disclosure of records or information deemed private and confidential under chapter 50A.25 RCW occurs, each party involved in the data-sharing that is aware of the misuse or unauthorized disclosure must inform the department within two business days of the discovery of the data security breach.

(2) In addition to informing the department of the misuse or unauthorized disclosure, the party responsible for the disclosure must take all reasonably available actions to rectify the disclosure to the department's standards. In most cases, these actions will include, at a minimum:

(a) Ceasing any continued release;

(b) Informing all individual whose data may have been released improperly of the situation; and

(c) Providing identity protection mechanisms at no charge to the individuals whose data may have been released.

## WSR 20-01-090

### PERMANENT RULES

### BUILDING CODE COUNCIL

[Filed December 12, 2019, 2:17 p.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

Purpose: The purpose of this permanent rule making is to adopt the 2018 Washington State Building Code, as amended and adopted by the state building code council on July 26, 2019. The implementation date is July 1, 2020.

Citation of Rules Affected by this Order: New 25; and amending 57.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 19-11-092 on May 17, 2019.

## Changes Other than Editing from Proposed to Adopted Version:

WAC	Section	Change
51-50-0504	Table 504.3	For I-4 Occupancy and Type IV A Construction Sprinklered, the allowable height was changed from 180 to 270 feet.
		For I-4 Occupancy and Type IV B Construction Sprinklered, the allowable height was changed from 120 to 180 feet.
		Footnote i was added to Sprinklered Occupancy I-1 Condition 2 and I-2.
		For R Occupancy add footnote "h."
		For R Occupancy add row for S13D.
51-50-0504	Table 506.2	For A-3 Occupancy and Type IV C Construction Sprinklered 2 or more Stories, the allowable area factor was changed from 56,000 to 56,250.
		For B Occupancy and Type B Construction non-sprinklered, the allowable area factor was changed from 75,000 to 72,000.
		For H-3 Occupancy and Type IV A, B and C Construction the allowable area factor was changed from 25,000 to 25,500.
		For R Occupancies change footnote "h" to apply to all "R" Occupancies.
		For R-3 and R-4 Occupancies add S13D. The allowable area factor is the same as for S13R.
		For U Occupancy footnote "I" was added.
51-50-0510	510.2	Conditions 4, 5 and 6 are deleted.
51-50-0602	602.4.4	Deleted last sentence.
	602.4.4.3	Deleted.
	602.4.4.4	Deleted.
	602.4.4.5	Deleted.
	602.4.4.6	Deleted.
	602.4.4.6.1	Deleted.
	602.4.4.6.2	Deleted.
	602.4.4.7	Deleted.
	602.4.4.8	Deleted.
	602.4.4.8.1	Deleted.
	602.4.4.8.2	Deleted.
	602.4.4.9	Deleted.
	Table 602	For greater than 5 feet but less than 10 feet changed fire resistance rating from 11 hours to one hour.
51-50-0706	706.6.1	Three conditions added to the exception.
51-50-0903	903.2.9.3	Addresses Group S-1.
51-50-0909	909.6.3	Clarifies what portions of Section 909 apply to different conditions.
51-50-10100	1010.1.9.4	Added model code language for doors serving unoccupied roofs
51-50-1107	1107.6.2.2.1	Was changed from deleted to only Exception 2 being deleted.
51-50-1203	1203	Moved to 51-50-1202.
51-50-1204	1204	Moved to 51-50-1203.
51-50-1604	Table 1604.5	Text for Risk Category IV modified.
51-50-1613	1613.4	Added a condition to ASCE 7 Section 12.2.5.4.
	Table 12.6-1	Modified table.
	1613.5.4	Deleted.

WAC	Section	Change
51-50-1705	1705.5.3	Modifies when special inspections are required.
	Table 1705.5.3	Addresses adhesive anchors not defined and modified text for concealed connections.

A final cost-benefit analysis is available by contacting Richard Brown, 1500 Jefferson Street S.E., phone 360-407-9277, email Richard.Brown@des.wa.gov, website www.sbcc.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 Non-governmental Entity: New 16, Amended 37, 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: July 26, 2019.

Doug Orth  
Chair

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

**WAC 51-50-003 International Building Code.** The ~~((2015))~~ 2018 edition of the *International Building Code*, including Appendix E, published by the International Code Council is hereby adopted by reference with the exceptions noted in this chapter of the Washington Administrative Code.

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

**WAC 51-50-008 Implementation.** The *International Building Code* adopted under chapter 51-50 WAC shall become effective in all counties and cities of this state on July 1, ~~((2016))~~ 2020.

**AMENDATORY SECTION** (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-0200 Chapter 2—Definitions.**

**SECTION 202—DEFINITIONS.**

**ADULT FAMILY HOME.** A dwelling, licensed by Washington state, 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.

**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.

**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 twelve 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.

**EFFICIENCY DWELLING UNIT.** A dwelling unit (~~containing only one habitable~~) where all permanent provisions for living, sleeping, eating and cooking are contained in a single room.

**HOSPICE CARE CENTER.** A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

**MASS TIMBER.** Structural elements of Type IV construction primarily of solid, built-up, panelized or engineered wood products that meet minimum cross section dimensions of Type IV construction.

**NIGHTCLUB.** An A-2 Occupancy use under the 2006 *International Building Code* 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 three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

**NONCOMBUSTIBLE PROTECTION** ~~((See))~~ **For MASS TIMBER.** Noncombustible material, in accordance with Section 703.5, designed to increase the fire-resistance rating and delay the combustion of mass timber.

**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.

**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 fifty 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 and assisted living facilities to protect the health and safety of fragile occupants and residents.

**WALL, LOAD-BEARING.** Any wall meeting either of the following classifications:

1. Any metal or wood stud wall that supports more than 100 pounds per linear foot (1459 N/m) of vertical load in addition to its own weight.
2. Any masonry or concrete, or mass timber wall that supports more than 200 pounds per linear foot (2919 N/m) of vertical load in addition to its own weight.

#### NEW SECTION

#### **WAC 51-50-0303 Section 303—Assembly Group A.**

**303.4 Assembly Group A-3.** Group A-3 occupancy includes assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A including, but not limited to:

- Amusement arcades;
- Art galleries more than 3,000 square feet;
- Bowling alleys;
- Community halls;
- Courtrooms;
- Dance halls (not including food or drink consumption);
- Exhibition halls;
- Funeral parlors;
- Greenhouses for the conservation and exhibition of plants that provide public access;
- Gymnasiums (without spectator seating);
- Indoor swimming pools (without spectator seating);
- Indoor tennis courts (without spectator seating);
- Lecture halls;
- Libraries;
- Museums;
- Places of religious worship;
- Pool and billiard parlors;
- Waiting areas in transportation terminals.

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

#### **WAC 51-50-0308 Section 308—Institutional Group I.**

**~~(308.2)~~ 308.1.1 Definitions.** The following terms are defined in Chapter 2:

**24-HOUR CARE.**

Custodial Care.  
Detoxification Facilities.  
Foster Care Facilities.

**HOSPICE CARE CENTER.**

Hospitals and psychiatric hospitals.  
Incapable of self-preservation.  
Medical care.  
Nursing homes.

**~~(308.3.3 Licensed care facilities.~~** ~~(Assisted living facilities as licensed by Washington state under chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC shall be classified as Group I-1, Condition 2.~~

**~~308.3.5)~~ 308.2 Institutional Group I-1.** Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than sixteen persons, excluding staff, who reside on a twenty-four-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 308.3.1 or 308.3.2. 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.

**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*.

**~~(308.4)~~ 308.2.6 Licensed care 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.

~~(308.6.5)~~ **308.5.5 Family home child care.** Family home child care licensed by Washington state for the care of twelve or fewer children shall be classified as Group R-3 or shall comply with the *International Residential Code*.

#### NEW SECTION

#### **WAC 51-50-0309 Section 309—Mercantile Group M.**

**309.1 Mercantile Group M.** Mercantile Group M occupancy includes, among others, the use of a building or structure or a portion thereof for the display and sale of merchandise, and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public. Mercantile occupancies shall include, but not be limited to, the following:

- Art galleries 3,000 square feet or less;
- Department stores;
- Drug stores;
- Markets;
- Greenhouses for display and sale of plants that provide public access;
- Motor fuel-dispensing facilities;
- Retail or wholesale stores;
- Sales rooms.

AMENDATORY SECTION (Amending WSR 16-06-108 and 16-03-064, filed 3/1/16 and 1/19/16, effective 7/1/16)

#### **WAC 51-50-0312 ((Section 312—Utility and miscellaneous Group U.)) Reserved.**

~~((312.1 General. Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U shall include, but not be limited to, the following:~~

- ~~Agricultural buildings~~
- ~~Aircraft hangers, accessory to a one- or two-family residence (see Section 412.5)~~
- ~~Barns~~
- ~~Carports~~
- ~~Fences more than 6 feet (1829 mm) in height~~
- ~~Grain silos, accessory to a residential occupancy~~
- ~~Greenhouses and other structures used for cultivation, protection or maintenance of plants~~
- ~~Livestock shelters~~
- ~~Private garages~~
- ~~Retaining walls~~
- ~~Sheds~~
- ~~Stables~~
- ~~Tanks~~
- ~~Towers))~~

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

#### **WAC 51-50-0403 Section 403—High-rise buildings.**

**403.3.2 Water supply to required fire pumps.** In all buildings that are more than 420 feet (128 m) in *building height*, and buildings of Type IV-A and IV-B that are more than 120 feet in *building height*, required fire pumps shall be supplied by connections to not fewer than two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Each connection and the supply piping between the connection and the pumps shall be sized to supply the flow and pressure required for the pumps to operate.

EXCEPTION: Two connections to the same main shall be permitted provided that the main is valved such that an interruption can be isolated so that the water supply will continue without interruption through not fewer than one of the connections.

**403.5.4 Smokeproof enclosures.** Every required *interior exit stairway* serving floors more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access shall be a *smokeproof enclosure* in accordance with Sections 909.20 and 1023.11. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.

((EXCEPTION: Unless required by other sections of this code, portions of such stairways which extend to serve floors below the level of exit discharge need not comply with Sections 909.20 and 1023.11 provided the portion of the stairway below is separated from the level of exit discharge with a 1-hour fire barrier.))

**403.4.8.3 Standby power loads.** The following are classified as standby power loads:

1. Ventilation and automatic fire detection equipment for smokeproof enclosures.
2. Elevators.
3. Where elevators are provided in a high-rise building for accessible means of egress, fire service access or occupant self-evacuation, the standby power system shall also comply with Sections 1009.4, 3007 or 3008, as applicable.
4. Sump pumps required by ASME A17.1 serving pit drains at the bottom of elevator hoistways of fire service access or occupant evacuation elevators.

**405.7.2 Smokeproof enclosure.** Every required stairway serving floor levels more than 30 feet (9144 mm) below the finished floor of its level of exit discharge shall comply with the requirements for a smokeproof enclosure as provided in Sections 909.20 and 1023.11. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.

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

**WAC 51-50-0407 ((Reserved)) Section 407—Group I-2.**

**407.4.4.3 Access to corridor.** Movement from habitable rooms shall not require passage through more than three doors and 100 feet (30,480 mm) distance of travel within the suite.

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

**WAC 51-50-0412 Section 412—Aircraft-related occupancies.**

**412.2.2.1 Stairways.** Stairways in airport traffic control towers shall be in accordance with Section 1011. Exit stairways shall be smokeproof enclosures complying with one of the alternatives provided in Section 909.20. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.

**[F]412.8.3 Means of egress.** The means of egress from heliports, helipads and helistops shall comply with the provisions of Chapter 10. Landing areas located on buildings or structures shall have two or more means of egress. For landing areas less than 60 feet in length or less than 2,000 square feet (186 m<sup>2</sup>) in area, the second means of egress is permitted to be a fire escape, alternating tread device or ladder leading to the floor below. On Group I-2 roofs with ((helistops)) heliports or helipads and helistops, rooftop structures enclosing exit stair enclosures or elevator shafts shall be enclosed with fire barriers and opening protectives that match the rating of their respective shaft enclosures below.

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

**WAC 51-50-0420 Section 420—Groups I-1, R-1, R-2, R-3.**

**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.

**~~((420.7))~~ 420.11 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.

**~~((420.7.1 Reserved:~~**

**~~420.7.2))~~ 420.11.1 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 420.7.8 is provided.

3. Type NS2 - Where two means of egress are at grade level or ramps constructed in accordance with Section 420.7.8 are provided.

**~~((420.7.3))~~ 420.11.2 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.

**~~((420.7.4))~~ 420.11.3 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.

**~~((420.7.5))~~ 420.11.4 Escape windows and doors.** Every sleeping room shall be provided with emergency escape and rescue windows as required by Section 1030. 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.

**~~((420.7.6 Reserved:~~**

**~~420.7.7))~~ 420.11.5 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.

~~((420.7.8))~~ **420.11.6 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 long.

~~((420.8))~~ **420.12 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 904.12.1 and 904.12.2.
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*.

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

**WAC 51-50-0422 Section 422—Ambulatory care facilities.**

**422.3.1 Means of egress.** Where ambulatory care facilities require smoke compartmentation in accordance with Section 422.3, the fire safety evacuation plans provided in accordance with Section ~~((4001.4))~~ 1002.2 shall identify the building components necessary to support ~~((a staged evacuation emergency response in accordance with))~~ Sections 403 and 404 of the *International Fire Code*.

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

**WAC 51-50-0503 Section 503—General building height and area limitations.**

~~((503.1 General. Unless otherwise specifically modified in Chapter 4 and this chapter, building height, number of stories and building area shall not exceed the limits specified in Sections 504 and 506 based on the type of construction as determined by Section 602 and the occupancies as determined by Section 302 except as modified hereafter. Building height, number of stories and building area provisions shall be applied independently. For the purposes of determining area limitations, height limitations and type of construction, each portion of a building separated by one or more fire walls complying with Section 706 shall be considered to be a separate building.))~~ **503.1.4 Occupied roofs.** A roof level or portion thereof shall be permitted to be used as an occupied roof provided the occupancy of the roof is an occupancy that is permitted by Table 504.4 for the story immediately below the roof. The area of the occupied roofs shall not be included in the building area as regulated by Section 506.

EXCEPTIONS:

1. The occupancy located on an occupied roof shall not be limited to the occupancies allowed on the story immediately below the roof where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and occupant notification in accordance with Sections 907.5.2.1 and 907.5.2.3 is provided in the area of the occupied roof. Emergency voice/alarm communication system notification in accordance with Section 907.5.2.2 shall also be provided in the area of the occupied roof where such system is required elsewhere in the building.
2. Assembly occupancies shall be permitted on roofs of open parking spaces of Type I or Type II construction, in accordance with the exception to Section 903.2.1.6.

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-0504 Section 504—Building height and number of stories.**

**Table 504.3  
Allowable Building Height in Feet Above Grade Plane<sup>a</sup>**

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A, B, E, F, M, S, U	NS <sup>b</sup>	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	270	180	85	85	70	60
H-1, H-2, H-3, H-5	NS <sup>c,d</sup>	UL	160	65	55	65	55	120	90	65	65	50	40
	S												
H-4	NS <sup>c,d</sup>	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	140	100	85	85	70	60
I-1 Condition 1, I-3	NS <sup>d,e</sup>	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	180	120	85	85	70	60
I-1 Condition 2, I-2	NS <sup>d,e,f</sup>	UL	160	65	55	65	55	65	65	65	65	50	40
	S <sup>i</sup>	UL	180	85									
I-4	NS <sup>d,g</sup>	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	<del>((180))</del> 270	<del>((120))</del> 180	85	85	70	60
R <sup>h</sup>	NS <sup>d</sup>	UL	160	65	55	65	55	65	65	65	65	50	40
	S13D	60	60	60	60	60	60	60	60	60	60	50	40
	S13R	60	60	60	60	60	60	60	60	60	60	60	60
	S	UL	180	85	75	85	75	270	180	85	85	70	60

For SI: 1 foot = 304.8 mm.

UL = Unlimited; NS = Buildings not equipped throughout with an automatic sprinkler system; S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

- a See Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.
- b See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
- c New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
- d The NS value is only for use in evaluation of existing building height in accordance with the International Existing Building Code.
- e New Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.
- f New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.
- g For new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.
- h New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.
- i I-1, Condition 2 Assisted living facilities licensed in accordance with chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC shall be permitted to use the allowable height above grade plane for Group R-2 occupancies.

**Table 504.4  
Allowable Number of Stories Above Grade Plane<sup>a,b</sup>**

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A-1	NS	UL	5	3	2	3	2	3	3	3	3	2	1
	S	UL	6	4	3	4	3	9	6	4	4	3	2
A-2	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A-3	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-4	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-5	NS	UL	UL	UL	UL	UL	UL	1	1	1	UL	UL	UL
	S	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
B	NS	UL	11	5	3	5	3	5	5	5	5	3	2
	S	UL	12	6	4	6	4	18	12	9	6	4	3
E	NS	UL	5	3	2	3	2	3	3	3	3	1	1
	S	UL	6	4	3	4	3	9	6	4	4	2	2
F-1	NS	UL	11	4	2	3	2	3	3	3		2	1
	S	UL	12	5	3	4	3	10	7	5	5	3	2
F-2	NS	UL	11	5	3	4	3	5	5	5	5	3	2
	S	UL	12	6	4	5	4	12	8	6	6	4	3
H-1	NS <sup>c,d</sup>	1	1	1	1	1	1	NP	NP	NP	1	1	NP
	S							1	1	1			
H-2	NS <sup>c,d</sup>	UL	3	2	1	2	1	1	1	1	2	1	1
	S							2	2	2			
H-3	NS <sup>c,d</sup>	UL	6	4	2	4	2	3	3	3	4	2	1
	S							4	4	4			
H-4	NS <sup>c,d</sup>	UL	7	5	3	5	3	5	5	5	5	3	2
	S	UL	8	6	4	6	4	8	7	6	6	4	3
H-5	NS <sup>c,d</sup>	4	4	3	3	3	3	2	2	2	3	3	2
	S							3	3	3			
I-1 Condition 1	NS <sup>d,e</sup>	UL	9	4	3	4	3	4	4	4	4	3	2
	S	UL	10	5	4	5	4	10	7	5	5	4	3
I-1 Condition 2	NS <sup>d,e</sup>	UL	9	4	3	4	3	3	3	3	4	3	2
	S <sup>i</sup>	UL	10	5				10	6	4			
I-2	NS <sup>d,f</sup>	UL	4	2	1	1	NP	NP	NP	NP	1	1	NP
	S	UL	5	3				7	5	1			
I-3	NS <sup>d,e</sup>	UL	4	2	1	2	1	2	2	2	2	2	1
	S	UL	5	3	2	3	2	7	5	3	3	3	2
I-4	NS <sup>d,g</sup>	UL	5	3	2	3	2	3	3	3	3	1	1
	S	UL	6	4	3	4	3	9	6	4	4	2	2
M	NS	UL	11	4	2	4	2	4	4	4	4	3	1
	S	UL	12	5	3	5	3	12	8	6	5	4	2
R-1h	NS <sup>d</sup>	UL	11	4	4	4	4	4	4	4	4	3	2
	S13R	4	4									4	3
	S	UL	12	5	5	5	5	18	12	8	5	4	3
R-2h	NS <sup>d</sup>	UL	11	4	4	4	4	4	4	4	4	3	2
	S13R	4	4	4								4	3

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
	S	UL	12	5	5	5	5	18	12	8	5	4	3
R-3h	NS <sup>d</sup>	UL	11	4	4	4	4	4	4	4	4	3	3
	S13D	4	4									3	3
	S13R	4	4									4	4
	S	UL	12									5	5
R-4h	NS <sup>d</sup>	UL	11	4	4	4	4	4	4	4	4	3	2
	S13D	4	4									3	2
	S13R	4	4									4	3
	S	UL	12									5	5
S-1	NS	UL	11	4	2	3	2	4	4	4	4	3	1
	S	UL	12	5	3	4	3	10	7	5	5	4	2
S-2	NS	UL	11	5	3	4	3	4	4	4	4	4	2
	S	UL	12	6	4	5	4	12	8	5	5	5	3
U	NS	UL	5	4	2	3	2	4	4	4	4	2	1
	S	UL	6	5	3	4	3	9	6	5	5	3	2

UL = Unlimited; NP = Not permitted; NS = Buildings not equipped throughout with an automatic sprinkler system; S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

- a See Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.
- b See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
- c New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
- d The NS value is only for use in evaluation of existing building height in accordance with the International Existing Building Code.
- e New Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.
- f New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.
- g For new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.
- h New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.
- i Group I-1, Condition 2 Assisted living facilities licensed in accordance with chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC shall be permitted to use the allowable number of stories for Group R-2 occupancies.

**504.4.1 Stair enclosure pressurization increase.** For Group ~~((R1 and R2 occupancies))~~ R-1, R-2, and I-1 Condition 2 Assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC located in buildings of Type VA construction equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, the maximum number of stories permitted in Section ~~((504.2))~~ 504.4 may be increased by one provided the interior exit stairways and ramps are pressurized in accordance with Sections ~~((909))~~ 909.6.3 and 909.20. Legally required standby power shall be provided in accordance with Sections 909.11 and 2702.2.16 for buildings constructed in compliance with this section and be connected to stairway shaft pressurization equipment, elevators and lifts used for accessible means of egress (if provided), elevator hoistway pressurization equipment (if provided) and other life safety equipment as determined by the authority having jurisdiction. For the purposes of this section, legally required standby

power shall comply with ~~((2014))~~ 2017 NEC Section 701.12, options (A), (B), (C), (D), (F), or (G) or subsequent revised section number(s).

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

**WAC 51-50-0505 ~~((Section 505 — Mezzanines and equipment platforms.))~~ Reserved.**

~~((505.2.1 Area limitation. The aggregate area of a mezzanine or mezzanines within a room shall be not greater than one-third of the floor area of that room or space in which they are located. The enclosed portion of a room shall not be included in a determination of the floor area of the room in which the mezzanine is located. In determining the allowable mezzanine area, the area of the mezzanine shall not be included in the floor area of the room.~~

EXCEPTIONS: 1. The aggregate area of *mezzanines* in buildings and structures of Type I or II construction for special industrial occupancies in accordance with Section 503.1.1 shall be not greater than two-thirds of the floor area of the room.  
 2. The aggregate area of *mezzanines* in buildings and structures of Type I or II construction shall be not greater than one-half of the floor area of the room in buildings and structures equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1 and an approved emergency voice/ alarm communication system in accordance with Section 907.5.2.2.

levels shall be not greater than two-thirds of the floor area of the room or space in which they are located. The area of the mezzanine shall not exceed the area determined according to Section 505.2.1.

**505.2.1.1 Aggregate area of mezzanines and equipment platforms.** Where a room contains both a *mezzanine* and an *equipment platform*, the aggregate area of the two raised floor

**505.3.1 Area limitation.** The aggregate area of all *equipment platforms* within a room shall be not greater than two-thirds of the area of the room in which they are located. Where an *equipment platform* is located in the same room as a *mezzanine*, the area of the *mezzanine* shall be determined by Section 505.2.1 and the combined aggregate area of the *equipment platforms* and *mezzanines* shall be not greater than two-thirds of the room in which they are located. The area of the mezzanine shall not exceed the area determined according to Section 505.2.1.)

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-0506 Section 506—Building area. Table 506.2

Allowable Area Factor (At = NS, S1, S13R, S13D or SM, as applicable) In Square Feet<sup>a,b</sup>

Occupancy Classification	See Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A-1	NS	UL	UL	15,500	8,500	14,000	8,500	45,000	30,000	((18,000)) 18,750	15,000	11,500	5,500
	S1	UL	UL	62,000	34,000	56,000	34,000	180,000	120,000	75,000	60,000	46,000	22,000
	SM	UL	UL	46,500	25,500	42,000	25,500	135,000	90,000	56,250	45,000	34,500	16,500
A-2	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	56,250	45,000	34,500	18,000
A-3	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	((56,000)) 56,250	45,000	34,500	18,000
A-4	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	56,250	45,000	34,500	18,000
A-5	NS	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
	S1												
	SM												
B	NS	UL	UL	37,500	23,000	28,500	19,000	108,000	((75,000)) 72,000	45,000	36,000	18,000	9,000
	S1	UL	UL	150,000	92,000	114,000	76,000	432,000	288,000	180,000	144,000	72,000	36,000
	SM	UL	UL	112,500	69,000	85,500	57,000	324,000	216,000	135,000	108,000	54,000	27,000
E	NS	UL	UL	26,500	14,500	23,500	14,500	76,500	51,000	31,875	25,500	18,500	9,500
	S1	UL	UL	106,000	58,000	94,000	58,000	306,000	204,000	127,500	102,000	74,000	38,000
	SM	UL	UL	79,500	43,500	70,500	43,500	229,500	153,000	95,625	76,500	55,500	28,500
F-1	NS	UL	UL	25,000	15,500	19,000	12,000	100,500	67,000	41,875	33,500	14,000	8,500
	S1	UL	UL	100,000	62,000	76,000	48,000	402,000	268,000	167,500	134,000	56,000	34,000
	SM	UL	UL	75,000	46,500	57,000	36,000	301,500	201,000	125,625	100,500	42,000	25,500
F-2	NS	UL	UL	37,500	23,000	28,500	18,000	151,500	101,000	63,125	50,500	21,000	13,000
	S1	UL	UL	150,000	92,000	114,000	72,000	606,000	404,000	252,500	202,000	84,000	52,000
	SM	UL	UL	112,500	69,000	85,500	54,000	454,500	303,000	189,375	151,500	63,000	39,000
H-1	NS <sup>c</sup>	21,000	16,500	11,000	7,000	9,500	7,000	10,500	10,500	10,000	10,500	7,500	NP
	S1												



Occupancy Classification	See Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
H-2	NS <sup>c</sup>	21,000	16,500	11,000	7,000	9,500	7,000	10,500	10,500	10,000	10,500	7,500	3,000
	S1												
	SM												
H-3	NS <sup>c</sup>	UL	60,000	26,500	14,000	17,500	13,000	<del>((25,000))</del> 25,500	<del>((25,000))</del> 25,500	<del>((25,000))</del> 25,500	25,500	10,000	5,000
	S1												
	SM												
H-4	NS <sup>c,d</sup>	UL	UL	37,500	17,500	28,500	17,500	<del>((75,000))</del> 72,000	54,000	40,500	36,000	18,000	6,500
	S1	UL	UL	150,000	70,000	114,000	70,000	288,000	216,000	162,000	144,000	72,000	26,000
	SM	UL	UL	112,500	52,500	85,500	52,500	216,000	162,000	121,500	108,000	54,000	19,500
H-5	NS <sup>c,d</sup>	UL	UL	37,500	23,000	28,500	19,000	72,000	54,000	40,500	36,000	18,000	9,000
	S1	UL	UL	150,000	92,000	114,000	76,000	288,000	216,000	162,000	144,000	72,000	36,000
	SM	UL	UL	112,500	69,000	85,500	57,000	216,000	162,000	121,500	108,000	54,000	27,000

Occupancy Classification	See Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
I-1	NS <sup>d,e</sup>	UL	55,000	19,000	10,000	16,500	10,000	54,000	36,000	18,000	18,000	10,500	4,500
	S1	UL	220,000	76,000	40,000	66,000	40,000	216,000	144,000	72,000	72,000	42,000	18,000
	SM	UL	165,000	57,000	30,000	49,500	30,000	162,000	108,000	54,000	54,000	31,500	13,500
I-2	NS <sup>d,f</sup>	UL	UL	15,000	11,000	12,000	NP	36,000	24,000	12,000	12,000	9,500	NP
	S1	UL	UL	60,000	44,000	48,000	NP	144,000	96,000	48,000	48,000	38,000	NP
	SM	UL	UL	45,000	33,000	36,000	NP	108,000	72,000	36,000	36,000	28,500	NP
I-3	NS <sup>d,e</sup>	UL	UL	15,000	10,000	10,500	7,500	36,000	24,000	12,000	12,000	7,500	5,000
	S1	UL	UL	45,000	40,000	42,000	30,000	144,000	96,000	48,000	48,000	30,000	20,000
	SM	UL	UL	45,000	30,000	31,500	22,500	108,000	72,000	36,000	36,000	22,500	15,000
I-4	NS <sup>d,g</sup>	UL	60,500	26,500	13,000	23,500	13,000	76,500	51,000	25,500	25,500	18,500	9,000
	S1	UL	121,000	106,000	52,000	94,000	52,000	306,000	204,000	102,000	102,000	74,000	36,000
	SM	UL	181,500	79,500	39,000	70,500	39,000	229,500	153,000	76,500	76,500	55,500	27,000
M	NS	UL	UL	21,500	12,500	18,500	12,500	61,500	41,000	25,625	20,500	14,000	9,000
	S1	UL	UL	86,000	50,000	74,000	50,000	246,000	164,000	102,500	82,000	56,000	36,000
	SM	UL	UL	64,500	37,500	55,500	37,500	184,500	123,000	76,875	61,500	42,000	27,000
R-1 <sup>h</sup>	NS <sup>d((h))</sup>	UL	UL	24,000	16,000	24,000	16,000	61,500	41,000	25,625	20,500	12,000	7,000
	S13R												
	S1	UL	UL	96,000	64,000	96,000	64,000	246,000	164,000	102,500	82,000	48,000	28,000
	SM	UL	UL	72,000	48,000	72,000	48,000	184,500	123,000	76,875	61,500	36,000	21,000
R-2 <sup>h</sup>	NS <sup>d((h))</sup>	UL	UL	24,000	16,000	24,000	16,000	61,500	41,000	25,625	20,500	12,000	7,000
	S13R												
	S1	UL	UL	96,000	64,000	96,000	64,000	246,000	164,000	102,500	82,000	48,000	28,000
	SM	UL	UL	72,000	48,000	72,000	48,000	184,500	123,000	76,875	61,500	36,000	21,000
R-3 <sup>h</sup>	NS <sup>d((h))</sup>	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
	S13D												
	S13R												
	S1												
	SM												

Occupancy Classification	See Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
R-4 <sup>h</sup>	NS <sup>d((r+h))</sup>	UL	UL	24,000	16,000	24,000	16,000	<del>((61,000))</del> 61,500	41,000	25,625	20,500	12,000	7,000
	S13D												
	S13R												
	S1	UL	UL	96,000	64,000	96,000	64,000	246,000	164,000	102,500	82,000	48,000	28,000
	SM	UL	UL	72,000	48,000	72,000	48,000	184,500	123,000	76,875	61,500	36,000	21,000
S-1	NS	UL	48,000	26,000	17,500	26,000	17,500	76,500	51,000	31,875	25,500	14,000	9,000
	S1	UL	192,000	104,000	70,000	104,000	70,000	306,000	204,000	127,500	102,000	56,000	36,000
	SM	UL	144,000	78,000	52,500	78,000	52,500	229,500	153,000	95,625	76,500	42,000	27,000
S-2	NS	UL	79,000	39,000	26,000	39,000	26,000	115,500	77,000	48,125	38,500	21,000	13,500
	S1	UL	316,000	156,000	104,000	156,000	104,000	462,000	308,000	192,500	154,000	84,000	54,000
	SM	UL	237,000	117,000	78,000	117,000	78,000	346,500	231,000	144,375	115,500	63,000	40,500
U	NS <sup>i</sup>	UL	35,500	19,000	8,500	14,000	8,500	54,000	36,000	22,500	18,000	9,000	5,500
	S1	UL	142,000	76,000	34,000	56,000	34,000	216,000	144,000	90,000	72,000	36,000	22,000
	SM	UL	106,500	57,000	25,500	42,000	25,500	162,000	108,000	67,500	54,000	27,000	16,500

For SI: 1 square foot = 0.0929 m<sup>2</sup>.

UL = Unlimited; NP = Not permitted; NS = Buildings not equipped throughout with an automatic sprinkler system; S1 = Buildings a maximum of one story above grade plane equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; SM = Buildings two or more stories above grade plane equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2; S13D = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.3.

- a See Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.
- b See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
- c New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
- d The NS value is only for use in evaluation of existing building area in accordance with the International Existing Building Code.
- e New Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.
- f New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.
- g For new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.
- h New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.
- i The maximum allowable area for a single-story nonsprinklered Group U greenhouse is permitted to be 9,000 square feet, or the allowable area shall be permitted to comply with Table C102.1 of Appendix C.

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

**WAC 51-50-0510 Section 510—Special provisions.**

**510.2 Horizontal building separation allowance.** A building shall be considered as separate and distinct buildings for the purpose of determining area limitations, continuity of fire walls, limitation of number of stories and type of construction where all of the following conditions are met:

1. The buildings are separated with a *horizontal assembly* having a *fire-resistance rating* of not less than 3 hours where vertical offsets are provided as part of a horizontal assembly, the vertical offset and the structure supporting the vertical offset shall have a fire-resistance rating of not less than 3 hours.
2. The building below the *horizontal assembly* is of Type IA construction.
3. *Shaft, stairway, ramp* and escalator enclosures through the *horizontal assembly* shall have not less than a 2-

hour *fire-resistance rating* with opening protective in accordance with Section ~~((716.5))~~ **716.**

EXCEPTION: Where the enclosure walls below the *horizontal assembly* have not less than a 3-hour *fire-resistance rating* with opening protectives in accordance with Section ~~((716.5))~~ **716**, the enclosure walls extending above the *horizontal assembly* shall be permitted to have a 1-hour *fire-resistance rating* provided:

1. The building above the *horizontal assembly* is not required to be of Type I construction.
2. The enclosure connects fewer than four *stories*; and
3. The enclosure opening protective above the *horizontal assembly* have a *fire protection rating* of not less than 1 hour.
4. Interior exit stairways located within the Type IA building are permitted to be of combustible materials where both of the following requirements are met:
  - 4.1. The building above the Type IA building is of Type III, IV, or V construction.

4.2. The stairway located in the Type IA building is enclosed by 3-hour fire-resistance-rated construction with opening protectives in accordance with Section 716.

~~((4. The building or buildings above the horizontal assembly shall be permitted to have multiple Group A occupancy uses, each with an occupant load of less than 300, or Group B, Group I-1, Condition 2 licensed care facilities, M, R, or S occupancies.~~

5. The building below the horizontal assembly shall be protected throughout by an approved automatic sprinkler system in accordance with Section 903.3.1.1, and shall be permitted to be any occupancy allowed by this code except Group H.

6. The maximum building height in feet (mm) shall not exceed the limits set forth in Section 504.3 for the building having the smaller allowable height as measured from the grade plane. Group I-1, Condition 2 licensed care facilities shall be permitted to use the values for maximum height in feet for Group R-2 occupancies.)

**510.5 Group R-1 and R-2 buildings of Type IIIA construction.** For buildings of Type IIIA construction in Groups R-1 and R-2, the maximum allowable height in Table 504.3 shall be increased by 10 feet and the maximum allowable number of stories in Table 504.4 shall be increased by one foot where the first floor assembly above the basement has a fire-resistance rating of not less than 3 hours and the floor area is subdivided by 2-hour fire-resistance-rated fire walls into areas of not more than 3,000 square feet (279 m<sup>2</sup>).

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-0602 Section 602—Construction classification.**

**Table 602**  
**Fire-resistance Rating Requirements for Exterior Walls Based on Fire Separation Distance<sup>a,d,g</sup>**

Fire Separation Distance = X (feet)	Type of Construction	Occupancy Group H <sup>c</sup>	Occupancy Group F-1, M, S-1 <sup>f</sup>	Occupancy Group A, B, E, F-2, I, R <sup>i</sup> , S-2, U <sup>h</sup>
X < 5 <sup>b</sup>	All	3	2	1
5 ≤ X < 10	IA, IVA	3	2	((+)) 1
	Others	2	1	
10 ≤ X < 30	IA, IB, IVA, IVB	2	1	1 <sup>c</sup>
	IIB, VB	1	0	0
	Others	1	1	1 <sup>c</sup>
X ≥ 30	All	0	0	0

For SI: 1 foot = 304.8 mm.

- a Load-bearing exterior walls shall also comply with the fire-resistance rating requirements of Table 601.
- b See Section 706.1.1 for party walls.
- c Open parking garages complying with Section 406 shall not be required to have a fire-resistance rating.
- d The fire-resistance rating of an exterior wall is determined based upon the fire separation distance of the exterior wall and the story in which the wall is located.
- e For special requirements for Group H occupancies, see Section 415.6.
- f For special requirements for Group S aircraft hangars, see Section 412.3.1.
- g Where Table 705.8 permits nonbearing exterior walls with unlimited area of unprotected openings, the required fire-resistance rating for the exterior walls is 0 hours.
- h For a building containing only a Group U occupancy private garage or carport, the exterior wall shall not be required to have a fire-resistance rating where the fire separation distance is 5 feet (1523 mm) or greater.

**602.4 Type IV.** Type IV construction is that type of construction in which the building elements are mass timber or non-combustible materials and have fire-resistance ratings in accordance with Table 601. Mass timber elements shall meet the fire-resistance rating requirements of this section based on either the fire-resistance rating of the noncombustible protection, the mass timber, or a combination of both and shall be determined in accordance with Section 703.2 or 703.3. The minimum dimensions and permitted materials for building elements shall comply with the provisions of this section including ((Table 602.4.4 and)) Section 2304.11. Mass timber elements of Types IV-A, IV-B and IV-C construction

shall be protected with noncombustible protection applied directly to the mass timber in accordance with Sections 602.4.1 through 602.4.3. The time assigned to the noncombustible protection shall be determined in accordance with Section 703.8 and comply with 722.7.

Cross-laminated timber shall be labeled as conforming to ANSI/APA PRG 320 as referenced in Section 2303.1.4.

Exterior load-bearing walls and nonload-bearing walls shall be mass timber construction, or shall be of noncombustible construction.

EXCEPTION: Exterior load-bearing walls and nonload-bearing walls of Type IV-HT Construction in accordance with Section 602.4.4.

The interior building elements, including nonload-bearing walls and partitions, shall be of mass timber construction or of noncombustible construction.

EXCEPTION: Interior building elements and nonload-bearing walls and partitions of Type IV-HT Construction in accordance with Section 602.4.4.

Combustible concealed spaces are not permitted except as otherwise indicated in Sections 602.4.1 through 602.4.4. Combustible stud spaces within light frame walls of Type IV-HT construction shall not be considered concealed spaces, but shall comply with Section 718.

In buildings of Type IV-A, IV-B, and IV-C, construction with an occupied floor located more than 75 feet above the lowest level of fire department access, up to and including 12 stories or 180 feet above grade plane, mass timber interior exit and elevator hoistway enclosures shall be protected in accordance with Section 602.4.1.2. In buildings greater than 12 stories or 180 feet above grade plane, interior exit and elevator hoistway enclosures shall be constructed of noncombustible materials.

**602.4.1 Type IV-A.** Building elements in Type IV-A construction shall be protected in accordance with Sections 602.4.1.1 through 602.4.1.6. The required fire-resistance rating of noncombustible elements and protected mass timber elements shall be determined in accordance with Section 703.2 or Section 703.3.

**602.4.1.1 Exterior protection.** The outside face of exterior walls of mass timber construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering, shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m<sup>2</sup>, a total heat release of less than 20 MJ/m<sup>2</sup> and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354 and having a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m<sup>2</sup>.

**602.4.1.2 Interior protection.** Interior faces of all mass timber elements, including the inside faces of exterior mass timber walls and mass timber roofs, shall be protected with materials complying with Section 703.5.

**602.4.1.2.1 Protection time.** Noncombustible protection shall contribute a time equal to or greater than times assigned in Table 722.7.1(1), but not less than 80 minutes. The use of materials and their respective protection contributions listed in Table 722.7.1(2), shall be permitted to be used for compliance with Section 722.7.1.

**602.4.1.3 Floors.** The floor assembly shall contain a noncombustible material not less than 1 inch in thickness above

the mass timber. Floor finishes in accordance with Section 804 shall be permitted on top of the noncombustible material. The underside of floor assemblies shall be protected in accordance with 602.4.1.2.

**602.4.1.4 Roofs.** The interior surfaces of roof assemblies shall be protected in accordance with Section 602.4.1.2. Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.

**602.4.1.5 Concealed spaces.** Concealed spaces shall not contain combustibles other than electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected in accordance with Section 602.4.1.2.

**602.4.1.6 Shafts.** Shafts shall be permitted in accordance with Sections 713 and 718. Both the shaft side and room side of mass timber elements shall be protected in accordance with Section 602.4.1.2.

**602.4.2 Type IV-B.** Building elements in Type IV-B construction shall be protected in accordance with Sections 602.4.2.1 through 602.4.2.6. The required fire-resistance rating of noncombustible elements or mass timber elements shall be determined in accordance with Section 703.2 or 703.3.

**602.4.2.1 Exterior protection.** The outside face of exterior walls of mass timber construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m<sup>2</sup>, a total heat release of less than 20 MJ/m<sup>2</sup> and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354, and having a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m<sup>2</sup>.

**602.4.2.2 Interior protection.** Interior faces of all mass timber elements, including the inside face of exterior mass timber walls and mass timber roofs, shall be protected, as required by this section, with materials complying with Section 703.5.

**602.4.2.2.1 Protection time.** Noncombustible protection shall contribute a time equal to or greater than times assigned in Table 722.7.1(1), but not less than 80 minutes. The use of materials and their respective protection contributions listed in Table 722.7.1(2), shall be permitted to be used for compliance with Section 722.7.1.

**602.4.2.2.2 Protected area.** All interior faces of all mass timber elements shall be protected in accordance with Section 602.4.2.2.1, including the inside face of exterior mass timber walls and mass timber roofs.

- EXCEPTION: Unprotected portions of mass timber ceilings and walls complying with Section 602.4.2.2.4 and the following:
1. Unprotected portions of mass timber ceilings, including attached beams, shall be permitted and shall be limited to an area equal to 20% of the floor area in any dwelling unit or fire area; or
  2. Unprotected portions of mass timber walls, including attached columns, shall be permitted and shall be limited to an area equal to 40% of the floor area in any dwelling unit or fire area; or
  3. Unprotected portions of both walls and ceilings of mass timber, including attached columns and beams, in any dwelling unit or fire area shall be permitted in accordance with Section 602.4.2.2.3.
  4. Mass timber columns and beams which are not an integral portion of walls or ceilings, respectively, shall be permitted to be unprotected without restriction of either aggregate area or separation from one another.

**602.4.2.2.3 Mixed unprotected areas.** In each dwelling unit or fire area, where both portions of ceilings and portions of walls are unprotected, the total allowable unprotected area shall be determined in accordance with Equation 6-1.

(Equation 6-1)

$$(U_{tc}/U_{ac}) + (U_{tw}/U_{aw}) \leq 1$$

where:

- $U_{tc}$  = Total unprotected mass timber ceiling areas;
- $U_{ac}$  = Allowable unprotected mass timber ceiling area conforming to Section 602.4.2.2.2, Exception 1;
- $U_{tw}$  = Total unprotected mass timber wall areas;
- $U_{aw}$  = Allowable unprotected mass timber wall area conforming to Section 602.4.2.2.2, Exception 2.

**602.4.2.2.4 Separation distance between unprotected mass timber elements.** In each dwelling unit or fire area, unprotected portions of mass timber walls and ceilings shall be not less than 15 feet from unprotected portions of other walls and ceilings, measured horizontally along the ceiling and from other unprotected portions of walls measured horizontally along the floor.

**602.4.2.3 Floors.** The floor assembly shall contain a non-combustible material not less than 1 inch in thickness above the mass timber. Floor finishes in accordance with Section 804 shall be permitted on top of the noncombustible material. The underside of floor assemblies shall be protected in accordance with Section 602.4.1.2.

**602.4.2.4 Roofs.** The interior surfaces of roof assemblies shall be protected in accordance with Section 602.4.2.2 except, in nonoccupiable spaces, they shall be treated as a concealed space with no portion left unprotected. Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.

**602.4.2.5 Concealed spaces.** Concealed spaces shall not contain combustibles other than electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected in accordance with Section 602.4.1.2.

**602.4.2.6 Shafts.** Shafts shall be permitted in accordance with Sections 713 and 718. Both the shaft side and room side of mass timber elements shall be protected in accordance with Section 602.4.1.2.

**602.4.3 Type IV-C.** Building elements in Type IV-C construction shall be protected in accordance with Sections 602.4.3.1 through 602.4.3.6. The required fire-resistance rating of building elements shall be determined in accordance with Sections 703.2 or 703.3.

**602.4.3.1 Exterior protection.** The exterior side of walls of combustible construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering, shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m<sup>2</sup>, a total heat release of less than 20 MJ/m<sup>2</sup> and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354 and having a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m<sup>2</sup>.

**602.4.3.2 Interior protection.** Mass timber elements are permitted to be unprotected.

**602.4.3.3 Floors.** Floor finishes in accordance with Section 804 shall be permitted on top of the floor construction.

**602.4.3.4 Roofs.** Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.

**602.4.3.5 Concealed spaces.** Concealed spaces shall not contain combustibles other than electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1.

**602.4.3.6 Shafts.** Shafts shall be permitted in accordance with Sections 713 and 718. Shafts and elevator hoistway and interior exit stairway enclosures shall be protected with non-combustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1, on both the inside of the shaft and the outside of the shaft.

**602.4.4 Type IV-HT.** Type IV-HT construction (Heavy Timber, HT) is that type of construction in which the exterior walls are of noncombustible materials and the interior building elements are of solid wood, laminated heavy timber or structural composite lumber (SCL), without concealed spaces. The minimum dimensions for permitted materials including solid timber, glued-laminated timber, structural composite lumber (SCL) and cross-laminated timber (CLT) and details of Type IV construction shall comply with the provisions of this section (~~(, including Table 602.4.4)~~) and Section 2304.11. Exterior walls complying with Section 602.4.4.1 or 602.4.4.2 shall be permitted. Interior walls and partitions not less than 1 hour fire-resistance rating or heavy timber conforming with Section ~~((602.4.4.8.1))~~ 2304.11.2.2 shall be permitted. ~~((Cross-laminated timber (CLT) dimensions used in this section are actual dimensions. Lumber decking shall be in accordance with Section 2304.9.))~~

**602.4.4.1 Fire-retardant-treated wood in exterior walls.** Fire-retardant-treated wood framing and sheathing complying with Section 2303.2 shall be permitted within exterior wall assemblies not less than 6 inches (152 mm) in thickness with a 2-hour rating or less.

**602.4.4.2 Cross-laminated timber in exterior walls.** Cross-laminated timber complying with Section 2303.1.4 shall be permitted within exterior wall assemblies not less than 6 inches (152 mm) in thickness with a 2-hour rating or less, provided the exterior surface of the cross-laminated timber is protected by one of the following:

1. Fire-retardant-treated wood sheathing complying with Section 2303.2 and not less than 15/32 inch (12 mm) thick;
  2. Gypsum board not less than 1/2 inch (12.7 mm) thick;
- or
3. A noncombustible material.

~~((602.4.4.3 Columns. Wood columns shall be sawn or glued laminated and shall be not less than 8 inches (203 mm), nominal, in any dimension where supporting floor loads and not less than 6 inches (152 mm) nominal in width and not less than 8 inches (203 mm) nominal in depth where supporting roof and ceiling loads only. Columns shall be continuous or superimposed and connected in an approved manner. Protection in accordance with Section 704.2 is not required.~~

**602.4.4.4 Floor framing.** Wood beams and girders shall be of sawn or glued laminated timber and shall be not less than 6 inches (152 mm) nominal in width and not less than 10 inches (254 mm) nominal in depth. Framed sawn or glued laminated timber arches, which spring from the floor line and support floor loads, shall be not less than 8 inches (203 mm) nominal in any dimension. Framed timber trusses supporting floor loads shall have members of not less than 8 inches (203 mm) nominal in any dimension.

**602.4.4.5 Roof framing.** Wood frame or glued laminated arches for roof construction, which spring from the floor line or from grade and do not support floor loads, shall have members not less than 6 inches (152 mm) nominal in width and have not less than 8 inches (203 mm) nominal in depth for the lower half of the height and not less than 6 inches (152 mm) nominal in depth for the upper half. Framed or glued lami-

nated arches for roof construction that spring from the top of walls or wall abutments, framed timber trusses and other roof framing, which do not support floor loads, shall have members not less than 4 inches (102 mm) nominal in width and not less than 6 inches (152 mm) nominal in depth. Spaced members shall be permitted to be composed of two or more pieces not less than 3 inches (76 mm) nominal in thickness where blocked solidly throughout their intervening spaces or where spaces are tightly closed by a continuous wood cover plate of not less than 2 inches (51 mm) nominal in thickness secured to the underside of the members. Splice plates shall be not less than 3 inches (76 mm) nominal in thickness. Where protected by approved automatic sprinklers under the roof deck, framing members shall be not less than 3 inches (76 mm) nominal in width.

**602.4.4.6 Floors.** Floors shall be without concealed spaces. Wood floors shall be constructed in accordance with Section 602.4.4.6.1 or 602.4.4.6.2.

**602.4.4.6.1 Sawn or glued laminated plank floors.** Sawn or glued laminated plank floors shall be one of the following:

1. Sawn or glued laminated planks, splined or tongue and groove, of not less than 3 inches (76 mm) nominal in thickness covered with 1 inch (25 mm) nominal dimension tongue and groove flooring, laid crosswise or diagonally, 15/32 inch (12 mm) wood structural panel or 1/2 inch (12.7 mm) particleboard.

2. Planks not less than 4 inches (102 mm) nominal in width set on edge close together and well spiked and covered with 1 inch (25 mm) nominal dimension flooring or 15/32 inch (12 mm) wood structural panel or 1/2 inch (12.7 mm) particleboard.

The lumber shall be laid so that no continuous line of joints will occur except at points of support. Floors shall not extend closer than 1/2 inch (12.7 mm) to walls. Such 1/2 inch (12.7 mm) space shall be covered by a molding fastened to the wall and so arranged that it will not obstruct the swelling or shrinkage movements of the floor. Corbelling of masonry walls under the floor shall be permitted to be used in place of molding.

**602.4.4.6.2 Cross laminated timber floors.** Cross laminated timber shall be not less than 4 inches (102 mm) in thickness. Cross laminated timber shall be continuous from support to support and mechanically fastened to one another. Cross laminated timber shall be permitted to be connected to walls without a shrinkage gap providing swelling or shrinking is considered in the design. Corbelling of masonry walls under the floor shall be permitted to be used.

**602.4.4.7 Roofs.** Roofs shall be without concealed spaces and wood roof decks shall be sawn or glued laminated, splined or tongue and groove plank, not less than 2 inches (51 mm) nominal in thickness; 1 1/8 inch thick (32 mm) wood structural panel (exterior glue); planks not less than 3 inches (76 mm) nominal in width, set on edge close together and laid as required for floors; or of cross laminated timber. Other types of decking shall be permitted to be used if providing equivalent fire resistance and structural properties.

Cross-laminated timber roofs shall be not less than 3 inches (76 mm) nominal in thickness and shall be continuous from support to support and mechanically fastened to one another.

**602.4.4.8 Partitions and walls.** Partitions and walls shall comply with Section 602.4.4.8.1 or 602.4.4.8.2.

**602.4.4.8.1 Interior walls and partitions.** Interior walls and partitions shall be of solid wood construction formed by not less than two layers of 1 inch (25 mm) matched boards or laminated construction 4 inches (102 mm) thick, or of 1-hour fire-resistance-rated construction.

**602.4.4.8.2 Exterior walls.** Exterior walls shall be of one of the following:

1. Noncombustible materials.
2. Not less than 6 inches (152 mm) in thickness and constructed of one of the following:
  - 2.1. Fire-retardant treated wood in accordance with Section 2303.2 and complying with Section 602.4.4.1.
  - 2.2. Cross-laminated timber complying with Section 602.4.4.2.

**602.4.4.9 Exterior structural members.** Where a horizontal separation of 20 feet (6096 mm) or more is provided, wood columns and arches conforming to heavy timber sizes complying with Table 602.4.4 shall be permitted to be used externally.)

**AMENDATORY SECTION** (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-0603 Section 603—Combustible material in Types I and II construction.**

**603.1 Allowable materials.** Combustible materials shall be permitted in buildings of Type I or II construction in the following applications and in accordance with Sections 603.1.1 through 603.1.3:

1. *Fire-retardant-treated wood* shall be permitted in:
  - 1.1. Nonbearing partitions where the required *fire-resistance rating* is 2 hours or less.
  - 1.2. Nonbearing *exterior walls* where fire-resistance-rated construction is not required.
  - 1.3. Roof construction, including girders, trusses, framing and decking.

**EXCEPTION:** In buildings of Type I-A construction exceeding two *stories above grade plane*, *fire-retardant-treated wood* is not permitted in roof construction where the vertical distance from the upper floor to the roof is less than 20 feet (6096 mm).

((2. Thermal and acoustical insulation, other than foam plastics, having a *flame spread index* of not more than 25.

- EXCEPTIONS:**
1. Insulation placed between two layers of noncombustible materials without an intervening airspace shall be allowed to have a *flame spread index* of not more than 100.
  2. Insulation installed between a finished floor and solid decking without intervening airspace shall be allowed to have a *flame spread index* of not more than 200.
  3. Foam plastics in accordance with Chapter 26.
  4. Roof coverings that have an A, B or C classification.

~~5. *Interior floor finish* and floor covering materials installed in accordance with Section 804.~~

~~6. Millwork such as doors, door frames, window sashes and frames.~~

~~7. *Interior wall and ceiling finishes* installed in accordance with Sections 801 and 803.~~

~~8. *Trim* installed in accordance with Section 806.~~

~~9. Where not installed greater than 15 feet (4572 mm) above grade, show windows, nailing or furring strips and wooden bulkheads below show windows, including their frames, aprons and show cases.~~

~~10. Finish flooring installed in accordance with Section 805.~~

~~11. Partitions dividing portions of stores, offices or similar places occupied by one tenant only and that do not establish a *corridor* serving an *occupant load* of 30 or more shall be permitted to be constructed of *fire-retardant-treated wood*, 1-hour fire-resistance-rated construction or of wood panels or similar light construction up to 6 feet (1829 mm) in height.~~

~~12. Stages and platforms constructed in accordance with Sections 410.3 and 410.4, respectively.~~

~~13. Combustible *exterior wall coverings*, balconies and similar projections and bay or oriel windows in accordance with Chapter 14.~~

~~14. Blocking such as for handrails, millwork, cabinets and window and door frames.~~

~~15. Light-transmitting plastics as permitted by Chapter 26.~~

~~16. Mastics and caulking materials applied to provide flexible seals between components of *exterior wall* construction.~~

~~17. Exterior plastic veneer installed in accordance with Section 2605.2.~~

~~18. Nailing or furring strips as permitted by Section 803.13.~~

~~19. Heavy timber as permitted by Note<sup>a</sup> to Table 601 and Sections 602.4.4.9 and 1406.3.~~

~~20. Aggregates, component materials and admixtures as permitted by Section 703.2.2.~~

~~21. Sprayed fire-resistant materials and intumescent and mastic fire-resistant coatings, determined on the basis of *fire resistance* tests in accordance with Section 703.2 and installed in accordance with Sections 1705.14 and 1705.15, respectively.~~

~~22. Materials used to protect penetrations in fire-resistance-rated assemblies in accordance with Section 714.~~

~~23. Materials used to protect joints in fire-resistance-rated assemblies in accordance with Section 715.~~

~~24. Materials allowed in the concealed spaces of buildings of Types I and II construction in accordance with Section 718.5.~~

~~25. Materials exposed within plenums complying with Section 602 of the *International Mechanical Code*.~~

~~26. Wall construction of freezers and coolers of less than 1,000 square feet (92.9 m<sup>2</sup>), in size, lined on both sides with noncombustible materials and the building is protected throughout with an *automatic sprinkler system* in accordance with Section 903.3.1.1.)~~

1.4. Balconies, porches, decks and exterior stairways not used as required exits on buildings three stories or less above grade plane. Approved connector shall be in accordance with Section 2304.10.5.

#### NEW SECTION

**WAC 51-50-0704 Section 704—Fire-resistance rating of structural members.**

**704.6.1 Secondary (nonstructural) attachments to structural members.** Where primary and secondary structural steel members require fire protection, secondary (nonstructural) tubular steel attachments to those structural members shall be protected with the same fire resistive rating as required for the structural member. The protection shall extend from the structural member a distance of not less than 12 inches. An open tubular attachment shall be filled with an equivalent fire protection method for a distance of 12-inch length from the structural member, or the entire length of the open tube, whichever is less.

#### NEW SECTION

**WAC 51-50-0705 Section 705—Exterior walls and projections.**

**705.1 General.** Exterior walls and projections shall comply with this section.

**705.2 Projections.** Cornices, roof and eave overhangs, projecting floors above, exterior balconies and similar projections extending beyond the exterior wall shall conform to the requirements of this section and Section 1405. Exterior egress balconies and exterior exit stairways and ramps shall comply with Sections 1021 and 1027, respectively. Projections shall not extend any closer to the line used to determine the fire separation distance than shown in Table 705.2.

EXCEPTIONS:

1. Buildings on the same lot and considered as portions of one building in accordance with Section 705.3 are not required to comply with this section for projections between the buildings.
2. Projecting floors complying with Section 705.2.4 are not required to comply with the projection limitations of Table 705.2.

**705.2.5 Projecting floors.** Where the fire separation distance on a lower floor is greater than the fire separation distance on the floor immediately above, the projecting floor shall have not less than the *fire-resistance rating* as the exterior wall above based on Table 602. The *fire-resistant rating* of the *horizontal* portion shall be continuous to the lower *vertical* wall.

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

**WAC 51-50-0706 Section 706—Fire walls.**

~~((706.1 General. Fire walls shall be constructed in accordance with Sections 706.2 through 706.11. The extent and location of such fire walls shall provide a complete separation. Where a fire wall also separates occupancies that are~~

~~required to be separated by a fire barrier wall, the most restrictive requirements of each separation shall apply.))~~  
**706.6.1 Stepped buildings.** Where a fire wall also serves as an exterior wall for a building and separates buildings having different roof levels, such wall shall terminate at a point not less than 30 inches (762 mm) above the lower roof level. Exterior walls above the fire wall extending more than 30 inches above the lower roof shall be of not less than 1-hour *fire-resistance-rated* construction from both sides with openings protected by fire assemblies having a fire protection rating of not less than 3/4 hour. Portions of the exterior walls exceeding 15 feet above the lower roof shall be permitted to be of *nonfire-resistance-rated* construction unless otherwise required by other provisions of this code.

EXEMPTION: A fire wall serving as part of an exterior wall that separates buildings having different roof levels shall be permitted to terminate at the underside of the roof sheathing, deck or slab of the lower roof, provided items 1, 2, and 3 below are met. The exterior wall above the fire wall is not required to be of *fire-resistance-rated* construction, unless required by other provisions of this code.

1. The lower roof assembly within 10 feet (3048 mm) of the fire wall has not less than a 1-hour *fire-resistance rating*.

2. The entire length and span of supporting elements for the rated roof assembly has a *fire-resistance rating* of not less than 1 hour.

3. Openings in the lower roof are not located within 10 feet (3048 mm) of the *fire wall*.

#### NEW SECTION

**WAC 51-50-0707 Section 707—Fire barriers.**

**707.4 Exterior walls.** Where exterior walls serve as a part of a required *fire-resistance-rated* shaft or separation or enclosure for a stairway, ramp or exit passageway, such walls shall comply with the requirements of Section 705 for exterior walls and the *fire-resistance-rated* enclosure or separation requirements shall not apply.

EXCEPTION: Exterior walls required to be *fire-resistance-rated* in accordance with Section 1021 for exterior egress balconies, Section 1023.7 for interior exit stairways and ramps, Section 1024.8 for exit passageways and Section 1027.6 for exterior exit stairways and ramp.

**707.5 Continuity.** Fire barriers shall extend from the top of the foundation or floor/ceiling assembly below to the underside of the floor or roof sheathing, slab or deck above and shall be securely attached thereto. Such fire barriers shall be continuous through concealed space, such as the space above a suspended ceiling. Joints and voids at intersections shall comply with Sections 707.8 and 707.9.

EXCEPTIONS:

1. Shaft enclosures shall be permitted to terminate at a top enclosure complying with Section 713.12.
2. Interior exit stairway and ramp enclosures required by Section 1023 and exit access stairway and ramp enclosures required by Section 1019 shall be permitted to terminate at a top enclosure complying with Section 713.12.



3. An exit passageway enclosure required by Section 1024.3 that does not extend to the underside of the roof sheathing, slab or deck above shall be enclosed at the top with construction of the same *fire-resistance rating* as required for the exit passageway.

#### NEW SECTION

#### **WAC 51-50-0713 Section 713—Shaft enclosures.**

**713.13.4 Chute discharge room.** Waste or linen chutes shall discharge into an enclosed room separated by fire barriers with a *fire-resistance rating* not less than the required *fire rating* of the shaft enclosure and constructed in accordance with Section 707 or *horizontal assemblies* constructed in accordance with Section 711, or both. Openings into the discharge room from the remainder of the building shall be protected by opening protectives having a *fire-protection rating* equal to the protection required for the shaft enclosure. Through penetrations of piping and conduit not necessary for the purpose of the chute discharge room are permitted as long as they are protected in accordance with Section 714 and do not impact the operation of the trash collection system. Doors shall be self- or automatic-closing upon the detection of smoke in accordance with Section 716.2.6.6. Waste chutes shall not terminate in an incinerator room. Waste and linen rooms that are not provided with chutes need only comply with Table 509.

**713.13.7 Chute venting and roof termination.** The full diameter of waste and linen chutes shall extend a minimum of 3 feet (0.92 m) above the building roof and be gravity vented in accordance with *International Mechanical Code* Section 515.

EXCEPTIONS:

1. Where mechanically ventilated in accordance with *International Mechanical Code* Section 515 the full diameter of the chute shall extend through the roof a minimum of 3 feet (0.92 m) and terminate at a blast cap. The mechanical exhaust connection shall tap into the side of the blast cap extension above the roof.
2. Where the trash chute does not extend to the upper floor of the building below the roof the trash chute shall be permitted to gravity vent to a sidewall louver termination. The horizontal extension of the trash chute shall be the full diameter of the chute and shall be enclosed in rated construction equal to the rating of the shaft enclosure. Where the chute is mechanically ventilated in accordance with *International Mechanical Code* Section 515 the blast cap shall terminate behind the louver and the exhaust fan and duct connection will be enclosed in the rated shaft.

#### NEW SECTION

#### **WAC 51-50-0717 Section 717—Ducts and air transfer openings.**

**717.5.2 Fire barriers.** Ducts and air transfer openings of fire barriers shall be protected with listed fire dampers installed in accordance with their listing. Ducts and air transfer openings shall not penetrate enclosures for interior exit stairways and ramps and exit passageways, except as permitted by Sections 1023.5 and 1024.6, respectively.

EXCEPTION: Fire dampers are not required at penetrations of fire barriers where any of the following apply:

1. Penetrations are tested in accordance with ASTM E119 or UL 263 as part of the *fire-resistance-rated* assembly.
2. Ducts are used as part of an approved smoke control system in accordance with Section 909 and where the use of a fire damper would interfere with the operation of a smoke control system.
3. Such walls shall have a required *fire-resistance rating* of 1 hour or less, penetrated by ducted HVAC systems, in areas of other than Group H and are in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. For the purposes of this exception, a ducted HVAC system shall be a duct system for conveying supply, return or exhaust air as part of the structure's HVAC system. Such a duct system shall be constructed of sheet steel not less than No. 26 gage thickness and shall be continuous without openings from the air-handling appliance or equipment to the air outlet and inlet terminals, located on the opposite side of the wall assembly.

**717.5.4 Fire partitions.** Ducts and air transfer openings that penetrate fire partitions shall be protected with listed fire dampers installed in accordance with their listing.

EXCEPTION: In occupancies other than Group H, fire dampers are not required where any of the following apply:

1. Corridor walls in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and the duct is protected as a through penetration in accordance with Section 714.
2. Tenant partitions in covered and open mall buildings where the walls are not required by provisions elsewhere in the code to extend to the underside of the floor or roof sheathing, slab or deck above.
3. The duct system is constructed of approved materials in accordance with the *International Mechanical Code* and the duct penetrating the wall complies with all of the following requirements:
  - 3.1. The duct shall not exceed 100 square inches (0.06 m<sup>2</sup>).
  - 3.2. The duct shall be constructed of steel not less than 0.0217-inch (0.55 mm) in thickness.
  - 3.3. The duct shall not have openings that communicate the corridor with adjacent spaces or rooms.
  - 3.4. The duct shall be installed above a ceiling.
  - 3.5. The duct shall not terminate at a wall register in the *fire-resistance-rated* wall.
  - 3.6. A minimum 12-inch-long (305 mm) by 0.060-inch-thick (1.52 mm) steel sleeve shall be centered in each duct opening. The sleeve shall be secured to both sides of the wall and all four sides of the sleeve with minimum 1.5 inch by 1.5 inch by 0.060-inch (38 mm by 38 mm by 1.52 mm) steel retaining angles. The retaining angles shall be secured to the sleeve and the wall with No. 10 (M5) screws. The annular space between the steel sleeve and the wall opening shall be filled with mineral wool batting on all sides.

4. Such walls shall have a required *fire-resistance rating* of 1 hour or less, penetrated by ducted HVAC systems in areas of other than Group H and are in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. For the purposes of this exception, a ducted HVAC system shall be a duct system for conveying supply, return or exhaust air as part of the structure's HVAC system. Such a duct system shall be constructed of sheet steel not less than No. 26 gage thickness and shall be continuous without openings from the air-handling appliance or equipment to the air outlet and inlet terminals located on the opposite side of the wall assembly.

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

**WAC 51-50-0903 Section 903—Automatic sprinkler systems.**

~~(903.2.1.6 Assembly occupancies on roofs. Where an occupied roof has an assembly occupancy with an occupant load exceeding 100 for Group A-2, and 300 for other Group A occupancies, the building shall be equipped with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.~~

EXCEPTION: Open parking garages of Type I or Type II construction.)

**903.2.1.8 Nightclub.** An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

**903.2.3 Group E.** An automatic sprinkler system shall be provided for fire areas containing Group E occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2.

EXCEPTIONS:

1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table 1004.1.2, provided that the aggregate area of any cluster of portable school classrooms does not exceed 6,000 square feet (557 m<sup>2</sup>); and clusters of portable school classrooms shall be separated as required by the building code; or
2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table 1004.1.2, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each classroom shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m<sup>2</sup>); and clusters of portable school classrooms shall be separated as required by the building code; or
3. Fire areas containing day care and preschool facilities with a total occupant load of 100 or less located at the level of exit discharge where every room in which care is provided has not fewer than one exit discharge door.

**903.2.6 Group I.** An automatic sprinkler system shall be provided throughout buildings with a Group I fire area.

EXCEPTIONS:

1. An automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted in Group I-1 Condition 1 facilities.

2. Where new construction ((or additions)) house ((less than)) sixteen persons receiving care, an automatic sprinkler system installed in accordance with Section ((903.2.8.3)) 903.3.1.2 shall be permitted for Group I-1, Condition 2, assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC.

3. An automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted in additions to existing buildings where both of the following situations are true:

3.1. The addition is made to a building previously approved as Group LC or Group R-2 that houses either an assisted living facility licensed under chapter 388-78A WAC or residential treatment facility licensed under chapter 246-337 WAC.

3.2. The addition contains spaces for sixteen or fewer persons receiving care.

**903.2.6.1 Group I-4.** An automatic sprinkler system shall be provided in fire areas containing Group I-4 occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2.

EXCEPTIONS:

1. An automatic sprinkler system is not required for Group I-4 day care facilities with a total occupant load of 100 or less, and located at the level of exit discharge and where every room where care is provided has not fewer than one exterior exit door.
2. In buildings where Group I-4 day care is provided on levels other than the level of exit discharge, an automatic sprinkler system in accordance with Section 903.3.1.1 shall be installed on the entire floor where care is provided, all floors between the level of care and the level of exit discharge and all floors below the level of exit discharge other than areas classified as an open parking garage.

**903.2.7 Group M.** An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m<sup>2</sup>).
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m<sup>2</sup>).
4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m<sup>2</sup>).

**903.2.8 Group R.** An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION:

Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.

7. A hand held (portable) fire extinguisher is in every Group R fire area.

~~((903.2.11.1.3 Basements. Where any portion of a basement is located more than 75 feet (22,860 mm) from openings required by Section 903.2.11.1, or where new walls, partitions or other similar obstructions are installed that increase the exit access travel distance to more than 75 feet, the basement shall be equipped throughout with an approved automatic sprinkler system.))~~ **903.2.9.3 Group 5-1 upholstered furniture and mattresses.** An automatic sprinkler system shall be provided throughout a Group 5-1 fire area where the area used for storage of upholstered furniture exceeds 2,500 square feet (232 m<sup>2</sup>).

EXCEPTION: Self-service storage facilities no greater than one story above grade plane where all storage spaces can be accessed directly from the exterior.

**903.2.11.7 Relocatable buildings within buildings.** Relocatable buildings or structures located within a building with an approved fire sprinkler system shall be provided with fire sprinkler protection within the occupiable space of the building and the space underneath the relocatable building.

- EXCEPTIONS:
1. Sprinkler protection is not required underneath the building when the space is separated from the adjacent space by construction resisting the passage of smoke and heat and combustible storage will not be located there.
  2. If the building or structure does not have a roof or ceiling obstructing the overhead sprinklers.
  3. Construction trailers and temporary offices used during new building construction prior to occupancy.
  4. Movable shopping mall kiosks with a roof or canopy dimension of less than 4 feet on the smallest side.

**903.3.5.3 Underground portions of fire protection system water supply piping.** The installation or modification of an underground water main, public or private, supplying a water-based fire protection system shall be in accordance with NFPA 24 and chapter 18.160 RCW. Piping and appurtenances downstream of the first control valve on the lateral or service line from the distribution main to one-foot above finished floor shall be approved by the fire *code official*. Such underground piping shall be installed by a fire sprinkler system contractor licensed in accordance with chapter 18.160 RCW and holding either a Level U or a Level 3 license. For underground piping supplying systems installed in accordance with Section 903.3.1.2, a Level 2, 3, or U licensed contractor is acceptable.

**AMENDATORY SECTION** (Amending WSR 18-01-104, filed 12/19/17, effective 7/1/18)

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

**[F] 907.2.3 Group E.** Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or
2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed

as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

- 2.1 The ability to broadcast voice messages or customized announcements;
- 2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;
- 2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;
- 2.4 The ability for two-way communications;
- 2.5 The ability for individual room calling;
- 2.6 The ability for a manual override;
- 2.7 Installation in accordance with NFPA 72;
- 2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and
- 2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

- EXCEPTIONS:
1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
  2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
  3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:
    - 3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or
    - 3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).
  4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
    - 4.1 Interior *corridors* are protected by smoke detectors.
    - 4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by *heat detectors* or other *approved* detection devices.
    - 4.3 Shops and laboratories involving dust or vapors are protected by heat detectors or other approved detection devices.
  5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:
    - 5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
    - 5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.
    - 5.3 Manual activation is provided from a normally occupied location.

**[F] 907.2.3.1 Sprinkler systems or detection.** When automatic sprinkler systems or smoke detectors are installed, such

systems or detectors shall be connected to the building fire alarm system.

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

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

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

EXCEPTIONS:

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

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

EXCEPTIONS:

1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

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

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

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

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

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

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

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

**WAC 51-50-0909 Section 909—Smoke control systems.**

**909.6.3 Pressurized stairways and elevator hoistways.** Where stairways or elevator hoistways are pressurized, such pressurization systems shall comply with the requirements of Section 909.20 of this code for stair pressurization and 909.21 of the *International Building Code and Fire Code* as necessary to determine that the stairway or elevator hoistways meets the pressurization requirements of the code. Stairway and elevator hoistway pressurization systems in high-rise buildings, underground buildings, and in airport traffic control towers shall comply with *International Building Code* and *International Fire Code* Sections 909 as smoke control systems.

Stairway pressurization systems in other than high-rise buildings, underground buildings, or airport traffic control towers are smoke control systems but shall only be required to comply with the following *International Building Code* 909 Sections: 909.1, 909.2, 909.3, 909.6 with the exception of Sections 909.6.1, 909.10 with the exception of Sections 909.10.2, 909.11 with the exception of Sections 909.11.1, 909.12 with the exception of Sections 909.12.3.2, 909.13, 909.14, 909.17, 909.18 with the exception of Sections 909.18.2 and 909.18.9, 909.19, 909.20.5 and 909.20.6. Design drawings shall include a description of system operation, the conditions for system testing and the criteria for system acceptance to achieve the code minimum performance of the smoke control system. Stairway pressurization systems shall be maintained in accordance with Section 909.20 of the *International Fire Code*.

Elevator hoistway pressurization systems in other than high-rise buildings, underground buildings, or airport traffic control towers are smoke control systems but shall only be required to comply with the following *International Building*

Code 909 Sections: 909.1, 909.2, 909.3, 909.6 with the exception of Sections 909.6.1, 909.10 with the exception of Sections 909.10.2, 909.11 with the exception of Sections 909.11.1, 909.12 with the exception of Sections 909.12.3.2, 909.13, 909.14, 909.17, 909.18 with the exception of Sections 909.18.2 and 909.18.9, 909.19, and 909.21 with the exception of Sections 909.21.2, 909.21.9, and 909.21.10. Design drawings shall include a description of system operation, the conditions for system testing and the criteria for system acceptance to achieve the code minimum performance of the smoke control system. Elevator hoistway pressurization systems shall be maintained in accordance with Section 909.20 of the International Fire Code.

**909.21.12 Hoistway venting.** Hoistway venting need not be provided for pressurized elevator shafts.

**909.21.13 Machine rooms.** Elevator machine rooms shall be pressurized in accordance with this section unless separated from the hoistway shaft by construction in accordance with Section 707.

**NEW SECTION**

**WAC 51-50-0913 Section 913—Fire pumps.**

**913.2.1 Protection of fire pump rooms and access.** Fire pumps shall be located in rooms that are separated from all other areas of the building by 2-hour fire barriers constructed in accordance with Section 707 or 2-hour horizontal assemblies constructed in accordance with Section 711, or both. Fire pump rooms not directly accessible from the outside shall be accessible through an enclosed passageway from an interior exit stairway or exterior exit. The enclosed passageway shall have a *fire-resistance rating* not less than the *fire-resistance rating* of the fire pump room (see NFPA 20 Section 4.12.2.1.2).

**AMENDATORY SECTION** (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-1004 Section 1004—Occupant load.**

**Table ((~~1004.1.2~~)) 1004.5, Maximum Floor Area Allowances Per Occupant**

((~~Table 1004.1.2~~

**Maximum Floor Area Allowances Per Occupant**

<b>FUNCTION OF SPACE</b>	<b>OCCUPANT-LOAD FACTOR*</b>
Accessory storage areas, mechanical-equipment room	300 gross
Agricultural building	300 gross
Aircraft hangars	500 gross
Airport terminal	
Baggage claim	20 gross
Baggage handling	300 gross
Concourse	100 gross
Waiting areas	15 gross

<b>FUNCTION OF SPACE</b>	<b>OCCUPANT-LOAD FACTOR*</b>
Assembly	
Gaming floors (keno, slots, etc.)	11 gross
Exhibit gallery and museum	30 net
Assembly with fixed seats	See Section-1004.4
Assembly without fixed seats	
Concentrated (chairs only – Not fixed)	7 net
Standing space	5 net*
Unconcentrated (tables and chairs)	15 net
Bowling centers, allow 5 persons for each lane including 15 feet of runway, and for additional areas	7 net
Business areas	100 gross
Courtrooms – Other than fixed seating areas	40 net
Day care	35 net
Dormitories	50 gross
Educational	
Classroom area	20 net
Shops and other vocational room areas	50 net
Exercise rooms	50 gross
Group H 5 – Fabrication and manufacturing areas	200 gross
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Kitchens, commercial	200 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Locker rooms	50 gross
Mall buildings – Covered and open	See Section-402.8.2
Mercantile	60 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Skating rinks, swimming pools	
Rink and pool	50 gross
Decks	15 gross
Stages and platforms	15 net

<u>FUNCTION OF SPACE</u>	<u>OCCUPANT LOAD FACTOR*</u>
<u>Warehouses</u>	<u>500 gross</u>

For SI: 1 square foot = 0.0929 m<sup>2</sup>; 1 foot = 304.8 mm.

- a Floor area in square feet per occupant.
- b The occupant load factor for fixed guideway transit and passenger rail systems shall be 15 net in accordance with NFPA 130.

**1004.2 Increased occupant load.** The *occupant load* permitted in any building, or portion thereof, is permitted to be increased from that number established for the occupancies in Table 1004.1.2, provided that all other requirements of the code are also met based on such modified number and the *occupant load* does not exceed one occupant per 7 square feet (0.65 m<sup>2</sup>) of occupiable floor space. Where required by the *building official*, an *approved aisle*, seating or fixed equipment diagram substantiating any increase in *occupant load* shall be submitted. Where required by the *building official*, such diagram shall be posted. See WAC 170-295-0080 (1)(b) for day care licensed by the state of Washington.)

**Table 1004.5  
Maximum Floor Area Allowance Per Occupant<sup>5</sup>**

<u>FUNCTION OF SPACE</u>	<u>OCCUPANT LOAD FACTOR<sup>a</sup></u>
<u>Accessory storage areas, mechanical equipment room</u>	<u>300 gross</u>
<u>Agricultural building</u>	<u>300 gross</u>
<u>Aircraft hangars</u>	<u>500 gross</u>
<u>Airport terminal</u>	
<u>Baggage claim</u>	<u>20 gross</u>
<u>Baggage handling</u>	<u>300 gross</u>
<u>Concourse</u>	<u>100 gross</u>
<u>Waiting areas</u>	<u>15 gross</u>
<u>Assembly</u>	
<u>Gaming floors (keno, slots, etc.)</u>	<u>11 gross</u>
<u>Exhibit gallery and museum</u>	<u>30 net</u>
<u>Billiard table/game table area</u>	<u>50 gross</u>
<u>Assembly with fixed seats</u>	<u>See Section 1004.6</u>
<u>Assembly without fixed seats</u>	
<u>Concentrated (chairs only - not fixed)</u>	<u>7 net</u>
<u>Standing space</u>	<u>5 net</u>
<u>Unconcentrated (tables and chairs)</u>	<u>15 net</u>
<u>Bowling centers, allow 5 persons for each lane including 15 feet of runway, and for additional areas</u>	<u>7 net</u>

<u>FUNCTION OF SPACE</u>	<u>OCCUPANT LOAD FACTOR<sup>a</sup></u>
<u>Business areas</u>	
<u>Concentrated business use areas</u>	<u>150 gross</u> <u>(See Section 1004.8)</u>
<u>Courtrooms - Other than fixed seating areas</u>	<u>40 net</u>
<u>Day care</u>	<u>35 net</u>
<u>Dormitories</u>	<u>50 gross</u>
<u>Educational</u>	
<u>Classroom area</u>	<u>20 net</u>
<u>Shops and other vocational room areas</u>	<u>50 net</u>
<u>Exercise rooms</u>	<u>50 gross</u>
<u>Group H-5 fabrication and manufacturing areas</u>	<u>200 gross</u>
<u>Industrial areas</u>	<u>100 gross</u>
<u>Institutional areas</u>	
<u>Inpatient treatment areas</u>	<u>240 gross</u>
<u>Outpatient areas</u>	<u>100 gross</u>
<u>Sleeping areas</u>	<u>120 gross</u>
<u>Kitchens, commercial</u>	<u>200 gross</u>
<u>Library</u>	
<u>Reading rooms</u>	<u>50 net</u>
<u>Stack area</u>	<u>100 gross</u>
<u>Locker rooms</u>	<u>50 gross</u>
<u>Mall buildings - Covered and open</u>	<u>See Section 402.8.2</u>
<u>Mercantile</u>	
<u>Storage, stock, shipping areas</u>	<u>300 gross</u>
<u>Group M art gallery</u>	<u>30 gross</u>
<u>Parking garages</u>	<u>200 gross</u>
<u>Residential</u>	<u>200 gross</u>
<u>Skating rinks, swimming pools</u>	
<u>Rink and pool</u>	<u>50 gross</u>
<u>Decks</u>	<u>15 gross</u>
<u>Stages and platforms</u>	<u>15 net</u>
<u>Warehouses</u>	<u>500 gross</u>

For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m<sup>2</sup>.

- a Floor area in square feet per occupant.

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

WAC 51-50-1006 Section 1006—Number of exits and exit access doorways.

**Table 1006.2.1**

**Spaces with One Exit or Exit Access Doorway**

<u>OCCUPANCY</u>	<u>MAXIMUM OCCUPANT LOAD OF SPACE</u>	<u>MAXIMUM COMMON PATH OF EGRESS TRAVEL DISTANCE (feet)</u>		
		<u>Without Sprinkler System (feet)</u>		<u>With Sprinkler System (feet)</u>
		<u>Occupant Load</u>		
		<u>OL &lt; 30</u>	<u>OL &gt; 30</u>	
<u>A<sup>c</sup>, E<sup>h</sup>, M</u>	<u>49</u>	<u>75</u>	<u>75</u>	<u>75<sup>a</sup></u>
<u>B</u>	<u>49</u>	<u>100</u>	<u>75</u>	<u>100<sup>a</sup></u>
<u>F</u>	<u>49</u>	<u>75</u>	<u>75</u>	<u>100<sup>a</sup></u>
<u>H-1, H-2, H-3</u>	<u>3</u>	<u>NP</u>	<u>NP</u>	<u>25<sup>b</sup></u>
<u>H-4, H-5</u>	<u>10</u>	<u>NP</u>	<u>NP</u>	<u>75<sup>b</sup></u>
<u>I-1, I-2<sup>d</sup>, I-4</u>	<u>10</u>	<u>NP</u>	<u>NP</u>	<u>75<sup>b</sup></u>
<u>I-3</u>	<u>10</u>	<u>NP</u>	<u>NP</u>	<u>100<sup>a</sup></u>
<u>R-1</u>	<u>10</u>	<u>NP</u>	<u>NP</u>	<u>75<sup>a</sup></u>
<u>R-2</u>	<u>20</u>	<u>NP</u>	<u>NP</u>	<u>125<sup>a</sup></u>
<u>R-3<sup>e</sup></u>	<u>20</u>	<u>NP</u>	<u>NP</u>	<u>125<sup>a,g</sup></u>
<u>R-4<sup>e</sup></u>	<u>20</u>	<u>NP</u>	<u>NP</u>	<u>125<sup>a,g</sup></u>
<u>S<sup>f</sup></u>	<u>29</u>	<u>100</u>	<u>75</u>	<u>100<sup>a</sup></u>
<u>U</u>	<u>49</u>	<u>100</u>	<u>75</u>	<u>75<sup>a</sup></u>

For SI: 1 foot = 304.8 mm.

NP = Not Permitted.

- a 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.
- b Group H occupancies equipped throughout with an automatic sprinkler system in accordance with Section 903.2.5.
- c For a room or space used for assembly purposes having fixed seating, see Section 1029.8.
- d For the travel distance limitations in Group I-2, see Section 407.4.
- e The common path of egress travel distance shall only apply in a Group R-3 occupancy located in a mixed occupancy building.
- f The length of common path of egress travel distance in a Group S-2 open parking garage shall be not more than 100 feet.
- g For the travel distance limitations in Groups R-3 and R-4 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.3, see Section 1006.2.2.6.
- h Day care facilities, rooms or spaces where care is provided for more than 10 children that are 2 1/2 years of age or less, shall have access to not less than two exits or exit access doorways.

**1006.2.1 Egress based on occupant load and common path of egress travel distance.** Two exits or exit access doorways from any space shall be provided where the design occupant load or the common path of egress travel distance exceeds the values listed in Table 1006.2.1. The cumulative occupant load from adjacent rooms, areas or spaces shall be determined in accordance with Section 1004.2.

- EXCEPTIONS:
1. The number of exits from foyers, lobbies, vestibules or similar spaces need not be based on cumulative occupant loads for areas discharging through such spaces, but the capacity of the exits from such spaces shall be based on applicable cumulative occupant loads.
  2. Care suites in Group I-2 occupancies complying with Section 407.4.
  3. Unoccupied mechanical rooms and penthouses are not required to comply with the common path of egress travel distance measurement.

**1006.2.2.4 Group I-4 means of egress.** This section is not adopted.

**1006.2.2.6 Electrical equipment rooms.** Rooms containing electrical equipment shall be provided with a second exit or exit access doorways as required by NFPA 70 Article 110 where all of the following apply:

1. The electrical equipment is rated at 1,200 amperes or more.
2. The electrical equipment is over 6 feet (1829 mm) wide.
3. The electrical equipment contains overcurrent devices, switching devices or control devices.

**1006.3.3 Single exits.** A single exit or access to a single exit shall be permitted from any story or occupied roof where one of the following conditions exists:

1. The occupant load, number of dwelling units and exit access travel distance within the portion of the building served by the single exit do not exceed the values in Table 1006.3.3(1) or 1006.3.3(2).

2. Rooms, areas and spaces complying with Section 1006.2.1 with exits that discharge directly to the exterior at the level of exit discharge, are permitted to have one exit or access to a single exit.

3. Parking garages where vehicles are mechanically parked shall be permitted to have one exit or access to a single exit.

4. Groups R-3 and R-4 occupancies shall be permitted to have one exit or access to a single exit.

5. Individual single-story or multistory dwelling units shall be permitted to have a single exit or access to a single exit from the dwelling unit provided that both of the following criteria are met:

5.1. The dwelling unit complies with Section 1006.2.1 as a space with one means of egress.

5.2. Either the exit from the dwelling unit discharges directly to the exterior at the level of exit discharge, or the exit access outside the dwelling unit's entrance door provides access to not less than two approved independent exits.

**Table 1006.3.3(1)**  
**Stories with One Exit or Access to One Exit for R-2 Occupancies**

<u>Story</u>	<u>Occupancy</u>	<u>Maximum Number of Dwelling Units</u>	<u>Maximum Exit Access Travel Distance</u>
Basement, first, second, or third story above grade plane	R-2 <sup>a,b</sup>	4 dwelling units	125 feet
Fourth story above grade plane and higher	NP	NA	NA

For SI: 1 foot = 304.8 mm.

NP = Not Permitted.

NA = Not Applicable.

- a Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1030.
- b This table is used for R-2 occupancies consisting of dwelling units. For R-2 occupancies consisting of sleeping units, use Table 1006.3.3(2).

**Table 1006.3.3(2)**  
**Stories with One Exit or Access to One Exit for Other Occupancies**

<u>Story</u>	<u>Occupancy</u>	<u>Maximum Occupant Load per Story</u>	<u>Maximum Exit Access Travel Distance (feet)</u>
First story above or below grade plane	A, B <sup>b</sup> , E, F <sup>b</sup> , M, U	49	75
	H-2, H-3	3	25
	H-4, H-5, I, R-1, R-2 <sup>a,c</sup>	10	75
	S <sup>b,d</sup>	29	75

<u>Story</u>	<u>Occupancy</u>	<u>Maximum Occupant Load per Story</u>	<u>Maximum Exit Access Travel Distance (feet)</u>
Second story above grade plane	B, F, M, S	29	75
Third story above grade plane and higher	NP	NA	NA

For SI: 1 foot = 304.8 mm.

NP = Not Permitted.

NA = Not Applicable.

- a Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1030.
- b Group B, F and S occupancies in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 shall have a maximum exit access travel distance of 100 feet.
- c This table is used for R-2 occupancies consisting of sleeping units. For R-2 occupancies consisting of dwelling units, use Table 1006.3.3(1).
- d The length of exit access travel distance in a Group S-2 open parking garage shall be not more than 100 feet.

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

**WAC 51-50-1009 Section 1009—Accessible means of egress.**

**1009.1 Accessible means of egress required.** Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress is required by Section 1006.2 or 1006.3 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

- EXCEPTIONS:
- 1. Accessible means of egress are not required to be provided in existing buildings.
  - 2. One accessible means of egress is required from an accessible mezzanine level in accordance with Section 1009.3, 1009.4 or 1009.5.
  - 3. In assembly areas with ramped aisles or stepped aisles, one accessible means of egress is permitted where the common path of egress travel is accessible and meets the requirements in Section 1029.8.
  - 4. In parking garages, accessible means of egress are not required to serve parking areas that do not contain accessible parking spaces.

**1009.2.1 Elevators required.** In buildings where a required accessible floor or accessible occupied roof is four or more stories above or below a level of exit discharge, not less than one required accessible means of egress shall be an elevator complying with Section 1009.4.

- EXCEPTIONS:
- 1. In buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the elevator shall not be required on floors provided with a horizontal exit and located at or above the levels of exit discharge.



2. In buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the elevator shall not be required on floors provided with a ramp conforming to the provisions of Section 1012.

**1009.8 Two-way communication.** A two-way communication system complying with Sections 1009.8.1 and 1009.8.2 shall be provided at the landing serving each elevator or bank of elevators on each accessible floor that is one or more stories above or below the *level of exit discharge*.

- EXCEPTIONS:
1. Two-way communication systems are not required at the landing serving each elevator or bank of elevators where the two-way communication system is provided within *areas of refuge* in accordance with Section 1009.6.5.
  2. Two-way communication systems are not required on floors provided with *ramps* that provide a direct path of egress travel to grade or the level of exit discharge conforming to the provisions of Section 1012.
  3. Two-way communication systems are not required at the landings serving only service elevators that are not designated as part of the accessible *means of egress* or serve as part of the required *accessible route* into a facility.
  4. Two-way communication systems are not required at the landings serving only freight elevators.
  5. Two-way communication systems are not required at the landing serving a private residence elevator.

**1009.8.1 System requirements.** Two-way communication systems shall provide communication between each required location and the *fire command center* or a central control point location *approved* by the fire department. Where the central control point is not a *constantly attended location*, a two-way communication system shall have a timed automatic telephone dial-out capability to a monitoring location. The two-way communication system shall include both audible and visible signals. The two-way communication system shall have a battery backup or an approved alternate source of power that is capable of 90 minutes use upon failure of the normal power source.

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

**WAC 51-50-10100 Section 1010—Doors, gates, and turnstiles.**

~~(1010.1.9.3)~~ **1010.1.9.4 Locks and latches.** Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.
2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main door or doors are permitted to be equipped with key-operated locking devices from the egress side, provided:
  - 2.1. The locking device is readily distinguishable as locked;
  - 2.2. A readily visible and durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign

shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3. The use of the key-operated locking device is revocable by the building official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no door-knob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.

5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

6. Doors serving roofs not intended to be occupied shall be permitted to be locked preventing entry to the building from the roof.

7. Approved, listed locks without delayed egress shall be permitted in Group I-1 condition 2 assisted living facilities licensed by the state of Washington, provided that:

~~((6-1-))~~ 7.1. The clinical needs of one or more patients require specialized security measures for their safety.

~~((6-2-))~~ 7.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

~~((6-3-))~~ 7.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.

~~((6-4-))~~ 7.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.

~~((6-5-))~~ 7.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

8. Other than egress courts, where occupants must egress from an exterior space through the building for means of egress, exit access doors shall be permitted to be equipped with an approved locking device where installed and operated in accordance with all of the following:

8.1. The occupant load of the occupied exterior area shall not exceed 300 as determined by IBC Section 1004.

8.2. The maximum occupant load shall be posted where required by Section 1004.9. Such sign shall be permanently affixed inside the building and shall be posted in a conspicuous space near all the exit access doorways.

8.3. A weatherproof telephone or two-way communication system installed in accordance with Sections 1009.8.1 and 1009.8.2 shall be located adjacent to not less than one required exit access door on the exterior side.

8.4. The egress door locking device is readily distinguishable as locked and shall be a key-operated locking device.

8.5. A clear window or glazed door opening, not less than 5 square feet (0.46 m<sup>2</sup>) sq. ft. in area, shall be provided at each exit access door to determine if there are occupants using the outdoor area.

8.6. A readily visible durable sign shall be posted on the interior side on or adjacent to each locked required exit access door serving the exterior area stating: THIS DOOR TO

REMAIN UNLOCKED WHEN THE OUTDOOR AREA IS OCCUPIED. The letters on the sign shall be not less than 1 inch high on a contrasting background.

9. Locking devices are permitted on doors to balconies, decks or other exterior spaces serving individual dwelling or sleeping units.

10. Locking devices are permitted on doors to balconies, decks or other exterior spaces of 250 square feet or less, serving a private office space.

**~~(1010.1.9.6)~~ 1010.1.9.7 Controlled egress doors in Groups I-1 and I-2.** Electric locking systems, including electromechanical locking systems and electromagnetic locking systems, shall be permitted to be locked in the means of egress in Group I-1 or I-2 occupancies where the clinical needs of persons receiving care require their containment. Controlled egress doors shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors are installed and operate in accordance with all of the following:

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.
2. The doors unlock upon loss of power controlling the lock or lock mechanism.
3. The door locking system shall be installed to have the capability of being unlocked by a switch located at the fire command center, a nursing station or other approved location. The switch shall directly break power to the lock.
4. A building occupant shall not be required to pass through more than one door equipped with a special egress lock before entering an exit.
5. The procedures for unlocking the doors shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the *International Fire Code*.
6. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door. All clinical staff shall have the keys, codes or other means necessary to operate the locking systems.
7. Emergency lighting shall be provided at the door.
8. The door locking system units shall be listed in accordance with UL 294.

EXCEPTION: 1. Items 1 through 4 and 6 shall not apply to doors to areas where persons, which because of clinical needs, require restraint or containment as part of the function of a psychiatric treatment area provided that all clinical staff shall have the keys, codes or other means necessary to operate the locking devices.

2. Items 1 through 4 and 6 shall not apply to doors to areas where a listed egress control system is utilized to reduce the risk of child abduction from nursery and obstetric areas of a Group I-2 hospital.

**1010.1.10 Panic and fire exit hardware.** Swinging doors serving a Group H occupancy and swinging doors serving rooms or spaces with an occupant load of 50 or more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware.

EXCEPTIONS: 1. A main exit of a Group A occupancy shall be permitted to ~~((be))~~ have locking devices in accordance with Section ~~((1010.1.9.3))~~ 1010.1.9.4, Item 2.

2. Doors provided with panic hardware or fire exit hardware and serving a Group A or E occupancy shall be permitted to be electromagnetically locked in accordance with Section 1010.1.9.9 or 1010.1.9.10.

3. Exit access doors serving occupied exterior areas shall be permitted to be locked in accordance with Section 1010.1.9.4, Item 7.

Electrical rooms with equipment rated 1,200 amperes or more and over 6 feet (1829 mm) wide, and that contain over-current devices, switching devices or control devices with exit or exit access doors, shall be equipped with panic hardware or fire exit hardware. The doors shall swing in the direction of egress travel.

**1010.1.10.3 Electrical rooms and working clearances.** Exit and exit access doors serving electrical rooms and working spaces shall swing in the direction of egress travel and shall be equipped with panic hardware or fire exit hardware where such rooms or working spaces contain one or more of the following:

1. Equipment operating at more than 600 volts, nominal.
2. Equipment operating at 600 volts or less, nominal and rated at 800 amperes or more, and where the equipment contains overcurrent devices, switching devices or control devices.

EXCEPTION: Panic and fire exit hardware is not required on exit and exit access doors serving electrical equipment rooms and working spaces where such doors are not less than twenty-five feet (7.6 m) from the nearest edge of the electrical equipment.

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

#### **WAC 51-50-1011 Section 1011—Stairways.**

**1011.7 Stairway construction.** Stairways shall be built of materials consistent with the types permitted for the type of construction of the building.

EXCEPTIONS: 1. Wood handrails shall be permitted in all types of construction.

2. Interior exit stairway in accordance with Section 510.2.

**1011.17 Stairways in individual dwelling units.** Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m<sup>2</sup>) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1011.

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

**WAC 51-50-1019 ~~((Reserved))~~ Section 1019—Exit access stairways and ramps.**

**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 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 or a Group R-4 facility 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 1029.7.
  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.

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

**WAC 51-50-1020 Section 1020—Corridors.**

**1020.4 Dead ends.** Where more than one exit or exit access doorway is required, the exit access shall be arranged such that dead-end corridors do not exceed 20 feet (6096 mm) in length.

- EXCEPTIONS:**
1. In Group I-3, Condition 2, 3 or 4, occupancies, the dead end in a corridor shall not exceed 50 feet (15,240 mm).
  2. In occupancies in Groups B, E, F, I-1, M, R-1, R-2, S and U, where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, the length of the dead-end corridors shall not exceed 50 feet (15,240 mm).
  3. A dead-end corridor shall not be limited in length where the length of the dead-end corridor is less than 2.5 times the least width of the dead-end corridor.
  4. In Group I-2, Condition 2 occupancies, the length of dead end corridors that do not serve patient rooms or patient treatment spaces shall not exceed 30 feet (9144 mm).

**1020.5 Air movement in corridors.** Corridors shall not serve as supply, return, exhaust, relief, or ventilation air ducts.

- EXCEPTIONS:**
1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted provided that each such corridor is directly supplied with outdoor air at a rate greater than the rate of makeup air taken from the corridor.
  2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.
  3. Where located within tenant spaces of one thousand square feet (93 m<sup>2</sup>) or less in area, utilization of corridors for conveying return air is permitted.
  4. Incidental air movement from pressurized rooms within health care facilities, provided that a corridor is not the primary source of supply or return to the room.
  5. Where such air is part of an engineered smoke control system.
  6. Air supplied to corridors serving residential occupancies shall not be considered as providing ventilation air to the dwelling units and sleeping units subject to the following:
    - 6.1 The air supplied to the corridor is one hundred percent outside air; and
    - 6.2 The units served by the corridor have conforming ventilation air independent of the air supplied to the corridor; and
    - 6.3 For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors which shall be spaced at no more than thirty feet (9,144 mm) on center along the corridor; or
    - 6.4 For high-rise buildings, corridor smoke detector activation will close required smoke/fire dampers at the supply inlet to the corridor at the floor receiving the alarm.

**NEW SECTION**

**WAC 51-50-1023 Section 1023—Interior exit stairways and ramps.**

**1023.2 Construction.** Enclosures for interior exit stairways and ramps shall be constructed as fire barriers in accordance with Section 707 or *horizontal* assemblies constructed in accordance with Section 711, or both. Interior exit stairway and ramp enclosures shall have a *fire-resistance rating* of not less than 2 hours where connecting four stories or more and not less than 1 hour where connecting less than four stories. The number of stories connected by the interior exit stairways or ramps shall include any basements, but not any mezzanines. Interior exit stairways and ramps shall have a *fire-resistance rating* not less than the floor assembly penetrated, but need not exceed 2 hours.

- EXCEPTIONS:**
1. Interior exit stairways and ramps in Group I-3 occupancies in accordance with the provisions of Section 408.3.8.
  2. Interior exit stairways within an atrium enclosed in accordance with Section 404.6.
  3. Interior exit stairway in accordance with Section 510.2.

**1023.5 Penetrations.** Penetrations into or through interior exit stairways and ramps are prohibited except for the following:

1. Equipment and ductwork necessary for independent ventilation or pressurization;
2. Fire protection systems;
3. Security systems;
4. Two-way communication systems;
5. Electrical raceway for fire department communication systems;
6. Electrical raceway serving the interior exit stairway and ramp and terminating at a steel box not exceeding 16 square inches (0.010 m);
7. Structural elements supporting the interior exit stairway or ramp or enclosure, such as beams or joists.

**1023.11 Smokeproof enclosures.** Where required by Section 403.5.4, 405.7.2 or 412.2.2.1, interior exit stairways and ramps shall be smokeproof enclosures in accordance with Section 909.20. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.

NEW SECTION

**WAC 51-50-10240 Section 1024—Exit passageways.**

**1024.8 Exit passageway exterior walls.** Exterior walls of the exit passageway shall comply with Section 705. Where nonrated walls or unprotected openings enclose the exterior of the exit passageway and the walls or openings are exposed by other parts of the building at an angle of less than 180 degrees (3.14 rad), the building exterior walls within 10 feet (3048 mm) horizontally of a nonrated wall or unprotected opening shall have a *fire-resistance rating* of not less than 1 hour. Openings within such exterior walls shall be protected by opening protectives having a *fire-protection rating* of not less than 3/4 hour. This construction shall extend vertically from the ground to a point 10 feet (3048 mm) above the floor of the exit passageway, or to the roof line, whichever is lower.

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

**WAC 51-50-1028 ((Section 1028—Exit discharge.))  
Reserved.**

~~((1028.4.1 Width or capacity. The required capacity of egress courts shall be determined as specified in Section 1005.1, but the minimum width shall be not less than 44 inches (1,118 mm), except as specified herein. Egress courts serving Group R-3 and U occupancies shall be not less than 36 inches (914 mm) in width. The required capacity and width of egress courts shall be unobstructed to a height of 7 feet (2,134 mm).))~~

EXCEPTION: ~~Encroachments complying with Section 1005.7.)~~

NEW SECTION

**WAC 51-50-10300 Section 1030—Emergency escape and rescue.**

**1030.6 Drainage.** Window wells shall be designed for proper drainage by connecting to the building's foundation drainage system required by Section 1805.4.2 or by an approved alternative method.

NEW SECTION

**WAC 51-50-11050 Section 1105—Accessible entrances.**

**1105.1.8 Automatic doors.** In facilities with the occupancies and building occupant loads indicated in Table 1105.1.8, all public entrances that are required to be accessible shall have one door be either a full power-operated door or a low-energy power-operated door. Where the public entrance includes a vestibule, at least one door into and one door out of the vestibule shall meet the requirements of this section.

**Table 1105.1.8<sup>a</sup>**

**PUBLIC ENTRANCE WITH POWER-OPERATED DOORS<sup>a</sup>**

Occupancy	Building Occupant Load Greater Than
A-1, A-2, A-3, A-4	300
B, M, R-1	500

<sup>a</sup> In mixed-use facilities containing occupancies listed, when the total sum of the occupant load is greater than those listed, the most restrictive building occupant load shall apply.

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

**WAC 51-50-1107 Section 1107—Dwelling units and sleeping units.**

~~((1107.6 Group R. Accessible units, Type A units and Type B units shall be provided in Group R Occupancies in accordance with Sections 1107.6.1 through 1107.6.4. Accessible and Type A units shall be apportioned among efficiency dwelling units, single bedroom units and multiple bedroom units, in proportion to the numbers of such units in the building.))~~

**1107.6.2.2.1 Type A units.** In Group R-2 Occupancies containing more than 10 dwelling units or sleeping units, at least 5 percent, but not less than one, of the units shall be a Type A unit. All units on a site shall be considered to determine the total number of units and the required number of Type A units. Type A units shall be dispersed among the various classes of units, as described in Section 1107.6. Bedrooms in monasteries and convents shall be counted as *sleeping units* for the purpose of determining the number of units. Where the *sleeping units* are grouped into suites, only one *sleeping unit* in each suite shall count towards the number of required *Type A units*.

EXCEPTIONS: 1. The number of Type A units is permitted to be reduced in accordance with Section 1107.7.

2. Existing structures on a site shall not contribute to the total number of units on a site.

**1107.5.1 Group I-1. Accessible units and Type B units shall be provided in Group I-1 occupancies in accordance with Sections 1107.5.1.1 through 1107.5.1.3.**

**1107.5.1.1 Accessible units in Group I-1, Condition 1. In Group I-1, Condition 1, at least 4 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.**

EXCEPTIONS: 1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.  
2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.

**1107.5.1.2 Accessible units in Group I-1, Condition 2. In Group I-1, Condition 2, at least 10 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.**

EXCEPTIONS: 1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.  
2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.

**1107.5.1.3 Type B units. In structures with four or more dwelling units or sleeping units intended to be occupied as a residence, every dwelling unit and sleeping unit intended to be occupied as a residence shall be a Type B unit.**

EXCEPTION: The number of Type B units is permitted to be reduced in accordance with Section 1107.7.

**1107.5.2 Group I-2 nursing homes. Accessible units and Type B units shall be provided in nursing homes of Group I-2, Condition 1 occupancies in accordance with Sections 1107.5.2.1 and 1107.5.2.2.**

**1107.5.2.1 Accessible units. At least 50 percent but not less than one of each type of the dwelling units and sleeping units shall be accessible units.**

EXCEPTIONS: 1. In not more than 90 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.  
2. In not more than 90 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.

**1107.5.2.2 Type B units. In structures with four or more dwelling units or sleeping units intended to be occupied as a residence, every dwelling unit and sleeping unit intended to be occupied as a residence shall be a Type B unit.**

EXCEPTION: The number of Type B units is permitted to be reduced in accordance with Section 1107.7.

**1107.5.4 Group I-2 rehabilitation facilities. In hospitals and rehabilitation facilities of Group I-2 occupancies that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility, 100 percent of the dwelling units and sleeping units shall be accessible units.**

EXCEPTIONS: 1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.  
2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.

**1107.6.2.3 Group R-2 other than live/work units, apartment houses, monasteries and convents. In Group R-2 Occupancies, other than live/work units, apartment houses, monasteries and convents falling within the scope of Sections 1107.6.2.1 and 1107.6.2.2, accessible units and Type B units shall be provided in accordance with Sections 1107.6.2.3.1 and 1107.6.2.3.2. Bedrooms within congregate living facilities shall be counted as sleeping units for the purpose of determining the number of units. Where the sleeping units are grouped into suites, only one sleeping unit in each suite shall be permitted to count towards the number of required accessible units. Accessible units shall be dispersed among the various classes of units, as described in Section 1107.6.**

#### NEW SECTION

**WAC 51-50-11090 Section 1109—Other features and facilities.**

**1109.2 Toilet and bathing facilities. Each toilet room and bathing room shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing rooms provided within the facility shall not be located on the inaccessible floor. Except as provided for in Sections 1109.2.3, 1109.2.4 and 1109.2.5 at least one of each type of fixture, element, control or dispenser in each accessible toilet room and bathing room shall be accessible.**

EXCEPTIONS: 1. Toilet rooms or bathing rooms accessed only through a private office, not for common or public use and intended for use by a single occupant, shall be permitted to comply with the specific exceptions in ICC A117.1.  
2. This section is not applicable to toilet and bathing rooms that serve dwelling units or sleeping units that are not required to be accessible by Section 1107.  
3. Where multiple single-user toilet rooms or bathing rooms are clustered at a single location, at least 50 percent but not less than one room for each use at each cluster shall be accessible. Where these rooms are designated as gender-neutral, the total number of accessible toilet or bathing rooms shall not be less than the sum of required accessible separate male plus female rooms.  
4. Where no more than one urinal is provided in a toilet room or bathing room, the urinal is not required to be accessible.  
5. Toilet rooms or bathing rooms that are part of critical care or intensive care patient sleeping rooms serving accessible units are not required to be accessible.

6. Toilet rooms or bathing rooms designed for bariatrics patients are not required to comply with the toilet room and bathing room requirement in ICC A117.1. The sleeping units served by bariatrics toilet or bathing rooms shall not count toward the required number of accessible sleeping units.

7. Where permitted in Section 1107, in toilet rooms or bathrooms serving accessible units, water closets designed for assisted toileting shall comply with Section 1109.2.2.

8. Where permitted in Section 1107, in bathrooms serving accessible units, showers designed for assisted toileting shall comply with Section 1109.2.3.

9. Where toilet facilities are primarily for children's use, required accessible water closets, toilet compartments and lavatories shall be permitted to comply with children's provision of ICC A117.1.

**1109.2.2 Water closets designed for assisted toileting.** Water closets designed for assisted toileting shall comply with Sections 1109.2.2.1 through 1109.2.2.6.

**1109.2.2.1 Location.** The centerline of the water closet shall be 24 inches (610 mm) minimum and 26 inches (660 mm) maximum from one side of the required clearance.

**1109.2.2.2 Clearance.** Clearance around the water closet shall comply with Sections 1109.2.2.2.1 through 1109.2.2.2.3.

**1109.2.2.2.1 Clearance width.** Clearance around a water closet shall be 66 inches (1675 mm) minimum in width, measured perpendicular from the side of the clearance that is 24 inches (610 mm) minimum and 26 inches (660 mm) maximum from the water closet centerline.

**1109.2.2.2.2 Clearance depth.** Clearance around the water closet shall be 78 inches (1980 mm) minimum in depth, measured perpendicular from the rear wall.

**1109.2.2.2.3 Clearance overlap.** The required clearance around the water closet shall be permitted overlaps in accordance with ICC A117.1 Section 604.3.3.

**1109.2.2.3 Height.** The height of the water closet seats shall comply with ICC A117.1 Section 604.4.

**1109.2.2.4 Swing-up grab bars.** The swing-up grab bars shall comply with ICC A117.1 Sections 609.2 and 609.8. Swing-up grab bars shall be provided on both sides of the water closet and shall comply with all of the following:

1. The centerline of the grab bar shall be 14 inches minimum to 16 inches (356 mm to 405 mm) maximum from the centerline of the water closet.

2. The length of the grab bar is 36 inches (915 mm) minimum in length, measured from the rear wall to the end of the grab bar.

3. The top of the grab bar in the down position is 30 inches (760 mm) minimum and 34 inches (865 mm) maximum above the floor.

**1109.2.2.5 Flush controls.** Flush controls shall comply with ICC A117.1 Section 604.6.

**1109.2.2.6 Dispensers.** Toilet paper dispensers shall be mounted on at least one of the swing-up grab bars and the

outlet of the dispenser shall be located at 24 inches (610 mm) minimum to 36 inches (915 mm) maximum from the rear wall.

**1109.2.3 Standard roll-in-type shower compartment designed for assisted bathing.** Standard roll-in-type shower compartments designed for assisted bathing shall comply with Sections 1109.2.3.1 through 1109.2.3.8.

**1109.2.3.1 Size.** Standard roll-in-type shower compartments shall have a clear inside dimension of 60 inches (1525 mm) minimum in width and 30 inches (760 mm) minimum in depth, measured at the center point of opposing sides. An entry 60 inches (1525 mm) minimum in width shall be provided.

**1109.2.3.2 Clearance.** A clearance of 60 inches (1525 mm) minimum in length adjacent to the 60 inch (1525 mm) width of the open face of the shower compartment, and 30 inches (760 mm) minimum in depth, shall be provided.

EXCEPTIONS:

1. A lavatory complying with Section 606 shall be permitted at one end of the clearance.
2. Where the shower compartment exceeds minimum sizes, the clear floor space shall be placed adjacent to the grab bars and 30 inches minimum from the back wall.

**1109.2.3.3 Grab bars.** Grab bars shall comply with ICC A117.1 Section 609 and shall be provided in accordance with Sections 1109.2.3.3.1 and 1109.2.3.3.2. In standard roll-in-type shower compartments, grab bars shall be provided on three walls. Where multiple grab bars are used, required horizontal grab bars shall be installed at the same height above the floor. Grab bars can be separate bars or one continuous bar.

**1109.2.3.3.1 Back-wall grab bar.** The back-wall grab bar shall extend the length of the back wall and extend within 6 inches (150 mm) maximum from the two adjacent side walls.

EXCEPTION:

The back wall grab bar shall not be required to exceed 48 inches (1220 mm) in length. The rear grab bar shall be located with one end within 6 inches maximum of a side wall with a grab bar complying with Section 1109.2.3.3.2.

**1109.2.3.3.2 Side-wall grab bars.** The side-wall grab bars shall extend the length of the wall and extend within 6 inches (150 mm) maximum from the adjacent back wall.

EXCEPTIONS:

1. The side-wall grab bar shall not be required to exceed 30 inches (760 mm) in length. The side grab bar shall be located with one end within 6 inches maximum of the back wall with a grab bar complying with Section 1109.2.3.3.1.
2. Where the side walls are located 72 inches (1830 mm) or greater apart, a grab bar is not required on one of the side walls.

**1109.2.3.4 Seats.** Wall-mounted folding seats shall not be installed.

**1109.2.3.5 Controls and hand showers.** In standard roll-in-type showers, the controls and hand shower shall be located 38 inches (965 mm) minimum and 48 inches (1220 mm) maximum above the shower floor. Controls shall be located to facilitate caregiver access.

**1109.2.3.6 Hand showers.** Hand showers shall comply with ICC A117.1 Section 608.5.

**1109.2.3.7 Thresholds.** Thresholds shall comply with ICC A117.1 Section 608.6.

**1109.2.3.8 Shower enclosures.** Shower compartment enclosures for shower compartments shall comply with ICC A117.1 Section 608.7.

**1109.2.3.9 Water temperature.** Water temperature shall comply with ICC A117.1 Section 608.8.

**1109.5.1 Minimum number.** Not fewer than two drinking fountains shall be provided. One drinking fountain shall comply with the requirements for people who use a wheelchair and one drinking fountain shall comply with the requirements for standing persons.

EXCEPTIONS:

1. A single drinking fountain with two separate spouts that complies with the requirements for people who use a wheelchair and standing persons shall be permitted to be substituted for two separate drinking fountains.
2. Where drinking fountains are primarily for children's use, drinking fountains for people using wheelchairs shall be permitted to comply with the children's provisions in ICC A117.1 and drinking fountains for standing children shall be permitted to provide the spout at 30 inches (762 mm) minimum above the floor.
3. In all occupancies that require more than two drinking fountains per floor or secured area, bottle filling stations shall be allowed to be substituted in accordance with Section 2902.5.

## NEW SECTION

### **WAC 51-50-1202 Section 1202—Ventilation.**

**1202.1 General.** Buildings shall be provided with natural ventilation in accordance with Section 1203.5, or mechanical ventilation in accordance with the *International Mechanical Code. Ambulatory care facilities* and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407 of the *International Mechanical Code*.

**1202.2 Attic spaces.** Enclosed *attics* and enclosed rafter spaces formed where ceilings are applied directly to the underside of roof framing members shall have cross ventilation for each separate space by ventilation openings protected against the entrance of rain and snow. Blocking and bridging shall be arranged so as not to interfere with the movement of air. An airspace of not less than 1 inch (25 mm) shall be provided between the insulation and the roof sheathing. The net free ventilating area shall not be less than 1/150th of the area of the space ventilated. Ventilators shall be installed in accordance with the manufacturer's installation instructions.

EXCEPTION: The net free cross-ventilation area shall be permitted to be reduced to 1/300 provided both of the following conditions are met:

1. A Class I or II vapor retarder is installed on the warm-in-winter side of the ceiling.

2. At least 40 percent and not more than 50 percent of the required venting area is provided by ventilators located in the upper portion of the attic or rafter space. Upper ventilators shall be located not more than 3 feet (914 mm) below the ridge or highest point of the space, measured vertically, with the balance of the ventilation provided by eave or cornice vents. Where the location of wall or roof framing members conflicts with the installation of upper ventilators, installation more than 3 feet (914 mm) below the ridge or highest point of the space shall be permitted.

**1202.4 Under-floor ventilation.** The space between the bottom of the floor joists and the earth under any building except spaces occupied by basements or cellars shall be provided with ventilation openings through foundation walls or *exterior walls*. Such openings shall be placed so as to provide cross ventilation of the under-floor space. A ground cover of six mil (0.006 inch thick) black polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped six inches minimum at the joints and shall extend to the foundation wall.

EXCEPTION: The ground cover may be omitted in crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of two inches.

**1202.5 Natural ventilation.** For other than Group R Occupancies, natural ventilation of an occupied space shall be through windows, doors, louvers or other openings to the outdoors. The operating mechanism for such openings shall be provided with ready access so that the openings are readily controllable by the building occupants. Group R Occupancies shall comply with the *International Mechanical Code*.

**1202.6 Radon resistive construction standards.** The criteria of this section establishes minimum radon resistive construction requirements for Group R Occupancies.

**1202.6.1 Application.** The requirements of Section 1202.6 shall be adopted and enforced by all jurisdictions of the state according to the following subsections.

**1202.6.1.1** All jurisdictions of the state shall comply with Section 1202.6.2.

**1202.6.1.2** Clark, Ferry, Okanogan, Pend Oreille, Skamania, Spokane, and Stevens counties shall also comply with Section 1203.6.3.

#### **1202.6.2 State wide radon requirements.**

**1202.6.2.1 Crawlspace.** All crawlspaces shall comply with the requirements of this section.

**1202.6.2.2 Ventilation.** All crawlspaces shall be ventilated as specified in Section 1203.3.

If the installed ventilation in a crawlspace is less than one square foot for each 300 square feet of crawlspace area, or if the crawlspace vents are equipped with operable louvers, a radon vent shall be installed to originate from a point between the ground cover and soil. The radon vent shall be installed in accordance with Sections 1203.6.3.2.6 and 1203.6.3.2.7.

**1202.6.2.3 Crawlspace plenum systems.** In crawlspace plenum systems used for providing supply air for an HVAC sys-

tem, aggregate, a permanently sealed soil gas retarder membrane and a radon vent pipe shall be installed in accordance with Section 1203.6.3.2. Crawlspace shall not be used for return air plenums.

In addition, an operable radon vent fan shall be installed and activated. The fan shall be located as specified in Section 1203.6.3.2.7. The fan shall be capable of providing at least 100 cfm at 1-inch water column static pressure. The fan shall be controlled by a readily accessible manual switch. The switch shall be labeled "RADON VENT FAN."

### 1202.6.3 Radon prescriptive requirements.

**1202.6.3.1 Scope.** This section applies to those counties specified in Section 1203.6.1.2. This section establishes prescriptive construction requirements for reducing the potential for radon entry into all Group R Occupancies, and for preparing the building for future mitigation if desired.

In all crawlspaces, except crawlspace plenums used for providing supply air for an HVAC system, a continuous air barrier shall be installed between the crawlspace area and the occupied area to limit air transport between the areas. If a wood sheet subfloor or other material is utilized as an air barrier, in addition to the requirements of Section 502.1.6.2 of the Washington State Energy Code, all joints between sheets shall be sealed.

### 1202.6.3.2 Floors in contact with the earth.

**1202.6.3.2.1 General.** Concrete slabs that are in direct contact with the building envelope shall comply with the requirements of this section.

EXCEPTION: Concrete slabs located under garages or other than Group R Occupancies need not comply with this chapter.

**1202.6.3.2.2 Aggregate.** A layer of aggregate of 4-inch minimum thickness shall be placed beneath concrete slabs. The aggregate shall be continuous to the extent practical.

**1202.6.3.2.3 Gradation.** Aggregate shall:

1. Comply with ASTM Standard C-33 Standard Specification for Concrete Aggregate and shall be size No. 8 or larger size aggregate as listed in Table 2, Grading Requirements for Course Aggregate; or

2. Meet the 1988 Washington State Department of Transportation Specification 9-03.1 (3) "Coarse Aggregate for Portland Cement Concrete," or any equivalent successor standards. Aggregate size shall be of Grade 8 or larger as listed in Section 9-03.1 (3) C, "Grading"; or

3. Be screened, washed pea gravel free of deleterious substances in a manner consistent with ASTM Standard C-33 with 100 percent passing a 1/2-inch sieve and less than 5 percent passing a No. 16 sieve. Sieve characteristics shall conform to those acceptable under ASTM Standard C-33.

EXCEPTION: Aggregate shall not be required if a substitute material or system, with sufficient load bearing characteristics, and having approved capability to provide equal or superior air flow, is installed.

**1202.6.3.2.4 Soil-gas retarder membrane.** A soil-gas retarder membrane, consisting of at least one layer of virgin polyethylene with a thickness of at least 6 mil, or equivalent flexible sheet material, shall be either placed directly under

all concrete slabs so that the slab is in direct contact with the membrane, or on top of the aggregate with 2 inches minimum of fine sand or pea gravel installed between the concrete slab and membrane. The flexible sheet shall extend to the foundation wall or to the outside edge of the monolithic slab. Seams shall overlap at least 12 inches. The membrane shall also be fitted tightly to all pipes, wires, and other penetrations of the membrane and sealed with an approved sealant or tape. All punctures or tears shall be repaired with the same or approved material and similarly lapped and sealed.

**1202.6.3.2.5 Sealing of penetrations and joints.** All penetrations and joints in concrete slabs or other floor systems and walls below grade shall be sealed by an approved sealant to create an air barrier to limit the movement of soil-gas into the indoor air.

Sealants shall be approved by the manufacturer for the intended purpose. Sealant joints shall conform to manufacturer's specifications. The sealant shall be placed and tooled in accordance with manufacturer's specifications. There shall be no gaps or voids after the sealant has cured.

**1202.6.3.2.6 Radon vent.** One continuous sealed pipe shall run from a point within the aggregate under each concrete slab to a point outside the building. Joints and connections shall be permanently gas tight. The continuous sealed pipe shall interface with the aggregate in the following manner, or by other approved equal method. The pipe shall be permanently connected to a "T" within the aggregate area so that the two end openings of the "T" lie within the aggregate area. A minimum of 5 feet of perforated drain pipe of 3 inches minimum diameter shall join to and extend from the "T." The perforated pipe shall remain in the aggregate area and shall not be capped at the ends. The "T" and its perforated pipe extensions shall be located at least 5 feet horizontally from the exterior perimeter of the aggregate area.

The continuous sealed pipe shall terminate no less than 12 inches above the eave, and more than 10 horizontal feet from a woodstove or fireplace chimney, or operable window. The continuous sealed pipe shall be labeled "radon vent." The label shall be placed so as to remain visible to an occupant.

The minimum pipe diameter shall be 3 inches unless otherwise approved. Acceptable sealed plastic pipe shall be smooth walled, and may include either PVC schedule 40 or ABS schedule of equivalent wall thickness.

The entire sealed pipe system shall be sloped to drain to the subslab aggregate.

The sealed pipe system may pass through an unconditioned attic before exiting the building; but to the extent practicable, the sealed pipe shall be located inside the thermal envelope of the building in order to enhance passive stack venting.

EXCEPTION: A fan for subslab depressurization system includes the following:

1. Soil-gas retarder membrane as specified in Section 1203.6.3.2.4;
2. Sealing of penetrations and joints as specified in Section 1203.6.3.2.5;
3. A 3-inch continuous sealed radon pipe shall run from a point within the aggregate under each concrete slab to a point outside the building;



4. Joints and connections shall be gas tight, and may be of either PVC schedule 40 or ABS schedule of equivalent in wall thickness;
5. A label of "radon vent" shall be placed on the pipe so as to remain visible to an occupant;
6. Fan circuit and wiring as specified in Section 1203.6.3.2.7 and a fan.

If the subslab depressurization system is exhausted through the concrete foundation wall or rim joist, the exhaust terminus shall be a minimum of 6 feet from operable windows or outdoor air intake vents and shall be directed away from operable windows and outdoor air intake vents to prevent radon reentrainment.

**1202.6.3.2.7 Fan circuit and wiring and location.** An area for location of an in-line fan shall be provided. The location shall be as close as practicable to the radon vent pipe's point of exit from the building, or shall be outside the building shell; and shall be located so that the fan and all downstream piping is isolated from the indoor air.

Provisions shall be made to allow future activation of an in-line fan on the radon vent pipe without the need to place new wiring. A 110 volt power supply shall be provided at a junction box near the fan location.

**1202.6.3.2.8 Separate aggregate areas.** If the 4-inch aggregate area underneath the concrete slab is not continuous, but is separated into distinct isolated aggregate areas by a footing or other barrier, a minimum of one radon vent pipe shall be installed into each separate aggregate area.

**EXCEPTION:** Separate aggregate areas may be considered a single area if a minimum 3-inch diameter connection joining the separate areas is provided for every 30 feet of barrier separating those areas.

**1202.6.3.2.9 Concrete block walls.** Concrete block walls connected to below grade areas shall be considered unsealed surfaces. All openings in concrete block walls that will not remain accessible upon completion of the building shall be sealed at both vertical and horizontal surfaces, in order to create a continuous air barrier to limit the transport of soil-gas into the indoor air.

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

**WAC 51-50-1203 Section 1203—(~~Ventilation~~)  
Temperature control.**

~~(1203.1 General. Buildings shall be provided with natural ventilation in accordance with Section 1203.5, or mechanical ventilation in accordance with the *International Mechanical Code. Ambulatory care facilities* and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407 of the *International Mechanical Code*.~~

**1203.2 Attic spaces.** Enclosed attics and enclosed rafter spaces formed where ceilings are applied directly to the underside of roof framing members shall have cross ventilation for each separate space by ventilation openings protected against the entrance of rain and snow. Blocking and bridging shall be arranged so as not to interfere with the movement of air. An airspace of not less than 1 inch (25 mm) shall be pro-

vided between the insulation and the roof sheathing. The net free ventilating area shall not be less than 1/150th of the area of the space ventilated. Ventilators shall be installed in accordance with the manufacturer's installation instructions.

**EXCEPTIONS:** The net free cross-ventilation area shall be permitted to be reduced to 1/300 provided both of the following conditions are met:

1. A Class I or II vapor retarder is installed on the warm-in-winter side of the ceiling.
2. At least 40 percent and not more than 50 percent of the required venting area is provided by ventilators located in the upper portion of the attic or rafter space. Upper ventilators shall be located not more than 3 feet (914 mm) below the ridge or highest point of the space, measured vertically, with the balance of the ventilation provided by eave or cornice vents. Where the location of wall or roof framing members conflicts with the installation of upper ventilators, installation more than 3 feet (914 mm) below the ridge or highest point of the space shall be permitted.

~~**1203.3 Unvented attic and unvented enclosed rafter assemblies.** Unvented attics and unvented enclosed roof framing assemblies created by ceilings applied directly to the underside of the roof framing members/rafters and the structural roof sheathing at the top of the roof framing members shall be permitted where all the following conditions are met:~~

~~1. The unvented attic space is completely within the building thermal envelope.~~

~~2. No interior vapor retarders are installed on the ceiling side (attic floor) of the unvented attic assembly or on the ceiling side of the unvented enclosed roof framing assembly.~~

~~3. Where wood shingles or shakes are used, a minimum 1/4 inch (6.4 mm) vented airspace separates the shingles or shakes and the roofing underlayment above the structural sheathing.~~

~~4. In Climate Zone 5B, any air impermeable insulation shall be a Class II vapor retarder or shall have a Class II vapor retarder coating or covering in direct contact with the underside of the insulation.~~

~~5. Insulation shall be located in accordance with the following:~~

~~5.1 Item 5.1.1, 5.1.2, 5.1.3 or 5.1.4 shall be met, depending on the air permeability of the insulation directly under the roof sheathing.~~

~~5.1.1 Where only air impermeable insulation is provided, it shall be applied in direct contact with the underside of the structural roof sheathing.~~

~~5.1.2 Where air permeable insulation is provided inside the building thermal envelope, it shall be installed in accordance with Item 5.1. In addition to the air permeable insulation installed directly below the structural sheathing, rigid board or sheet insulation shall be installed directly above the structural roof sheathing in accordance with these R-values for condensation control:~~

~~i. Climate Zone #4C—R-10 minimum rigid board or air impermeable insulation R-value.~~

~~ii. Climate Zone #5B—R-20 minimum rigid board or air impermeable insulation R-value.~~

~~5.1.3 Where both air impermeable and air permeable insulation are provided, the air impermeable insulation shall be applied in direct contact with the underside of the struc-~~

tural roof sheathing in accordance with Item 5.1.1 and shall be in accordance with these R-values for condensation control. The air permeable insulation shall be installed directly under the air impermeable insulation.

- i. Climate Zone #4C—R-10 minimum rigid board or air-impermeable insulation R-value.
- ii. Climate Zone #5B—R-20 minimum rigid board or air-impermeable insulation R-value.

5.1.4 Alternatively, sufficient rigid board or sheet insulation shall be installed directly above the structural roof sheathing to maintain the monthly average temperature of the underside of the structural roof sheathing above 45 degrees F. For calculation purposes, an interior air temperature of 68 degrees F is assumed and the exterior air temperature is assumed to be the monthly average outside air temperature of the three coldest months.

5.2 Where preformed insulation board is used as the air permeable insulation layer, it shall be sealed at the perimeter of each individual sheet interior surface to form a continuous layer.

EXCEPTIONS: 1. Section 1203.3 does not apply to special use structures or enclosures such as swimming pool enclosures, data processing centers, hospitals or art galleries.  
2. Section 1203.3 does not apply to enclosures in Climate Zone 5B that are humidified beyond 35 percent during the three coldest months.

**1203.4 Under floor ventilation.** The space between the bottom of the floor joists and the earth under any building except spaces occupied by basements or cellars shall be provided with ventilation openings through foundation walls or exterior walls. Such openings shall be placed so as to provide cross ventilation of the under floor space. A ground cover of six mil (0.006 inch thick) black polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped six inches minimum at the joints and shall extend to the foundation wall.

EXCEPTION: The ground cover may be omitted in crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of two inches.

**1203.5 Natural ventilation.** For other than Group R Occupancies, natural ventilation of an occupied space shall be through windows, doors, louvers or other openings to the outdoors. The operating mechanism for such openings shall be provided with ready access so that the openings are readily controllable by the building occupants. Group R Occupancies shall comply with the *International Mechanical Code*.

**1203.6 Radon resistive construction standards.** The criteria of this section establishes minimum radon resistive construction requirements for Group R Occupancies.

**1203.6.1 Application.** The requirements of Section 1203.6 shall be adopted and enforced by all jurisdictions of the state according to the following subsections.

**1203.6.1.1** All jurisdictions of the state shall comply with Section 1203.6.2.

**1203.6.1.2** Clark, Ferry, Okanogan, Pend Oreille, Skamania, Spokane, and Stevens counties shall also comply with Section 1203.6.3.

## **1203.6.2 State wide radon requirements.**

**1203.6.2.1 Crawlspace.** All crawlspaces shall comply with the requirements of this section.

**1203.6.2.2 Ventilation.** All crawlspaces shall be ventilated as specified in Section 1203.3.

If the installed ventilation in a crawlspace is less than one square foot for each 300 square feet of crawlspace area, or if the crawlspace vents are equipped with operable louvers, a radon vent shall be installed to originate from a point between the ground cover and soil. The radon vent shall be installed in accordance with Sections 1203.6.3.2.6 and 1203.6.3.2.7.

**1203.6.2.3 Crawlspace plenum systems.** In crawlspace plenum systems used for providing supply air for an HVAC system, aggregate, a permanently sealed soil gas retarder membrane and a radon vent pipe shall be installed in accordance with Section 1203.6.3.2. Crawlspace shall not be used for return air plenums.

In addition, an operable radon vent fan shall be installed and activated. The fan shall be located as specified in Section 1203.6.3.2.7. The fan shall be capable of providing at least 100 cfm at 1-inch water column static pressure. The fan shall be controlled by a readily accessible manual switch. The switch shall be labeled "RADON VENT FAN."

## **1203.6.3 Radon prescriptive requirements.**

**1203.6.3.1 Scope.** This section applies to those counties specified in Section 1203.6.1.2. This section establishes prescriptive construction requirements for reducing the potential for radon entry into all Group R Occupancies, and for preparing the building for future mitigation if desired.

In all crawlspaces, except crawlspace plenums used for providing supply air for an HVAC system, a continuous air barrier shall be installed between the crawlspace area and the occupied area to limit air transport between the areas. If a wood sheet subfloor or other material is utilized as an air barrier, in addition to the requirements of Section 502.1.6.2 of the Washington State Energy Code, all joints between sheets shall be sealed.

### **1203.6.3.2 Floors in contact with the earth.**

**1203.6.3.2.1 General.** Concrete slabs that are in direct contact with the building envelope shall comply with the requirements of this section.

EXCEPTION: Concrete slabs located under garages or other than Group R Occupancies need not comply with this chapter.

**1203.6.3.2.2 Aggregate.** A layer of aggregate of 4-inch minimum thickness shall be placed beneath concrete slabs. The aggregate shall be continuous to the extent practical.

**1203.6.3.2.3 Gradation.** Aggregate shall:

1. Comply with ASTM Standard C-33 Standard Specification for Concrete Aggregate and shall be size No. 8 or larger size aggregate as listed in Table 2, Grading Requirements for Course Aggregate; or
2. Meet the 1988 Washington State Department of Transportation Specification 9-03.1 (3) "Coarse Aggregate for Portland Cement Concrete," or any equivalent successor

standards. Aggregate size shall be of Grade 8 or larger as listed in Section 9-03.1 (3) C, "Grading"; or

3. Be screened, washed pea gravel free of deleterious substances in a manner consistent with ASTM Standard C-33 with 100 percent passing a 1/2-inch sieve and less than 5 percent passing a No. 16 sieve. Sieve characteristics shall conform to those acceptable under ASTM Standard C-33.

**EXCEPTION:** Aggregate shall not be required if a substitute material or system, with sufficient load-bearing characteristics, and having approved capability to provide equal or superior air flow, is installed.

**1203.6.3.2.4 Soil-gas retarder membrane.** A soil-gas retarder membrane, consisting of at least one layer of virgin polyethylene with a thickness of at least 6 mil, or equivalent flexible sheet material, shall be either placed directly under all concrete slabs so that the slab is in direct contact with the membrane, or on top of the aggregate with 2 inches minimum of fine sand or pea gravel installed between the concrete slab and membrane. The flexible sheet shall extend to the foundation wall or to the outside edge of the monolithic slab. Seams shall overlap at least 12 inches. The membrane shall also be fitted tightly to all pipes, wires, and other penetrations of the membrane and sealed with an approved sealant or tape. All punctures or tears shall be repaired with the same or approved material and similarly lapped and sealed.

**1203.6.3.2.5 Sealing of penetrations and joints.** All penetrations and joints in concrete slabs or other floor systems and walls below grade shall be sealed by an approved sealant to create an air barrier to limit the movement of soil-gas into the indoor air.

Sealants shall be approved by the manufacturer for the intended purpose. Sealant joints shall conform to manufacturer's specifications. The sealant shall be placed and tooled in accordance with manufacturer's specifications. There shall be no gaps or voids after the sealant has cured.

**1203.6.3.2.6 Radon vent.** One continuous sealed pipe shall run from a point within the aggregate under each concrete slab to a point outside the building. Joints and connections shall be permanently gas-tight. The continuous sealed pipe shall interface with the aggregate in the following manner, or by other approved equal method. The pipe shall be permanently connected to a "T" within the aggregate area so that the two end openings of the "T" lie within the aggregate area. A minimum of 5 feet of perforated drain pipe of 3 inches minimum diameter shall join to and extend from the "T." The perforated pipe shall remain in the aggregate area and shall not be capped at the ends. The "T" and its perforated pipe extensions shall be located at least 5 feet horizontally from the exterior perimeter of the aggregate area.

The continuous sealed pipe shall terminate no less than 12 inches above the eave, and more than 10 horizontal feet from a woodstove or fireplace chimney, or operable window. The continuous sealed pipe shall be labeled "radon vent." The label shall be placed so as to remain visible to an occupant.

The minimum pipe diameter shall be 3 inches unless otherwise approved. Acceptable sealed plastic pipe shall be smooth walled, and may include either PVC schedule 40 or ABS schedule of equivalent wall thickness.

The entire sealed pipe system shall be sloped to drain to the subslab aggregate.

The sealed pipe system may pass through an unconditioned attic before exiting the building; but to the extent practicable, the sealed pipe shall be located inside the thermal envelope of the building in order to enhance passive stack venting.

**EXCEPTION:** A fan for subslab depressurization system includes the following:

1. Soil-gas retarder membrane as specified in Section 1203.6.3.2.4;
2. Sealing of penetrations and joints as specified in Section 1203.6.3.2.5;
3. A 3-inch continuous sealed radon pipe shall run from a point within the aggregate under each concrete slab to a point outside the building;
4. Joints and connections shall be gas-tight, and may be of either PVC schedule 40 or ABS schedule of equivalent in wall thickness;
5. A label of "radon vent" shall be placed on the pipe so as to remain visible to an occupant;
6. Fan circuit and wiring as specified in Section 1203.6.3.2.7 and a fan.

If the subslab depressurization system is exhausted through the concrete foundation wall or rim joist, the exhaust terminus shall be a minimum of 6 feet from operable windows or outdoor air intake vents and shall be directed away from operable windows and outdoor air intake vents to prevent radon reentrainment.

**1203.6.3.2.7 Fan circuit and wiring and location.** An area for location of an in-line fan shall be provided. The location shall be as close as practicable to the radon vent pipe's point of exit from the building, or shall be outside the building shell; and shall be located so that the fan and all downstream piping is isolated from the indoor air.

Provisions shall be made to allow future activation of an in-line fan on the radon vent pipe without the need to place new wiring. A 110 volt power supply shall be provided at a junction box near the fan location.

**1203.6.3.2.8 Separate aggregate areas.** If the 4-inch aggregate area underneath the concrete slab is not continuous, but is separated into distinct isolated aggregate areas by a footing or other barrier, a minimum of one radon vent pipe shall be installed into each separate aggregate area.

**EXCEPTION:** Separate aggregate areas may be considered a single area if a minimum 3-inch diameter connection joining the separate areas is provided for every 30 feet of barrier separating those areas.

**1203.6.3.2.9 Concrete block walls.** Concrete block walls connected to below grade areas shall be considered unsealed surfaces. All openings in concrete block walls that will not remain accessible upon completion of the building shall be sealed at both vertical and horizontal surfaces, in order to create a continuous air barrier to limit the transport of soil-gas into the indoor air.

**1203.7 Other ventilation and exhaust systems.** Ventilation and exhaust systems for occupancies and operations involving flammable or combustible hazards or other contaminant

sources as covered in the *International Mechanical Code* or the *International Fire Code* shall be provided as required by both codes.) **1203.1 Equipment and systems.** Interior spaces intended for human occupancy shall be provided with active or passive space-heating systems capable of maintaining an indoor temperature of not less than 68°F (20°C) at a point 3 feet (914 mm) above the floor on the design heating day.

EXCEPTIONS: 1. Interior spaces where the primary purpose of the space is not associated with human comfort.  
2. Group F, H, S, or U occupancies.  
3. Group R-1 Occupancies not more than 500 square feet.

**1203.2.1 Definitions.** For the purposes of this section only, the following definitions apply.

**DESIGNATED AREAS** are those areas designated by a county to be an urban growth area in chapter 36.70A RCW and those areas designated by the U.S. Environmental Protection Agency as being in nonattainment for particulate matter.

**SUBSTANTIALLY REMODELED** means any alteration or restoration of a building exceeding 60 percent of the appraised value of such building within a 12-month period. For the purpose of this section, the appraised value is the estimated cost to replace the building and structure in-kind, based on current replacement costs.

**1203.2.2 Primary heating source.** Primary heating sources in all new and substantially remodeled buildings in designated areas shall not be dependent upon wood stoves.

**1203.2.3 Solid fuel burning devices.** No new or used solid fuel burning device shall be installed in new or existing buildings unless such device is United States Environmental Protection Agency certified or exempt from certification by the United States Environmental Protection Agency and conforms with RCW 70.94.011, 70.94.450, 70.94.453 and 70.94.457.

EXCEPTIONS: 1. Wood cook stoves.  
2. Antique wood heaters manufactured prior to 1940.

#### NEW SECTION

**WAC 51-50-1206 Section 1206—Sound transmission.**

**1206.1 Scope.** This section shall apply to common interior walls, partitions and floor/ceiling assemblies between adjacent dwelling units and sleeping units or between dwelling units and sleeping units and adjacent public areas.

#### NEW SECTION

**WAC 51-50-1207 Section 1207—Interior space dimensions.**

**1207.4 Efficiency dwelling units.** Efficiency dwelling units shall conform to the requirements of the code except as modified herein:

1. The unit shall have a living room of not less than 190 square feet (17.7 m) of floor area.
2. The unit shall be provided with a separate closet.

3. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.

4. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

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

**WAC 51-50-1208 ((Section 1208—Interior space dimensions.)) Reserved.**

~~((1208.3 Room area. Every dwelling unit shall have no fewer than one room that shall have not less than 120 square feet (13.9 m<sup>2</sup>) of net floor area. Other habitable rooms shall have a net floor area of not less than 70 square feet (6.5 m<sup>2</sup>).~~

EXCEPTION: Kitchens are not required to be of a minimum floor area.

~~Portions of a room with a sloped ceiling measuring less than 5 feet (1524 mm) or a flat ceiling measuring less than 7 feet (2134 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum habitable area for that room.))~~

#### NEW SECTION

**WAC 51-50-1209 Section 1209—Toilet and bathroom requirements.**

**1209.3.1 Water closet compartment.** Each water closet utilized by the public or employees shall occupy a separate compartment with walls or partitions and a door enclosing the fixtures to ensure privacy. Gender-neutral toilet room water closet compartments shall be in accordance with Section 2902.2.2.

EXCEPTIONS: 1. Water closet compartments shall not be required in a single-occupant toilet room with a lockable door.  
2. Toilet rooms located in child day care facilities and containing two or more water closets shall be permitted to have one water closet without an enclosing compartment.  
3. This provision is not applicable to toilet areas located within Group I-3 occupancy housing areas.

**1209.3.2 Urinal partitions.** Each urinal utilized by the public or employees shall occupy a separate area with walls or partitions to provide privacy. The walls or partitions shall begin at a height not more than 12 inches (305 mm) from and extend not less than 60 inches (1524 mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal not less than 18 inches (457 mm) or to a point not less than 6 inches (152 mm) beyond the outermost front lip of the urinal measured from the finished back wall surface, whichever is greater.

EXCEPTIONS: 1. Urinal partitions shall not be required in a single occupant or family or assisted-use toilet room with a lockable door.  
2. Toilet rooms located in child day care facilities and containing two or more urinals shall be permitted to have one urinal without partitions.

3. Urinals located in gender-neutral toilet facilities shall be in accordance with Section 2902.2.2.

**AMENDATORY SECTION** (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-1604 Section 1604—General design requirements.**

**Table 1604.5  
Risk Category of Buildings and Other Structures**

RISK CATEGORY	NATURE OF OCCUPANCY
I	Buildings and other structures that represent a low hazard to human life in the event of failure including, but not limited to: <ul style="list-style-type: none"> <li>• Agricultural facilities.</li> <li>• Certain temporary facilities.</li> <li>• Minor storage facilities.</li> </ul>
II	Buildings and other structures except those listed in Risk Categories I, III, and IV.
III	Buildings and other structures that represent a substantial hazard to human life in the event of failure including, but not limited to: <ul style="list-style-type: none"> <li>• Buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300.</li> <li>• Buildings and other structures containing Group E or Group I-4 occupancies with an occupant load greater than 250.</li> <li>• Buildings and other structures containing educational occupancies for students above the 12th grade with an occupant load greater than 500.</li> <li>• Group I-2 occupancies with an occupant load of 50 or more resident care recipients but not having surgery or emergency treatment facilities.</li> <li>• Group I-3 occupancies.</li> <li>• Any other occupancy with an occupant load greater than 5,000.<sup>a</sup></li> <li>• Power-generating stations, water treatment facilities for potable water, wastewater treatment facilities and other public utility facilities not included in Risk Category IV.</li> <li>• Buildings and other structures not included in Risk Category IV containing quantities of toxic or explosive materials that:</li> </ul>

RISK CATEGORY	NATURE OF OCCUPANCY
	Exceed maximum allowable quantities per control area as given in Table 307.1(1) or 307.1(2) or per outdoor control area in accordance with the <i>International Fire Code</i> ; and  Are sufficient to pose a threat to the public if released. <sup>b</sup>
IV	Buildings and other structures designated as essential facilities including, but not limited to: <ul style="list-style-type: none"> <li>• Group I-2 occupancies having surgery or emergency treatment facilities.</li> <li>• <u>Structures that house private emergency power generation, medical gas systems, HVAC systems or related infrastructure systems that support emergency surgery or emergency treatment.</u></li> <li>• Fire, rescue, ambulance and police stations, and emergency vehicle garages.</li> <li>• Designated earthquake, hurricane, or other emergency shelters.</li> <li>• Designated emergency preparedness, communications and operations centers, and other facilities required for emergency response.</li> <li>• Power-generating stations and other public utility facilities required as emergency backup facilities for Risk Category IV structures.</li> <li>• Buildings and other structures containing quantities of highly toxic materials that:                             <p>Exceed maximum allowable quantities per control area as given in Table 307.1(2) or per outdoor control area in accordance with the <i>International Fire Code</i>; and</p>                             Are sufficient to pose a threat to the public if released.<sup>b</sup></li> <li>• Aviation control towers, air traffic control centers, and emergency aircraft hangars.</li> <li>• Buildings and other structures having critical national defense functions.</li> <li>• Water storage facilities and pump structures required to maintain water pressure for fire suppression.</li> </ul>

- a For purposes of occupant load calculation, occupancies required by Table 1004.1.2 to use gross floor area calculations shall be permitted to use net floor areas to determine the total occupant load.
- b Where approved by the building official, the classification of buildings and other structures as Risk Category III or IV based on their quantities of toxic, highly toxic or explosive materials is permitted to be reduced to Risk Category II, provided it can be demonstrated by a hazard assessment in accordance with Section 1.5.3 of ASCE 7 that a release of the toxic, highly toxic or explosive materials is not sufficient to pose a threat to the public.

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

**WAC 51-50-1607 ((Section 1607—Live loads.)) Reserved.**

((Table 1607.1

**Minimum Uniformly Distributed Live Loads,  $L_u$ , And Minimum Concentrated Live Loads<sup>a</sup>**

OCCUPANCY OR USE	UNIFORM (psf)	CONCENTRATED (pounds)
5. Balconies and decks <sup>b</sup>	1.5 times the live load for the area served. Not required to exceed 100 psf.	—

(All other items in table and footnotes to remain unchanged))

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-1613 Section ((1613.5—Amendments to ASCE 7)) 1613—Earthquake loads.**

((1613.5)) **1613.4 Amendments to ASCE 7.** The provisions of Section ((4613.5)) **1613.4** shall be permitted as an amendment to the relevant provisions of ASCE 7. The text of ASCE 7 shall be amended as indicated in Sections ((4613.5.2)) **1613.4.1** through ((4613.5.4)) **1613.4.2**.

((1613.5.1 **Transfer of anchorage forces into diaphragm.** Modify ASCE 7 Section 12.11.2.2.1 as follows:

**12.11.2.2.1 Transfer of anchorage forces into diaphragm.** Diaphragms shall be provided with continuous ties or struts between diaphragm chords to distribute these anchorage forces into the diaphragms. Diaphragm connections shall be positive, mechanical or welded. Added chords are permitted to be used to form subdiaphragms to transmit the anchorage forces to the main continuous cross-ties. The maximum length-to-width ratio of a wood, wood structural panel or untopped steel deck sheathed structural subdiaphragm that serves as part of the continuous tie system shall be 2.5 to 1. Connections and anchorages capable of resisting the prescribed forces shall be provided between the diaphragm and the attached components. Connections shall extend into the

diaphragm a sufficient distance to develop the force transferred into the diaphragm.

**1613.5.2 Increased structural height limit.** Modify ASCE 7 Section 12.2.5.4 as follows:

**12.2.5.4 Increased structural height limit for steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls, and special reinforced concrete shear walls.** The limits on height,  $h_n$ , in Table 12.2-1 are permitted to be increased from 160 ft (50 m) to 240 ft (75 m) for structures assigned to Seismic Design Categories D or E and from 100 ft (30 m) to 160 ft (50 m) for structures assigned to Seismic Design Category F, if all of the following are satisfied:

1. The structure shall not have an extreme torsional irregularity as defined in Table 12.3-1 (horizontal structural irregularity Type 1b).

2. The steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls or special reinforced concrete shear walls in any one plane shall resist no more than 60 percent of the total seismic forces in each direction, neglecting accidental torsional effects.

3. Where floor and roof diaphragms transfer forces from the vertical seismic force-resisting elements above the diaphragm to other vertical force-resisting elements below the diaphragm, these in-plane transfer forces shall be amplified by the over-strength factor,  $\Omega_o$ , for the design of the diaphragm flexure, shear, and collectors.

4. The earthquake force demands in foundation mat slabs, grade beams, and pile caps supporting braced frames and/or walls arranged to form a shear-resisting core shall be amplified by 2 for shear and 1.5 for flexure.

5. The earthquake shear force demands in special reinforced concrete shear walls shall be amplified by the over-strength factor,  $\Omega_o$ .

**1613.5.3 Analysis procedure selection.** Modify ASCE 7 Section 12.6.1 and Table 12.6-1 as follows:

**12.6.1 Analysis procedure.** The structural analysis required by Chapter 12 shall consist of one of the types permitted in Table 12.6-1, based on the structure's seismic design category, structural system, dynamic properties, and regularity, or with the approval of the authority having jurisdiction, an alternative generally accepted procedure is permitted to be used. The analysis procedure selected shall be completed in accordance with the requirements of the corresponding section referenced in Table 12.6-1.

**Table 12.6-1 Permitted Analytical Procedures**

Seismic Design Category	Structural Characteristics	Equivalent Lateral Force Procedure, Section 12.8 <sup>a</sup>	Modal Response Spectrum Analysis, Section 12.9 <sup>a</sup>	Linear Seismic Response History Procedures, Chapter 16 <sup>a</sup>	Nonlinear Seismic Response History Procedures, Chapter 16 <sup>b</sup>
B, C	All structures	P	P	P	P
D, E, F	Risk Category I or II buildings not exceeding two stories above the base	P	P	P	P
	Structures of light frame construction	P	P	P	P
	Structures with no structural irregularities and not exceeding 160 ft in structural height	P	P	P	P
	Structures exceeding 160 ft in structural height with no structural irregularities and with $T < 3.5T_s$	P	P	P	P
	Structures not exceeding 160 ft in structural height and having only horizontal irregularities of Type 2, 3, 4, or 5 in Table 12.3-1 or vertical irregularities of Type 4, 5a, or 5b in Table 12.3-2	P	P	P	P
	Structures not exceeding 160 ft in structural height and having only horizontal irregularities of Type 2, 3, 4, or 5 in Table 12.3-1 or vertical irregularities of Type 4, 5a, or 5b in Table 12.3-2	P	P	P	P
	All other structures $\leq$ 240 ft in height	NP	P	P	P
	All structures $>$ 240 ft in height	NP	NP	NP	P <sup>c</sup>

<sup>a</sup> P: Permitted; NP: Not Permitted;  $T_s = S_{D1}/S_{D5}$

<sup>b</sup> When nonlinear response history procedure is used, one of the linear procedures shall also be performed.

<sup>c</sup> Refer to Section 12.6.2 for additional requirements.

**1613.5.4 Nonlinear response history procedure for buildings in excess of 240 ft (75 m) in height.** Modify ASCE 7 Section 12.6.2 as follows:

In addition to any of the linear analysis procedures in Table 12.6-1, a nonlinear dynamic analysis in accordance with ASCE 7 Chapter 16 shall be performed, except that analysis shall be conducted for MCER ground motions. Acceptance criteria shall be compatible with providing not greater than a 10 percent, 5 percent or 2-1/2 percent risk of collapse for Risk Category II, III and IV structures, respectively. In addition, proportioning of the seismic force resisting system shall incorporate a capacity based approach that identifies the mechanism of nonlinear lateral displacement of the structure, those structural actions expected to yield, and those intended to remain elastic. Design shall be subject to an approved independent structural design review.)) **1613.4.1**

**ASCE 7 Section 12.2.5.4.** Amend ASCE 7 Section 12.11.2.2.1 as follows:

**12.2.5.4 Increased structural height limit for steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls, and special reinforced concrete shear walls.** The limits on height,  $h_{LT}$ , in Table 12.2-1 are permitted to be increased from 160 ft (50 m) to 240 ft (75 m) for structures assigned to Seismic Design Categories D or E and from 100 ft (30 m) to 160 ft (50 m) for structures assigned to Seismic Design Category F, provided that the seismic force-resisting systems are limited to steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear

walls, or special reinforced concrete cast-in-place shear walls and all of the following requirements are met:

1. The structure shall not have an extreme torsional irregularity as defined in Table 12.3-1 (horizontal structural irregularity Type 1b).

2. The steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls or special reinforced concrete shear walls in any one plane shall resist no more than 60 percent of the total seismic forces in each direction, neglecting accidental torsional effects.

3. Where floor and roof diaphragms transfer forces from the vertical seismic force-resisting elements above the diaphragm to other vertical force-resisting elements below the diaphragm, these in-plane transfer forces shall be amplified by the overstrength factor,  $Q_o$  for the design of the diaphragm flexure, shear, and collectors.

4. The earthquake force demands in foundation mat slabs, grade beams, and pile caps supporting braced frames and/or walls arranged to form a shear-resisting core shall be

amplified by 2 for shear and 1.5 for flexure. The redundancy factor,  $\rho$ , applies and shall be the same as that used for the structure in accordance with Section 12.3.4.

5. The earthquake shear force demands in special reinforced concrete shear walls shall be amplified by the overstrength factor,  $Q_o$ .

**1613.4.2 ASCE 7 Section 12.6.** Amend ASCE 7 Section 12.6 and Table 12.6-1 to read as follows:

**12.6 ANALYSIS PROCEDURE SELECTION**

**12.6.1 Analysis procedure.** The structural analysis required by Chapter 12 shall consist of one of the types permitted in Table 12.6-1, based on the structure's seismic design category, structural system, dynamic properties, and regularity, or with the approval of the authority having jurisdiction, an alternative generally accepted procedure is permitted to be used. The analysis procedure selected shall be completed in accordance with the requirements of the corresponding section referenced in Table 12.6-1.

**Table 12.6-1**

**Permitted Analytical Procedures**

<b>Seismic Design Category</b>	<b>Structural Characteristics</b>	<b>Equivalent Lateral Force Procedure, Section 12.8<sup>a</sup></b>	<b>Modal Response Spectrum Analysis, Section 12.9.1, or Linear Response History Analysis, Section 12.9.2</b>	<b>Nonlinear Response History Procedures, Chapter 16<sup>a</sup></b>
B, C	All structures	P	P	P
D, E, F	Risk Category I or II buildings not exceeding two stories above the base	P	P	P
	Structures of light frame construction	P	P	P
	Structures with no structural irregularities and not exceeding 160 ft in structural height	P	P	P
	Structures exceeding 160 ft in structural height with no structural irregularities and with $T < 3.5T_s$	P	P	P
	Structures not exceeding 160 ft in structural height and having only horizontal irregularities of Type 2, 3, 4, or 5 in Table 12.3-1 or vertical irregularities of Type 4, 5a, or 5b in Table 12.3-2	P	P	P
	All other structures $\leq$ 240 ft in height	NP	P	P
	All structures $>$ 240 ft in height	NP	NP	P <sup>c</sup>

<sup>a</sup> P: Permitted; NP: Not Permitted;  $T_s = S_{D1}/S_{D5}$ .



AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-1705 Section 1705—Required special inspections and tests.**

**1705.5.3 Mass timber construction.** *Special inspections of mass timber elements in Types IV-A, IV-B and IV-C construction ((in buildings, structures, or portions thereof greater than 85 feet above grade plane)) shall be in accordance with Table 1705.5.3.*

**Table 1705.5.3**

**Required Special Inspections of Mass Timber Construction**

Type	Continuous Special Inspection	Periodic Special Inspection
1. Inspection of anchorage and connections of mass timber construction to timber deep foundation systems.		X
2. Inspect erection and sequence of mass timber construction.		X
3. Inspection of connections where installation methods are required to meet design loads.		
<del>((a-))</del> <u>3.1. Threaded fasteners.</u>		
<u>3.1.1. Verify use of proper installation equipment.</u>		X
<u>3.1.2. Verify use of pre-drilled holes where required.</u>		X
<u>3.1.3. Inspect screws, including diameter, length, head type, spacing, installation angle, and depth.</u>		X
<del>((b-))</del> <u>3.2. Adhesive anchors installed in horizontal or upwardly inclined orientation to resist sustained tension loads.</u>	X	
<u>3.3. Adhesive anchors not defined in 3.2</u>		<u>X</u>
<del>((c-))</del> <u>3.4. Bolted connections.</u>		X
<del>((d. Other proprietary))</del> <u>3.5. Concealed connections.</u>		X

**1705.11.1 Structural wood.** *Continuous special inspection is required during field gluing operations of elements of the main windforce-resisting system. Periodic special inspection is required for nailing, bolting, anchoring and other fastening of elements of the main windforce-resisting system, including wood shear walls, wood diaphragms, drag struts, braces and hold-downs.*

EXCEPTION: *Special inspections are not required for wood shear walls, shear panels and diaphragms, including nailing, bolting, anchoring and other fastening to other elements of the main windforce-resisting system, where the lateral resistance is provided by sheathing of wood structural panels, and the fastener spacing of the sheathing is more than 4 inches (102 mm) on center.*

**1705.12.2 Structural wood.** For the seismic force-resisting systems of structures assigned to *Seismic Design Category C, D, E, or F:*

1. *Continuous special inspection shall be required during field gluing operations of elements of the seismic force-resisting system.*

2. *Periodic special inspection shall be required for nailing, bolting, anchoring and other fastening of elements of the seismic force-resisting system, including wood shear walls, wood diaphragms, drag struts, braces, shear panels and hold-downs.*

EXCEPTION: *Special inspections are not required for wood shear walls, shear panels and diaphragms, including nailing, bolting, anchoring and other fastening to other elements of the seismic force-resisting system, where the lateral resistance is provided by sheathing of wood structural panels, and the fastener spacing of the sheathing is more than 4 inches (102 mm) on center.*

**1705.12.6 Plumbing, mechanical and electrical components.** *Periodic special inspection of plumbing, mechanical and electrical components shall be required for the following:*

1. Anchorage of electrical equipment for emergency and standby power systems in structures assigned to Seismic Design Category C, D, E or F.

2. Anchorage of other electrical equipment in structures assigned to Seismic Design Category E or F.

3. Installation and anchorage of piping systems designed to carry hazardous materials and their associated mechanical units in structures assigned to Seismic Design Category C, D, E or F.

4. Installation and anchorage of ductwork designed to carry hazardous materials in structures assigned to Seismic Design Category C, D, E or F.

5. Installation and anchorage of vibration isolation systems in structures assigned to Seismic Design Category C, D, E or F where the approved construction documents require a nominal clearance of .25 inch (6.4 mm) or less between the equipment support frame and restraint.

6. Installation of mechanical and electrical equipment, including ductwork, piping systems and their structural supports, where automatic fire sprinkler systems are installed in Risk Category IV structures assigned to Seismic Design Category C, D, E or F to verify one of the following:

6.1. Minimum clearances have been provided as required by Section 13.2.3 ASCE/SEI 7.

6.2. A nominal clearance of not less than 3 inches (76 mm) has been provided between fire protection sprinkler system drops and sprigs and: Structural members not used collectively or independently to support the sprinklers; equipment attached to the building structure; and other systems' piping.

Where flexible sprinkler hose fittings are used, special inspection of minimum clearances is not required.

**1705.19 Sealing of mass timber.** Periodic special inspections of sealants or adhesives shall be conducted where sealant or adhesive required by Section 703.9 is applied to mass timber building elements as designated in the approved construction documents.

#### NEW SECTION

**WAC 51-50-1807 Section 1807—Foundation walls, retaining walls and embedded posts and poles.**

**1807.2.2 Design lateral soil loads.** Retaining walls shall be designed for the lateral soil loads set forth in Section 1610. For structures assigned to Seismic Design Category D, E, or F, the design of retaining walls supporting more than 6 feet (1829 mm) of backfill height measured to the bottom of the footing shall incorporate the additional seismic lateral earth pressure in accordance with the geotechnical investigation where required in Section 1803.2.

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

**WAC 51-50-21070 Section 2107—Allowable stress design.**

**2107.1 General.** The design of masonry structures using *allowable stress design* shall comply with Sections 2106 and the requirements of Chapters 1 through 8 of TMS 402/ACI 530/ASCE 5 except as modified by Sections 2107.2 through 2107.4.

**2107.2 TMS 402/ACI 530/ASCE 5, Section 2.1.8.7.1.1, lap splices.** In lieu of Section 2.1.8.7.1.1, it shall be permitted to design lap splices in accordance with Section 2107.2.1.

**((2107.2.1 Lap splices.** The minimum length of lap splices for reinforcing bars in tension or compression,  $l_d$ , shall be  $l_d = 0.002d_b f_s$  (Equation 21-1)

$$\text{For SI: } l_d = 0.29d_b f_s$$

but not less than 12 inches (305 mm). In no case shall the length of the lapped splice be less than 40 bar diameters.

where:

$d_b$  = Diameter of reinforcement, inches (mm).

$f_s$  = Computed stress in reinforcement due to design loads, psi (MPa).

In regions of moment where the design tensile stresses in the reinforcement are greater than 80 percent of the allowable steel tension stress,  $F_s$ , the lap length of splices shall be increased not less than 50 percent of the minimum required

length, but need not be greater than  $72d_b$ . Other equivalent means of stress transfer to accomplish the same 50 percent increase shall be permitted. Where epoxy coated bars are used, lap length shall be increased by 50 percent.))

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-2303 Section 2303—Minimum standards and quality.**

**2303.1.4 Structural glued cross-laminated timber.** Cross-laminated timbers shall be manufactured and identified in accordance with ANSI/APA PRG 320. Cross-laminated timbers in Construction Types IV-A, IV-B, and IV-C shall be manufactured and identified in accordance with ANSI/APA PRG 320 - 18.

**2303.6 Nails and staples.** Nails and staples shall conform to requirements of ASTM F1667, including Supplement 1. Nails used for framing and sheathing connections shall have minimum average bending yield strengths as follows: 80 kips per square inch (ksi) (551 MPa) for shank diameters larger than 0.177 inch (4.50 mm) but not larger than 0.254 inch (6.45 mm), 90 ksi (620 MPa) for shank diameters larger than 0.142 inch (3.61 mm) but not larger than 0.177 inch (4.50 mm) and 100 ksi (689 MPa) for shank diameters of not less than 0.099 inch (2.51 mm) but not larger than 0.142 inch (3.61 mm). Staples used for framing and sheathing connections shall have minimum average bending moments as follows: 3.6 in.-lbs (0.41 N-m) for No. 16 gage staples, 4.0 in.-lbs (0.45 N-m) for No. 15 gage staples, and 4.3 in.-lbs (0.49 N-m) for No. 14 gage staples. Staples allowable bending moments shall be listed on the construction documents.

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

**WAC 51-50-2407 ((Section 2407—Glass in handrails and guards.)) Reserved.**

**((2407.1.1 Loads.** The panels and their support system shall be designed to withstand the loads specified in Section 1607.8, using a factor of safety of four.

**2407.1.2 Structural glass baluster panels.** Guards with structural glass baluster panels shall be installed with an attached top rail or handrail. The top rail or handrail shall be supported by a minimum of three glass baluster panels, or shall be otherwise supported to remain in place should one glass baluster panel fail.

**EXCEPTION:** An attached top rail or handrail is not required where the glass baluster panels are laminated glass with two or more glass plies of equal thickness and of the same glass type.))

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

**WAC 51-50-2603 ((Section 2603—Foam plastic insulation.)) Reserved.**

~~((2603.10 Wind resistance. Foam plastic insulation complying with ASTM C 578 or ASTM C 1289 and used as exterior wall sheathing on framed wall assemblies shall comply with ANSI/FS 100 for wind pressure resistance.))~~

#### NEW SECTION

#### WAC 51-50-2702 Section 2702—Emergency and standby power systems.

**2702.1.5 Load duration.** Emergency power systems and standby power systems shall be designed to provide the required power for a minimum duration of 8 hours without being refueled or recharged, unless specified otherwise in this code.

EXCEPTION: The minimum duration of all required power loads may be reduced to 2 hours for all systems except for fire pumps that require a minimum duration of 8 hours in accordance with NFPA 20.

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

#### WAC 51-50-2900 Chapter 29—Plumbing systems.

##### SECTION 2901—GENERAL.

**2901.1 Scope.** The provisions of this chapter and the state plumbing code shall govern the erection, installation, *alteration*, repairs, relocation, replacement, *addition* to, use or maintenance of plumbing equipment and systems. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the state plumbing code.

**2901.2 Health codes.** In food preparation, serving and related storage areas, additional fixture requirements may be dictated by health codes.

**2901.3 Fixed guideway transit and passenger rail systems.** In construction of a fixed guideway and passenger rail system, subject to Section 3114, public plumbing fixtures are not required.

##### SECTION 2902—MINIMUM PLUMBING FACILITIES.

**2902.1 Minimum number of fixtures.** Plumbing fixtures shall be provided in the minimum number shown in Table 2902.1. Uses not shown in Table 2902.1 shall be determined individually by the *building official* based on the occupancy which most nearly resembles the proposed occupancy. The number of occupants shall be determined by this code. Plumbing fixtures need not be provided for unoccupied buildings or facilities.

**2902.1.1 Fixture calculations.** To determine the *occupant load* of each sex, the total *occupant load* shall be divided in half. To determine the required number of fixtures, the fixture ratio or ratios for each fixture type shall be applied to the *occupant load* of each sex in accordance with Table 2902.1. Fractional numbers resulting from applying the fixture ratios of Table 2902.1 shall be rounded up to the next whole number. For calculations involving multiple occupancies, such

fractional numbers for each occupancy shall first be summed and then rounded up to the next whole number.

EXCEPTION: The total *occupant load* shall not be required to be divided in half where *approved* statistical data indicate a distribution of the sexes of other than 50 percent of each sex.

**2902.1.1.1 Private offices.** Fixtures only accessible to private offices shall not be counted to determine compliance with this section.

**2902.1.1.2 Urinals in men's facilities.** Where urinals in men's facilities are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one quarter (25%) of the minimum specified. For men's facilities serving 26 or more persons, not less than one urinal shall be provided.

**2902.1.1.3 Urinals.** Where urinals are provided in gender-neutral facilities, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced less than one quarter (25 percent) of the minimum specified. Facilities serving 26 or more persons, not less than one urinal shall be provided.

~~((2902.1.2))~~ **2902.1.4 Family or assisted-use toilet and bath fixtures.** Fixtures located within family or assisted-use toilet and bathing rooms required by Section 1109.2.1 are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.

**2902.2 Separate facilities.** Where plumbing fixtures are required, separate facilities shall be provided for each sex.

EXCEPTIONS:

1. Separate facilities shall not be required for *dwelling units* and *sleeping units*.
2. Separate facilities shall not be required in structures or tenant spaces with a total *occupant load*, including both employees and customers, of 15 or less.
3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or less.
4. Separate facilities shall not be required in spaces primarily used for drinking or dining with a total occupant load, including both employees and customers, of 30 or fewer.
5. Separate facilities shall not be required when gender-neutral facilities are provided in accordance with Section 2902.2.2.

**2902.2.1 Family or assisted-use toilet facilities serving as separate facilities.** Where a building or tenant space requires a separate toilet facility for each sex and each toilet facility is required to have only one water closet, two family or assisted-use toilet facilities shall be permitted to serve as the required separate facilities. Family or assisted-use toilet facilities shall not be required to be identified for exclusive use by either sex as required by Section 2902.4.

**2902.2.2 Gender-neutral facilities.** Gender-neutral toilet facilities, when provided, shall be in accordance with the following:

1. There is no reduction in the number of fixtures required to be provided for male and female in the type of occupancy and in the minimum number shown in Table 2902.1.

2. Gender-neutral multiuser toilet rooms shall have water closets and urinals located in toilet compartments in accordance with ICC A117.1.

3. Gender-neutral multiuser toilet room water closet and urinal compartments shall have full-height walls and a door enclosing the fixture to ensure privacy.

4. Gender-neutral toilet room water closet and urinal compartment doors shall be securable from within the compartment.

5. Gender-neutral toilet rooms provided for the use of multiple occupants, the egress door from the room shall not be lockable from the inside of the room.

6. Compartments shall not be required in a single-occupant toilet room with a lockable door.

**2902.3 Employee and public toilet facilities.** Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902.1 for all users. Employees shall be provided with toilet facilities in all occupancies. Employee toilet facilities shall either be separate or combined employee and public toilet facilities.

EXCEPTION: Public toilet facilities shall not be required in:

1. Open or enclosed parking garages where there are no parking attendants.
2. Structures and tenant spaces intended for quick transactions, including takeout, pickup and drop-off, having a public access area less than or equal to 300 square feet (28 m<sup>2</sup>).
3. Fixed guideway transit and passenger rail systems constructed in accordance with Section 3112.

~~((2902.3.1 Access. The route to the public toilet facilities required by Section 2902.3 shall not pass through kitchens, food preparation areas, unpackaged food storage areas, storage rooms or closets. Access to the required facilities shall be from within the building or from the exterior of the building. Access to toilets serving multiple tenants shall be through a common use area and not through an area controlled by a tenant. All routes shall comply with the accessibility requirements of this code. The public shall have access to the required toilet facilities at all times that the building is occupied. For other requirements for plumbing facilities, see Chapter 11.))~~

**2902.3.2 Location of toilet facilities in occupancies other than malls.** In occupancies other than covered and open mall buildings, the required *public* and employee toilet facilities shall be located in each building not more than one story above or below the space required to be provided with toilet facilities, or conveniently in a building adjacent thereto on the same property, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

EXCEPTION: The location and maximum distances of travel to required employee facilities in factory and industrial occupancies are permitted to exceed that required by this section, provided that the location and maximum distance of travel are *approved*.

**2902.3.3 Location of toilet facilities in malls.** In covered and open mall buildings, the required *public* and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 300 feet (91,440 mm). In mall buildings, the required facilities shall be based on total square footage (m<sup>2</sup>) within a covered mall building or within the perimeter line of an open mall building, and facilities shall be installed in each individual store or in a central toilet area located in accordance with this section. The maximum distance of travel to central toilet facilities in mall buildings shall be measured from the main entrance of any store or tenant space. In mall buildings, where employees' toilet facilities are not provided in the individual store, the maximum distance of travel shall be measured from the employees' work area of the store or tenant space.

**2902.3.4 Pay facilities.** Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.

**2902.3.5 Door locking.** Where a toilet room is provided for the use of multiple occupants, the egress door for the room shall not be lockable from the inside of the room. This section does not apply to family or assisted-use toilet rooms.

**2902.3.6 Prohibited toilet room location.** Toilet rooms shall not open directly into a room used for the preparation of food for service to the public.

**2902.4 Signage.** Required public facilities shall be provided with signs that designate the sex ~~((as required by Section 2902.2))~~ for separate facilities or indicate gender-neutral facilities. Signs shall be readily visible and located near the entrance to each toilet facility. Signs for accessible toilet facilities shall comply with Section 1111.

**2902.4.1 Directional signage.** Directional signage indicating the route to the public toilet facilities shall be posted in a lobby, corridor, aisle or similar space, such that the sign can be readily seen from the main entrance to the building or tenant space.

**2902.5 Drinking fountain location.** Drinking fountains shall not be required to be located in individual tenant spaces provided that public drinking fountains are located within a distance of travel of 500 feet of the most remote location in the tenant space and not more than one story above or below the tenant space. Where the tenant space is in a covered or open mall, such distance shall not exceed 300 feet. Drinking fountains shall be located on an accessible route. Drinking fountains shall not be located in toilet rooms.

**2902.5.1 Drinking fountain number.** Occupant loads over 30 shall have one drinking fountain for the first 150 occupants, then one per each additional 500 occupants.

EXCEPTIONS: 1. Sporting facilities with concessions serving drinks shall have one drinking fountain for each 1000 occupants.  
2. A drinking fountain need not be provided in a drinking or dining establishment.

**2902.5.2 Multistory buildings.** Drinking fountains shall be provided on each floor having more than 30 occupants in schools, dormitories, auditoriums, theaters, offices and public buildings.

**2902.5.3 Penal institutions.** Penal institutions shall have one drinking fountain on each cell block floor and one on each exercise floor.

**2902.5.4 Bottle filling stations.** Bottle filling stations shall be provided in accordance with Sections 2902.5.4.1 through 2902.5.4.3.

**2902.5.4.1 Group E occupancies.** In Group E occupancies with an occupant load over 30, a minimum of one bottle filling station shall be provided on each floor. This bottle filling station may be integral to a drinking fountain.

**2902.5.4.2 Substitution.** In all occupancies that require more than two drinking fountains per floor or secured area, *bottle*

*filling stations* shall be permitted to be substituted for up to 50 percent of the required number of drinking fountains.

**2902.5.4.3 Accessibility.** At least one of the required bottle filling stations shall be located in accordance with Section 309 ICC A117.1.

**2902.6 Dwelling units.** Dwelling units shall be provided with a kitchen sink.

~~((2902.7 Water closet space requirements. The water closet stool in all occupancies shall be located in a clear space not less than 30 inches (762 mm) in width, with a clear space in front of the stool of not less than 24 inches (610 mm).))~~

**2902.8 Water.** Each required sink, lavatory, bathtub and shower stall shall be equipped with hot and cold running water necessary for its normal operation.

~~((2902.9 Small occupancies. Drinking fountains shall not be required for an occupant load of 15 or fewer.))~~

SECTION 2903—RESERVED.

SECTION 2904—RESERVED.

**Table 2902.1**  
**Minimum Number of Required Plumbing Fixtures<sup>a</sup>**  
(See Sections 2902.2 and 2902.3)

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathtubs/ Showers
				Male	Female	Male	Female	
1	Assembly	A-1 <sup>d</sup>	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		—
		A-2 <sup>d</sup>	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		—
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		—
		A-3 <sup>d</sup>	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums	1 per 125	1 per 65	1 per 200		—
			Passenger terminals and transportation facilities	1 per 500	1 per 500	1 per 750		—
			Places of worship and other religious services	1 per 150	1 per 75	1 per 200		—
		A-4	Coliseums, arenas, skating rinks, pools, and tennis courts for indoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150	
A-5	Stadiums amusement parks, bleachers and grandstands for outdoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150		—	

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers
				Male	Female	Male	Female	
2	Business	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for first 80 and 1 per 80 for remainder exceeding 80		—
3	Educational	E <sup>c</sup>	Educational facilities	1 per 35	1 per 25	1 per 85	1 per 50	—
4	Factory and industrial	F-1 and F-2	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		Check State (UPC)
5	Institutional	I-1	Residential care	1 per 10		1 per 10		1 per 8
		I-2	Hospitals, ambulatory nursing home care recipient <sup>b</sup>	1 per room <sup>c</sup>		1 per room <sup>c</sup>		1 per 15
			Employees, other than residential care <sup>b</sup>	1 per 25		1 per 35		—
			Visitors other than residential care	1 per 75		1 per 100		—
		I-3	Prisons <sup>b</sup>	1 per cell		1 per cell		1 per 15
			Reformatories, detention centers and correctional centers <sup>b</sup>	1 per 15		1 per 15		1 per 15
			Employees <sup>b</sup>	1 per 25		1 per 35		—
I-4	Adult day care and child day care	1 per 15		1 per 15		1		
6	Mercantile	M	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—
7	Residential	R-1	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit
		R-2	Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8
			Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit
		R-3	One- and two-family dwellings	1 per dwelling unit		1 per 10		1 per dwelling unit
			Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
R-4	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8		
8	Storage	S-1 S-2	Structures for the storage of goods, warehouses, storehouses and freight depots, low and moderate hazard	1 per 100		1 per 100		Check State (UPC)

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by this code, except with respect to Group E occupancies the provisions of note "e" shall apply.
- b. Toilet facilities for employees shall be separate from facilities for inmates or care recipients.
- c. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient sleeping unit and with provisions for privacy.
- d. The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.
- e. For Group E occupancies: The number of occupants shall be determined by using a calculation of 100 square feet gross building area per student for the minimum number of plumbing fixtures.

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

**WAC 51-50-3001 Reserved.**

~~((Section 3002—Hoistway enclosures.~~

~~**3002.4 Elevator car to accommodate ambulance stretcher.** In buildings four stories in height or more, and in buildings which are required to have an elevator and contain Group R-1, R-2 or I Occupancies on a level other than the exit discharge level, at least one elevator shall be provided for fire department emergency access to all floors. The elevator car shall be of such a size and arrangement to accommodate a 24-inch by 84-inch (610 mm by 2134 mm) ambulance stretcher with not less than 5-inch (127 mm) radius corners, in the horizontal, open position and shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than 3 inches (76 mm) in height and shall be placed inside on both sides of the hoistway door frame.))~~

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

**WAC 51-50-30020 ((Section 30020—Hoistway enclosures.)) Reserved.**

~~((**30020.4 Elevator car to accommodate ambulance stretcher.** Where elevators are provided in buildings four or more stories above, or four or more stories below, grade plane, or in any Group R-1, R-2 or I occupancy building provided with an elevator regardless of the number of stories, not fewer than one elevator shall be provided for fire department emergency access to all floors. The elevator car shall be of such a size and arrangement to accommodate an ambulance stretcher 24-inch by 84-inch (610 mm by 2,134 mm) with not less than 5-inch (127 mm) radius corners, in the horizontal, open position and shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than 3 inches (76 mm) in height and shall be placed inside on both sides of the hoistway door frame.))~~

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

**WAC 51-50-30050 Section 30050—Machine rooms.**

~~**30050.2 ((Venting.)) Temperature control.** Elevator machine rooms, machinery spaces that contain the driving machine, and control rooms or spaces that contain the operation or motion controller for elevator operation shall be provided with an independent dedicated ventilation or air-conditioning system to control the space temperature to protect against the overheating of the electrical equipment. Ventilation systems shall use outdoor make up air pathway that does not rely on transfer air from other building systems. The system shall service the equipment space only, and shall be capable of maintaining the temperature and humidity within the range established by the manufacturer's specifications. Where no manufacturer specifications are available, the equipment space temperature shall be maintained at no less~~

than fifty-five degrees Fahrenheit and no more than ninety degrees Fahrenheit.

The cooling load for the equipment shall include the BTU output of the elevator operation equipment as specified by the manufacturer based on one hour of continuous operation. The outdoor design temperature for ventilation shall be from the 0.5% column for summer from the Puget Sound Chapter of ASHRAE publication "*Recommended Outdoor Design Temperatures, Washington State*." The following formula shall be used to calculate flow rate for ventilation:

CFM = BTU output of elevator machine room equipment/[1.08 x (acceptable machine room temp - make up air temp)]

The ventilation or air-conditioning system will be provided with the same source of power (normal, optional standby, legally required standby, or emergency) as the elevator equipment so that the temperature control is available at all times that the elevators have power.

EXCEPTION: For buildings four stories or less, natural or mechanical means may be used in lieu of an independent ventilation or air-conditioning system to keep the equipment space ambient air temperature and humidity in the range specified by the elevator equipment manufacturer.

**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 16-03-064, filed 1/19/16, effective 7/1/16)

**WAC 51-50-3009 ((Section 3009—Hoistway venting.)) Reserved.**

~~((**3009.1 Vents required.** Where required by the authority having jurisdiction over the conveyance, hoistways of elevators and dumbwaiters penetrating four or more stories shall be provided with a means for venting smoke and hot gases to the outer air in case of fire.~~

EXCEPTION: Venting is not required for the following elevators and hoistways:

1. In occupancies other than Groups R-1, R-2, I-1, I-2 and similar occupancies with overnight sleeping units, where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
2. Sidewalk elevator hoistways.
3. Elevators contained within and serving open parking garages only.
4. Elevators within individual residential dwelling units.

~~**3009.2 Location of vents.** Vents shall be located at the top of the hoistway and shall open either directly to the outer air or through noncombustible ducts to the outer air. Noncombustible ducts shall be permitted to pass through the elevator machine room, provided that portions of the ducts located outside the hoistway or machine room are enclosed by construction having not less than the fire resistance rating required for the hoistway. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited as not to provide greater than 2 inches of clearance on all sides.~~

~~3009.3 Area of vents.~~ Except as provided for in Section 3009.3.1, the area of the vents shall not be less than 3 1/2 percent of the area of the hoistway nor less than 3 square feet (0.28 m<sup>2</sup>) for each elevator car, and not less than 3 1/2 percent nor less than 0.5 square feet (0.047 m<sup>2</sup>) for each dumbwaiter car in the hoistway, whichever is greater. The total required vent area shall be equipped with dampers that remain powered closed until activated open by the fire alarm system panel. The dampers shall open upon loss of power.

~~3009.3.1 Reduced vent area.~~ Where mechanical ventilation conforming to the *International Mechanical Code* is provided, a reduction in the required vent area is allowed provided that all of the following conditions are met:

- ~~1. The occupancy is not in Group R-1, R-2, I-1 or I-2 or of a similar occupancy with overnight sleeping units.~~
- ~~2. The vents required by Section 3009.2 do not have outside exposure.~~
- ~~3. The hoistway does not extend to the top of the building.~~
- ~~4. The hoistway and machine room exhaust fan is automatically reactivated by thermostatic means.~~
- ~~5. Equivalent venting of the hoistway is accomplished.))~~

NEW SECTION

**WAC 51-50-3101 Section 3101—General.**

**3101.1 Scope.** The provisions of this chapter shall govern special building construction including membrane structures, temporary structures, pedestrian walkways and tunnels, automatic vehicular gates, awnings and canopies, marquees, signs, towers and antennas, relocatable buildings, swimming pool enclosures and safety devices, and solar energy systems and fixed guideway transit and passenger rail systems.

NEW SECTION

**WAC 51-50-3114 Section 3114—Fixed guideway transit and passenger rail systems.** Construction of fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130, standard for fixed guideway transit and passenger rail systems.

**3114.1 Means of egress.** The means of egress for fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130-17.

NEW SECTION

**WAC 51-50-3304 Section 3304—Site work.**

**3304.5.1 Fire watch during construction.** Where required by the fire code official, a fire watch shall be provided during nonworking hours for new construction that exceeds 40 feet (12,192 mm) in height above the lowest adjacent grade.

- EXCEPTIONS:
1. New construction that is built under the IRC.
  2. New construction less than 5 stories and 50,000 square feet per story.

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-3500 Chapter 35—Referenced standards.** Add the reference standards as follows:

Standard reference number	Title	Referenced in code section number
ANSI/APA PRG-320-18	Standard for Performance-Rated Cross-Laminated Timber (revised 2018)	602.4, 2303.1.4
NFPA 130	Standard for Fixed Guideway Transit and Passenger Rail Systems	3101.1, ((3112)) <u>3114</u>

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

**WAC 51-50-4700 Appendix D—Fire districts.**

**D102.2.5 Structural fire rating.** Walls, floors, roofs and their supporting structural members shall be not less than 1 hour fire-resistance-rated construction.

- EXCEPTIONS:
1. Buildings of Type IV-HT construction.
  2. Buildings equipped throughout with an *automatic sprinkler system* in accordance with Section 903.3.1.1.
  3. Automobile parking structures.
  4. Buildings surrounded on all sides by a permanently open space of not less than 30 feet (9144 mm).
  5. Partitions complying with Section 603.1, Item 11.

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

**WAC 51-50-480403 ((Alterations.)) Reserved.**

~~((403.1 General.~~ Except as provided by Section 401.2 or this section, alterations to any building or structure shall comply with the requirements of the *International Building Code* for new construction. Alterations shall be such that the existing building or structure is no less conforming with the provisions of this code than the existing building or structure was prior to the alteration.

- EXCEPTIONS:
1. An existing stairway shall not be required to comply with the requirements of Section 1011 of the *International Building Code* where the existing space and construction does not allow a reduction in pitch or slope.
  2. Handrails otherwise required to comply with Section 1011.11 of the *International Building Code* shall not be required to comply with the requirements of Section 1014.6 regarding full extension of the handrails where such extensions would be hazardous due to plan configuration.
  3. In buildings considered existing structures on July 1, 2010, dwelling units shall be permitted to have a ceiling height of not less than 7 feet (2134 mm).))

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

**WAC 51-50-480407 ((Change of occupancy.)) Reserved.**



~~((407.1 Conformance. No change shall be made in the use or occupancy of any building unless such building is made to comply with the requirements of the *International Building Code* for the use or occupancy. Changes in use or occupancy in a building or portion thereof shall be such that the existing building is no less complying with the provisions of this code than the existing building or structure was prior to the change. Subject to the approval of the building official, the use or occupancy of existing buildings shall be permitted to be changed and the building is allowed to be occupied for purposes in other groups without conforming to all the requirements of the *International Building Code* for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use. The hazard tables of Chapter 10 may be used to demonstrate the relative fire and life risk of the existing and the new proposed uses.))~~

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

**WAC 51-50-480409 ((Moved structures.)) Reserved.**

~~((409.1 Conformance. Buildings or structures moved into or within the jurisdiction shall comply with the provisions of this code, the *International Residential Code* (chapter 51-51 WAC), the *International Mechanical Code* (chapter 51-52 WAC), the *International Fire Code* (chapter 51-54A WAC), the *Uniform Plumbing Code and Standards* (chapters 51-56 and 51-57 WAC), the *Washington State Energy Code* (chapter 51-11 WAC) and the *Washington State Ventilation and Indoor Air Quality Code* (chapter 51-13 WAC) for new buildings or structures.~~

EXCEPTION: Group R-3 buildings or structures are not required to comply if:

1. The original occupancy classification is not changed; and
2. The original building is not substantially remodeled or rehabilitated.

~~For the purposes of this section, a building shall be considered to be substantially remodeled when the costs of remodeling exceed 60 percent of the value of the building exclusive of the costs relating to preparation, construction, demolition or renovation of foundations.))~~

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

**WAC 51-50-480410 ((Accessibility for existing buildings.)) Reserved.**

~~((410.6 Alterations. A facility that is altered shall comply with the applicable provisions in Chapter 11 of the *International Building Code*, unless technically infeasible. Where compliance with this section is technically infeasible, the alteration shall provide access to the maximum extent technically feasible.~~

EXCEPTIONS: 1. The altered element or space is not required to be on an accessible route, unless required by Section 410.7.  
2. Accessible means of egress required by Chapter 10 of the *International Building Code* are not required to be provided in existing facilities.

3. The alteration to Type A individually owned dwelling units within a Group R-2 occupancy shall be permitted to meet the provision for a Type B dwelling unit.

4. Type B dwelling or sleeping units required by Section 1107 of the *International Building Code* are not required to be provided in existing buildings and facilities undergoing alterations where the work area is 50 percent or less of the aggregate area of the building.

**410.8.10 Toilet rooms.** Where it is technically infeasible to alter existing toilet and bathing rooms to be accessible, an accessible family or assisted-use toilet or bathing room constructed in accordance with Section 1109.2.1 of the *International Building Code* is permitted. The family or assisted-use toilet or bathing room shall be located on the same floor and in the same area as the existing toilet or bathing rooms. At the inaccessible toilet and bathing rooms, directional signs indicating the location of the nearest family or assisted-use toilet or bathing room shall be provided. These directional signs shall include the International Symbol of Accessibility and sign characters shall meet the visual character requirements in accordance with ICC A117.1. The number of toilet or bathing rooms and water closets required by the Washington State Building Code is permitted to be reduced by one, in order to provide accessible features.))

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

**WAC 51-50-480705 ((Accessibility.)) Reserved.**

~~((705.1.5 Dining areas. This section is not adopted.~~

**705.1.9 Toilet rooms.** Where it is technically infeasible to alter existing toilet and bathing rooms to be accessible, an accessible family or assisted-use toilet or bathing room constructed in accordance with Section 1109.2.1 of the *International Building Code* is permitted. The family or assisted-use toilet or bathing room shall be located on the same floor and in the same area as the existing toilet or bathing rooms. At the inaccessible toilet and bathing rooms, directional signs indicating the location of the nearest family or assisted-use toilet room or bathing room shall be provided. These directional signs shall include the International Symbol of Accessibility and sign characters shall meet the visual character requirements in accordance with ICC A117.1. The number of toilet or bathing rooms and water closets required by the Washington State Building Code is permitted to be reduced by one, in order to provide accessible features.))

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

**WAC 51-50-480906 ((Section 906—Accessibility.)) Reserved.**

~~((906.1 General. A building, facility or element that is altered shall comply with this section and Sections 705 and 806.~~

**906.2 Type B dwelling or sleeping units.** Where four or more Group I-1, I-2, R-1, R-2 or R-3 dwelling or sleeping units are being altered, the requirements of Section 1107 of the *International Building Code* for Type B units and Chapter

9 of the *International Building Code* for visible alarms apply only to the quantity of the spaces being altered.))

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

**WAC 51-50-480907 ((Structural)) Reserved.**

~~((907.4.1 Evaluation and analysis. An engineering evaluation and analysis that establishes the structural adequacy of the altered structure shall be prepared by a registered design professional and submitted to the code official. For structures assigned to Seismic Design Category D, the registered design professional shall submit to the code official a seismic evaluation report of the existing building based on one of the procedures specified in Section 301.1.4.2. This seismic evaluation report shall not be required for buildings in compliance with the benchmark building provisions of ASCE/SEI.))~~

NEW SECTION

**WAC 51-50-481002 Section 1002—Special use and occupancy.**

**1002.1 Compliance with the building code.** Where the character or use of an existing building or part of an existing building is changed to one of the following special use or occupancy categories as defined in the *International Building Code*, the building shall comply with all of the applicable requirements of the *International Building Code*:

1. Covered and open mall buildings;
2. Atriums;
3. Motor vehicle-related occupancies;
4. Aircraft-related occupancies;
5. Motion picture projection rooms;
6. Stages and platforms;
7. Special amusement buildings;
8. Incidental use areas;
9. Hazardous materials;
10. Ambulatory care facilities;
11. Group I-2 occupancies;
12. Group I-1, Condition 2, for licensure as an assisted living facility under chapter 388-78A WAC or residential treatment facility under chapter 246-337 WAC.

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

**WAC 51-50-481204 ((Alterations)) Change of occupancy.**

~~((1204.1 Accessibility requirements. The provisions of Sections 705, 806, and 906, as applicable, shall apply to facilities designated as historic structures that undergo alterations, unless technically infeasible. Where compliance with the requirements for accessible routes, entrances, or toilet rooms would threaten or destroy the historic significance of the building or facility, as determined by the professional responsible for the historical documentation of the project, the alternative requirements of Sections 1204.1.1 through 1204.1.4 for that element shall be permitted.~~

EXCEPTION: Type B dwelling or sleeping units required by Section 1107 of the *International Building Code* are not required to be provided in historical buildings.))

**1204.1 General.** Historic buildings shall comply with the applicable structural provisions for the work as classified in Chapter 4 or 5.

EXCEPTION: The code official shall be authorized to accept existing floors and existing live loads and to approve operational controls that limit the live load on any floor.

**1204.10 One-hour fire-resistant assemblies.** Where one-hour fire-resistance-rated construction is required by these provisions, it need not be provided, regardless of construction or occupancy, where the existing wall and ceiling finish is wood lath or metal lath and plaster.

**1204.14 Natural light.** When it is determined by the professional responsible for the historical documentation of the project that compliance with the natural light requirements of Section 1011.1 will lead to loss of historic character or historic materials in the building, the existing level of natural lighting shall be considered acceptable.

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

**WAC 51-50-481205 ((Change of occupancy)) Reserved.**

~~((1205.10 One hour fire resistant assemblies. Where one-hour fire-resistance-rated construction is required by these provisions, it need not be provided, regardless of construction or occupancy, where the existing wall and ceiling finish is wood lath or metal lath and plaster.~~

~~1205.14 Natural light. When it is determined by the professional responsible for the historical documentation of the project that compliance with the natural light requirements of Section 1011.1 will lead to loss of historic character or historic materials in the building, the existing level of natural lighting shall be considered acceptable.))~~ **1205.1 General.**

**WSR 20-01-097**

**PERMANENT RULES**

**DEPARTMENT OF ECOLOGY**

[Order 18-04—Filed December 12, 2019, 3:10 p.m., effective January 18, 2020]

Effective Date of Rule: January 18, 2020.

Purpose: Ecology is adopting amendments to chapter 173-186 WAC, Oil spill contingency plan—Railroad. This chapter requires railroads carrying bulk oil as cargo to plan for oil spills to include how to make notifications, and to have the cleanup equipment and trained personnel to respond to spills that may occur. This rule making will:

- Establish three types of railroads for planning and scale requirements according to RCW 90.56.210.

- Establish requirements for citing spill management teams including entities providing wildlife rehabilitation and recovery services.
- Enhance requirements for readiness for spills of oils that may weather and sink.
- Update drill requirements to reflect legislative direction.
- Include other edits to address inconsistent or unclear direction in the rule.

Citation of Rules Affected by this Order: Amending chapter 173-186 WAC.

Statutory Authority for Adoption: RCW 90.56.210, oil and hazardous substance spill prevention and response.

Other Authority: Not applicable.

Adopted under notice filed as WSR 19-15-037 on July 11, 2019.

Changes Other than Editing from Proposed to Adopted Version:

- Throughout the rule, in all places where the term is used, replaced the words "wildlife response provider or WRP" with "wildlife response service provider or WRSP" in order to be consistent with similar regulatory standards applicable to other regulated oil handlers in chapter 173-182 WAC.
- In **WAC 173-186-210 and 173-186-602, binding agreement**, corrected the incorrect form number for the binding agreement to read form number ECY 070 612.
- In **WAC 173-186-510 Type and frequency of drills**, changed the name of the "Multiplan holder deployment drill" to "Multiplan holder large scale equipment deployment drill" in order to be consistent with similar regulatory standards in chapter 173-182 WAC.

A final cost-benefit analysis is available by contacting Nhi Irwin, Department of Ecology, Spill Prevention, Preparedness, and Response Program, Olympia, WA 98504-7600, phone 360-407-7039, TTY 711, for deaf or hard of hearing 877-833-6341 (Washington relay service), email SpillsRuleMaking@ECY.WA.GOV, website <https://ecology.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 15, Amended 15, Repealed 4.

Number of Sections Adopted at the Request of a Non-governmental 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: December 12, 2019.

Maia D. Bellon  
Director

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-010 Purpose.** The purpose of this chapter is to establish railroad oil spill contingency plan requirements, drill and equipment verification requirements, and provisions for inspection of records, effects of noncompliance, and enforcement, which:

(1) Ensure maximally effective and rapid responses to oil spills by plan holders, spill management teams (SMT), wildlife response service providers (WRSP) and primary response contractors (PRC);

(2) Ensure constant readiness, well-maintained equipment and trained personnel;

(3) Support coordination with state, federal, local, tribal and other contingency planning efforts;

(4) Provide for the protection of Washington waters, and natural, cultural and significant economic resources by minimizing the impact of oil spills; and

(5) Provide the highest level of protection that can be met through the use of best achievable technology and those staffing levels, training procedures, and operational methods that constitute best achievable protection (BAP) as informed by the BAP five year review cycle (WAC 173-186-410) and as determined by ecology.

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-020 Applicability.** (1) This chapter applies to:

(a) Railroad facilities required to submit oil spill contingency plans under chapter 90.56 RCW except for facilities as described in subsection (2) of this section.

(b) Railroad facility owners or operators who lease access to state owned railroad tracks.

(c) Any person submitting a contingency plan on behalf of a facility regulated under this chapter.

(d) Primary response contractors (PRCs) under contract to railroad contingency plan holders.

(e) SMTs that provide spill management services that must be approved by ecology to be cited in a contingency plan.

(f) WRSPs that provide wildlife response services that must be approved by ecology to be cited in a contingency plan.

(2) This chapter does not apply to:

(a) A railroad that is owned and operated by the state.

(b) Pipelines or facilities other than railroads. Contingency planning regulations for pipelines and facilities other than railroads are described in chapter 173-182 WAC.

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-040 Definitions.** Unless the context clearly requires otherwise, the definitions in chapters 90.56 RCW, 173-182 WAC and the following apply to this chapter.

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

**"Cargo"** means goods or services carried as freight for commerce.

**"Facility"** means:

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

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

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

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

(ii) Underground storage tank regulated by the department or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

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

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

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

**"Owner"** or **"operator"** means, in the case of a railroad, any person owning or operating the railroad. Operator does not include any person who owns the land underlying a railroad if the person is not involved in the operations of the railroad.

**"Planning standards"** means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

**"Rail plan holder"** means a person who submits and implements a railroad contingency plan consistent with RCW 90.56.210 on the person's own behalf or on behalf of one or more persons.

**"Spill management team"** means representatives and assigned personnel who are qualified and capable of integrating into an incident command system or unified command system and managing a spill.

**"Tank car"** means a rail car, the body of which consists of a tank for transporting liquids.

**"TYPE A"** means any railroad classification transporting oil in bulk that is crude oil regardless of volume.

**"TYPE B"** means any railroad classification transporting oil in bulk that is not crude oil in an amount of forty-nine or more tank car loads per year.

**"TYPE C"** means any railroad classification transporting oil in bulk that is not crude oil in an amount less than forty-nine tank car loads per year.

**"Wildlife response service provider"** means representatives and assigned personnel who are qualified and capable of assuming the responsibilities of the wildlife branch during an oil spill.

**"Worldwide response resource list (WRRL)"** means an equipment list established and maintained by spill response equipment owners.

**"Worst case spill"** means, in the case of a railroad, a spill that includes the entire fuel capacity of the locomotive and the entire cargo capacity of the largest number of cargo rail cars carried by the railroad, based on seven hundred fourteen barrels per tank car, complicated by adverse weather conditions unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, unique operations, industry spill history and transfer capacity.

## **PART II: ((OIL SPILL CONTINGENCY PLANS)) PLAN SUBMITTAL, MAINTENANCE AND IMPLEMENTATION**

**((Section A — Plan Submittal and Maintenance))**

**AMENDATORY SECTION** (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-110 Submitting a railroad contingency plan.** (1) The rail plan holder shall submit ~~((two copies))~~ one hard copy and electronic copy of the plan and all appendices. ~~((Electronic submission of plans is encouraged, provided it is in an electronic format acceptable to ecology. In the case of electronic submission, only one copy is necessary.))~~

(2) Once the initial plan is approved, rail plan holders shall resubmit their plans to ecology every five years for review and approval.

(3) Ecology will maintain mailing address and electronic submittal instructions on the agency web site.

**AMENDATORY SECTION** (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-120 Phase-in dates for this chapter.** ~~((1) Railroads that transport crude oil, currently operating in Washington, shall submit plans to ecology no more than ninety days after the effective date of this chapter; however, no later than within thirty days after the effective date of this chapter the rail plan holder shall provide ecology either a federal plan or the following information to demonstrate capability for response to oil spills:~~

~~(a) Contact information for the railroad.~~

~~(b) Notification procedures in case of spills to water.~~

~~(c) Description of rail operations in the state.~~

~~(d) Letter of intent with a primary response contractor.~~

~~If the plan covers operations in areas where geographic response plans do not currently exist, the plan will be submitted without that information and a timeline to develop interim~~

resources at risk data will be developed together by the plan holder and ecology.

(2) Railroads exclusively transporting oils other than crude oil, currently operating in Washington, shall submit a plan to ecology or have enrolled in an integrated plan no more than one hundred eighty days after the effective date of this chapter; however, no later than within ninety days after the effective date of this chapter the rail plan holder shall provide ecology either a federal plan or the following information to demonstrate capability for response to oil spills:

- (a) Contact information for the railroad.
- (b) Notification procedures in case of spills to water.
- (c) Description of rail operations in the state.
- (d) Letter of intent with a primary response contractor.

(3) If upon initial plan review ecology determines that there is insufficient access to equipment described in WAC 173-186-310, railroads shall have no more than eighteen additional months after initial plan review to reach full compliance with the equipment planning standards.

(4) For rail plan holders exclusively transporting oils other than crude oils, a letter of intent with a contractor shall initially be sufficient to meet WAC 173-186-220. The rail plan holders shall then have an additional twelve months to secure a contract with a primary response contractor after initial plan approval.) (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans. Each update must contain all necessary content and meet the requirements of this chapter.

(2) Existing approved railroads defined as Type A shall within eighteen months after the effective date of this chapter submit updates for:

- (a) Binding agreement (WAC 173-186-210).
- (b) Contingency plan general content - Notification information relating to SMTs, WRSPs, contracts or other approved documents, personnel listed in ICS roles in an organizational table, and description of type and frequency of training (WAC 173-186-220).

(c) Contingency plan general content - Reference to an incident management handbook or detailed description of planning process (WAC 173-186-220).

(d) Contingency plan general content - List of resources at risk considering water column and benthic species and habitat, identification of waterways depth and response options based on those factors. (WAC 173-186-220). This update will be met through planned updates to the geographic response plans which are developed as annexes to the Northwest Area Contingency Plan.

(e) Field document - Notification form (WAC 173-186-230).

(f) Nonfloating oils planning standard (WAC 173-186-330).

(g) Meet the requirements for access to equipment and personnel to support initial wildlife assessment, wildlife deterrence, and mobile field stabilization assets (WAC 173-186-370).

(h) Drill types and frequency (WAC 173-186-510 and 173-186-530).

(3) For existing approved railroads defined as Type B, shall within eighteen months after the effective date of this chapter submit updates for:

(a) Binding agreement (WAC 173-186-602).

(b) Contingency plan general content - Reference to an incident management handbook or detailed description of planning process (WAC 173-186-603).

(c) Contingency plan general content - Notification information relating to SMTs, WRSPs, personnel listed in ICS roles in an organizational table, and description of type and frequency of training dependent of ICS position (WAC 173-186-603).

(d) Contingency plan general content - List of resources at risk considering water column and benthic species and habitat, identification of waterway depth and response option based on those factors. (WAC 173-186-603). This update will be met through planned updates to the geographic response plans which are developed as annexes to the Northwest Area Contingency Plan.

(e) Field document - Notification form (WAC 173-186-604).

(f) Drills (WAC 173-186-800 and 173-186-810).

(4) For existing approved railroads defined as Type C, within eighteen months of the effective date of this rule:

(a) Send a letter to ecology stating that the plan is complete and still meets all requirements; or

(b) Update the plan with any missing required information.

(5) Final plan updates will be given a thirty day public review and comment period. Ecology will approve, disapprove, or conditionally approve the plan update no later than sixty-five days from the update submittal date.

**AMENDATORY SECTION** (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-140 Significant changes to approved plans.** (1) At any point during the five year approval period, if there is a temporary or permanent significant change in the personnel or response equipment described in the plan, the rail plan holder shall:

(a) Notify ecology in writing within twenty-four hours of the change; and

(b) Provide both a schedule for the prompt return of the plan to full operational status and a proposal for any backfill to compensate for the temporary significant change. This proposal shall be reviewed and approved by ecology.

(2) Changes which are considered significant include:

(a) Loss of equipment that results in being out of compliance with any planning standard;

(b) Movement of greater than ten percent of available boom, storage, recovery, in situ burn or shoreline cleanup equipment out of the home base as depicted on the ((western)) worldwide regional response list (WRRL);

(c) Transfers of equipment to support spill response for out-of-region spills;

(d) Permanent loss of initial response personnel listed in command and general staff incident command system (ICS) positions provided in the plan;

(e) Permanent loss of personnel designated as the binding agreement signer;

(f) Changes in the oil types handled; permanent changes in storage capacity; changes in handling or transporting of an oil product;

(g) Changes in equipment ownership if used to satisfy a rail plan holder planning standard; or

(h) Modification or discontinuation of any mutual aid, letter of intent or contract or letter of agreement.

(3) Notification by facsimile or email will be considered written notice.

(4) Failure to report significant changes in the plan could result in the loss of plan approval.

(5) If the proposed change to the plan is to be made permanent, the rail plan holder then shall have thirty calendar days from notification to ecology to distribute the amended page(s) of the contingency plan to ecology for review and approval.

(6) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place the plan into conditional approval or disapprove the plan.

#### NEW SECTION

##### **WAC 173-186-160 Plan implementation procedures.**

Every rail plan holder is required to implement the ecology approved plan in any response to an oil spill and drill. A decision to use a different plan shall first be approved by the state and federal on-scene coordinators.

#### NEW SECTION

##### **WAC 173-186-170 Inspection of records.**

Ecology may verify compliance with this chapter by examining:

- (1) Training and equipment maintenance records;
- (2) Drill records;
- (3) Accuracy of call-out and notification lists;
- (4) Spill management team lists;
- (5) ICS forms;
- (6) Waste disposal records; and
- (7) Post-spill reviews and other records on lessons learned.

#### NEW SECTION

##### **WAC 173-186-180 Enforcement—Noncompliance.**

(1) If an owner or operator of a railroad, a person, or rail plan holder is unable to comply with an approved contingency plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

- (a) Place conditions on plan approval.
- (b) Require additional drills to demonstrate effectiveness of the plan.
- (c) Revoke the approval status.
- (2) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.
- (3) Any violation of this chapter may be subject to enforcement and penalty sanctions.
- (4) Ecology may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation

of this chapter. Each day that a railroad is in violation of this chapter shall be considered a separate violation.

(5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of ecology or a court shall be deemed guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

#### NEW SECTION

**WAC 173-186-190 Severability.** If any provision of this chapter is held invalid, the remainder of the chapter is not affected.

### **PART III: OIL SPILL CONTINGENCY PLANS FOR TYPE A RAILROADS**

#### **Section ((B)) ~~Δ~~—Contingency Plan Format, Content and Implementation**

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-210 Binding agreement.** (1) Each plan shall contain a written ~~((statement binding the rail plan holder to its use. Form number ECY 070 550 may be used.~~

~~(2) The binding agreement shall be signed by each of the following: (a) The rail plan holder, (b) the owner or operator, or a designee with authority to bind the owners and operators of the railroad covered by the plan.~~

~~(3) The plan holder shall submit the agreement with the plan and shall include the name, address, phone number, and if appropriate the email address, and web site of the submitting party.~~

~~(4) In the statement, the signator shall:~~

~~(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural and economic resources;~~

~~(b) Commit to having an incident commander in the state within six hours after notification of a spill;~~

~~(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;~~

~~(d) Verify authority and capability to make necessary and appropriate expenditures in order to implement plan provisions; and~~

~~(e) Commit to working in unified command within the ICS)) agreement binding the contingency plan submitter to its use. The person(s) signing the agreement shall be authorized to make expenditures to implement the requirements in subsection (2) of this section. Form number ECY 070 612 may be used. The binding agreement shall be signed by:~~

(a) An authorized owner, or operator, or a designee with authority to bind the owners and operators of the facilities or vessels covered by the plan;

(b) An authorized representative(s) of a company contracted to the vessel or facility and approved by ecology to provide containment and clean-up services.

(2) The agreement is submitted with the plan and will include the name, address, phone number, email address, and web site of the submitting party. The signator will:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural, and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(d) Verify authority and capability to make necessary and appropriate expenditures in order to implement plan provisions; and

(e) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-220 Contingency plan general content.** (1) Contingency plans shall include all of the content and meet all the requirements in this section.

(2) In Washington state, the Northwest Area Contingency Plan (NWACP) serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060. Rail plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans shall include the following:

(a) Each plan shall state the name, location, type and address of the facility and the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill volume. If oil handling operations vary on different rail routes, more than one worst case spill volume may be submitted to ecology for consideration.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date and page of the amendment and the name of the authorized person making the change.

(d) Each plan shall have a table of contents and a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall provide a list and map of expected rail routes in Washington and a description of the operations covered by the plan, including locations where fueling occurs and an inventory of above ground storage tanks and the tank capacities.

An inventory of above ground storage tanks and tank capacities is not required if the total above ground storage

capacity from containers with capacity of at least fifty-five gallons is less than one thousand three hundred twenty gallons.

(f) Each plan shall list all oil cargo transported, including region of origin, oil types, physical properties, and health and safety hazards of the oil cargo. A safety data sheet (SDS) or equivalent information may satisfy some of these requirements; the plan shall identify where the SDS or equivalent is kept for emergency response use.

(g) Each plan shall ~~((have the PRC's))~~ include contact information for the PRC, SMT, and WRSP resources contracted to meet plan holder planning standards. Contact information must include the name, address, twenty-four-hour phone number, or other means of contact at any time of the day ~~((, and include:))~~.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, SMT, or WRSP, shall be included in the plan. If the entire contract is not submitted, that document shall be available for inspection, if requested by ecology.

(ii) For mutual aid agreements that a rail plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(h) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response. This includes:

(i) An organizational diagram depicting the chain of command for the ~~((spill management team))~~ SMT for a worst case spill.

~~((An organization list of one primary and one alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS organizational chart. If a response contractor is used to fill positions, they shall agree in writing to staff the positions. If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.))~~ For the purpose of ensuring depth of the SMT, a table detailing the names of personnel to fill the following ICS roles or the name of the SMT contracted to fill the roles. Named personnel may be listed a maximum of two times. Personnel filling key roles do not need to be a resident in Washington state.

<u>ICS Position</u>	<u>Name</u>	<u>Name</u>	<u>Name</u>
<u>Responsible party incident commander</u>			
<u>Public information officer</u>			
<u>Liaison officer</u>			
<u>Safety officer</u>			
<u>Operations section chief</u>			
<u>Planning section chief</u>			
<u>Finance section chief</u>			
<u>Logistics section chief</u>			
<u>Situation unit leader</u>		<u>X</u>	<u>X</u>
<u>Resources unit leader</u>		<u>X</u>	<u>X</u>

<u>ICS Position</u>	<u>Name</u>	<u>Name</u>	<u>Name</u>
<u>Documentation unit leader</u>		<u>X</u>	<u>X</u>
<u>Environmental unit leader</u>		<u>X</u>	<u>X</u>
<u>Air operations branch director</u>		<u>X</u>	<u>X</u>

X = Not required

The plan must identify incident commanders, if located out-of-state, that could arrive in state by six hours to form unified command. If a response contractor or SMT is used to fill positions, they must have an approved application on file with the state and they must agree in writing, either through contract or other approvable means, to staff the positions. In this case, the name of the contractor or SMT may be used in the table rather than an individual.

If the entire contract for additional SMT support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(ii) A detailed description of the planning process ~~((and))~~ or a reference to the incident management handbook with planning process descriptions and meeting agendas. A job description for each spill management position or a reference to the incident management handbook with position descriptions; except if the rail plan holder follows without deviation the planning process or job descriptions contained in the NWACP. If the planning process or job descriptions are consistent with those contained in the NWACP, then the rail plan holder may reference the NWACP rather than repeat the information.

(iv) Include a description of the type and frequency of training that the spill management team receives, which shall include at a minimum, dependent on the position, ICS, NWACP policies, use and location of geographic response plans (GRPs), the contents of the plan and worker health and safety. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

~~((v) Identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out of state, a primary and alternate incident commander that could arrive at the initial command post within six hours.))~~

(i) Each plan shall include procedures for immediately notifying appropriate parties that a spill or a substantial threat of a spill has occurred. The procedures shall establish a clear order of priority for immediate notification and include:

(i) A list of the names and phone numbers of required notifications to government agencies, response contractors and spill management team members. The notification section shall include names and phone numbers, except that the portion of the list containing internal call down information need not be included in the plan, but shall be available for review by ecology upon request and verified during spills and drills.

(ii) Identify the central reporting office or individuals responsible for implementing the notification process.

(iii) ~~((include))~~ A form to document those notifications.

(j) Each plan shall contain the procedures to track and account for the entire volume of oil recovered and oily wastes

generated and disposed of during spills. The responsible party shall provide waste disposal records to ecology upon request.

(k) Each plan shall state how an oil spill will be assessed for determining product type, potential spill volume, and environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(i) Each plan shall list procedures that will be used to confirm the occurrence, and estimate the quantity and nature of the spill. An updated notification report is required if the initially reported estimated quantity or the area extent of the contamination changes significantly. Rail plan holders and responsible parties are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation.

(ii) The plan shall contain a checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

(l) Each plan shall include a description of the methods to be used to promptly assess spills with the potential to impact groundwater, including contact information in the plan for resources typically used to investigate, contain and remediate/recover spills to groundwater.

(m) Each plan shall include concise procedures to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

(n) Each plan shall include a description of the sensitive areas and a description of how environmental protection will be achieved, including containment, enhanced collection and diversion tactics.

(i) The plan shall include information on natural, cultural and economic resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics; public beaches, water intakes including both drinking and agricultural water supplies, private and public wells that supply drinking water, and marinas; shellfish resources, significant economic resources and vulnerable populations to be protected in the geographic area covered by the plan.

(ii) Identification of sensitive resources will not be limited to surface and shoreline species at risk from floating oil spills but will also consider water column and benthic species at risk from sunken, submerged, or nonfloating oil spills. Identification of waterway depths, water density, sediment load, sea floor or river bottom types, and response options based on those factors and risks from nonfloating oil spills.

(iii) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If railroad facilities occur in areas where descriptions of the sensitive areas and a description of how environmental protection will be achieved do not exist, railroad plan holders will submit summary descriptions of the sensitive areas and prepare booming strategy "control points" for waterways in the vicinity of the railroad tracks.



(o) Each plan shall identify potential initial command post locations.

(p) Each plan shall contain a description of how the rail plan holder meets each applicable planning standard in Section C of this chapter.

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-230 Field document.** (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill or a substantial threat of a spill. The owner or operator of the railroad shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations for use during an initial response. The locations where field documents are kept shall be listed in the plan.

(2) At a minimum, the field document shall contain:

(a) Procedures to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures including a form to document them when made; and

(c) The checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

**Section ((C)) B—Planning Standards**

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-330 Planning standards for ((~~erude oils~~)) spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink.** (1) ((~~Rail~~)) Plan holders

carrying, handling, storing, or transporting ((~~erude oils shall have a letter of intent with a primary response contractor that maintains the resources and/or capabilities necessary to respond to a spill of oil that may weather, and sink or submerge. Such equipment shall include, but is not limited to, the following:~~

(a) ~~Sonar, sampling equipment or other methods to locate the oil on the bottom or suspended in the water column;~~

(b) ~~Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;~~

(c) ~~Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;~~

(d) ~~Equipment necessary to assess the impact of such discharges; and~~

(e) ~~Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.~~

(2) ~~The equipment shall be capable of being on scene within twelve hours of spill notification)) oils, that may weather and sink when spilled to the environment, must have or contract with a PRC that maintains the resources and/or capabilities necessary to respond to a spill of nonfloating oil spills.~~

(2) The plan holder or contracted primary response contractors must have equipment capable of arriving within the time frames outlined in the table below:

<u>Time (hours)</u>	<u>Capability</u>
<u>6</u>	<u>Initiate an assessment and consultation regarding the potential for the spilled oil to submerge or sink.</u>
<u>6-12</u>	<u>Resources to detect and delineate the spilled oil such as side scan or multibeam sonar, sampling equipment, divers, remotely operated vehicles or other methods to locate the oil on the bottom or suspended in the water column could have arrived.</u> <u>Additionally, containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom could have arrived.</u>
<u>12-24</u>	<u>Resources and equipment necessary to assess the impact of the spilled oil on the environment oil could have arrived.</u> <u>Dredges, submersible pumps, or other equipment necessary to recover oil from the bottom and shoreline could have arrived.</u>

(3) Additionally, the contingency plan must detail the process for identifying if the oil handled has the potential to sink or submerge and include a description of the process for detecting, delineating, and recovering nonfloating oils in the areas that may be impacted. In lieu of including nonfloating oils response details in the contingency plan, plan holders may cite the nonfloating oils response tools found in the NWACP.

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-370 Planning standards for wildlife rescue and rehabilitation.** ((~~Each plan shall identify applicable federal, state and NWACP requirements for wildlife rescue and rehabilitation, and describe the equipment, personnel, resource and strategies for compliance with the requirements. These resources shall have the capability to arrive on scene within twenty four hours of spill notification.~~)) Plan holders must plan to respond to and care for wildlife injured or endangered by oil spills.

(1) The plan must include contact information for any PRC or WRSP, available under contract or other approvable means, and that maintain the required equipment, personnel, permits, materials, and supplies, for conducting wildlife response operations in accordance with the capabilities detailed below.

(2) The plan shall describe the equipment, personnel, and resources for wildlife response, including:

(a) Equipment and personnel that may be used to support an initial impact assessment and wildlife reconnaissance via air, land, or water in the spill area.

(b) Equipment and personnel that may be used to deter the types of wildlife likely to be found within the areas where the plan holder operates or transits, including the types and staging locations of the deterrent equipment. This equipment must have the capability to arrive on-scene within twelve hours of spill notification.

(c) Equipment and supplies for mobile field stabilization activities, such as, conducting the initial health assessment and treatment of impacted wildlife prior to transport to a wildlife rehabilitation facility. The mobile field stabilization asset must be a minimum of one hundred eighty square feet, lighted and heated, and capable of arriving on-scene within twelve hours of spill notification.

(d) Wildlife rehabilitation facilities, space, and equipment suitable to conduct wildlife rehabilitation activities. Wildlife rehabilitation facilities shall meet the WDFW rehabilitation requirements detailed in WAC 220-450-100. For planning purposes, the capability described below is equal to one wildlife rehabilitation unit. The plan holder must have access to one wildlife rehabilitation unit with the capability to be strategically placed to support the response within twenty-four hours of spill notification. Each wildlife rehabilitation unit must contain:

(i) A minimum of one thousand one hundred square feet of space to house and treat wildlife. This space shall have the ability to be configured to support intake, prewash stabilization, wash/rinse, and drying activities as needed. A minimum of two wash and rinse stations will be located within this space.

(ii) A minimum of one thousand square feet of space to support rehabilitation activities. This space shall have the ability to be configured to support animal food preparation, medical lab, dry storage, morgue and necropsy areas.

(iii) Pools with a minimum of six hundred square feet of surface area are required. Pool dimensions will be such that no point in a pool will be greater than eight feet from a side. Pools will have the ability to be filled with freshwater to a minimum depth of three feet.

(3) WRSP that are appropriately trained to staff and manage the wildlife response within an incident command structure. At a minimum, one person that could be able to arrive in the state within the first twelve hours of spill notification to coordinate with the state, federal, tribal, and other response partners to initiate wildlife reconnaissance, deterrence, recovery, stabilization, and rehabilitation operations as needed.

(4) Wildlife operations field staff to conduct and manage the various field aspects of a wildlife response including reconnaissance, deterrence, recovery, stabilization, and rehabilitation. At a minimum, two personnel that could have arrived within the first twelve hours of spill notification to support these activities. An additional seven personnel, for a total of nine that could have arrived within twenty-four hours of spill notification to support these activities.

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-380 Documenting compliance with the planning standards.** (1) The rail plan holder shall describe how the planning standards found in this chapter are met.

(2) The rail plan holder shall include in the plan, a spreadsheet provided by ecology on the resources to meet the planning standards as described in this chapter. This spreadsheet shall account for boom, recovery systems, storage, and personnel (~~by type, quantity, home base and provider~~).

(3) Ecology will use the process and criteria found in WAC 173-182-350 to analyze the spreadsheet.

### Section ~~(D)~~ C—Plan Evaluation

#### ~~((PART III: DRILL AND EQUIPMENT VERIFICATION PROGRAM))~~ **Section D: Drill and Equipment Verification Program**

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-500 Drill participation, scheduling and evaluation.** (1) Rail plan holders (~~and~~), PRCs, SMTs and WRSPs shall participate in a drill and equipment verification program for the purpose of ensuring that all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Exercise Program (NPREP), is relied on to test each component of the plan.

(2) **Ecology's participation in drills:** Rail plan holders and PRCs shall ensure ecology is provided an opportunity to help design and evaluate all tabletop and deployment drills for which the rail plan holder desires drill credit.

(3) **Scheduling drills:** Rail plan holders shall schedule drills on the NWACP area exercise calendar. Drill scheduling requirements are listed in the table in WAC 173-186-510.

(4) **Evaluating drills:** Ecology shall provide a written drill evaluation report to the rail plan holder following each drill. Credit will be granted for drill objectives that are successfully met.

(5) Objectives that are not successfully met shall be tested again and successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(6) Where plan deficiencies have been identified in the written evaluation, rail plan holders may be required to make specific amendments to the plan or conduct additional trainings to address the deficiencies.

(7) A rail plan holder may request an informal review with ecology of the ecology drill evaluation within thirty days of receipt of the report.

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-510 Type and frequency of drills.** To receive the credit from ecology for performing a required drill, the plan holder shall conduct the following drills within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - One in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - Two per year	These drills include notification, safety assessments, GRP and equipment deployments.	Scheduled at least 30 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment, and verification of ecology approved alternative speeds.	No notice.
Wildlife deployment drill	1 - One in each three-year cycle. This is an additional drill unless it is incorporated into a large multiobjective deployment drill	This drill will be a deployment of wildlife equipment and wildlife ( <del>handlers</del> ) response service provider personnel.	Scheduled at least <del>((30))</del> 90 days in advance.
<u>Multiplan holder large scale equipment deployment drill</u>	<u>1 - One in each three-year cycle</u>	<u>This drill may involve dedicated and nondedicated equipment, vessels of opportunity, multiple simultaneous tactics, responses to potentially non-floating oils, and the verification of operational readiness over multiple operational periods.</u>	<u>Scheduled at least 90 days in advance.</u>

(1) **Tabletop drills:** Tabletop drills are intended to demonstrate a rail plan holder's capability to manage a spill using the ICS, the SMT, and WRSP described in the plan. Role playing shall be required in this drill.

(a) During all required tabletop drills rail plan holders shall provide a master list of equipment and personnel identified to fill both command post and field operations roles.

(b) Once during each three-year cycle, the rail plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a tabletop drill. However, at ecology's discretion, team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every six years.

(2) **Deployment drills:** Rail plan holders shall use deployment drills to demonstrate the actions they would take in a spill, including: Notifications, safety actions, environmental assessment, land-based tactics and equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of rail plan holder owned assets, contracted PRC assets, and nondedicated assets.

(b) Rail plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle.

(c) Rail plan holders shall design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the rail plan holder could impact from spills.

(d) At least twice during a triennial cycle, rail plan holders shall deploy a GRP or sensitive area strategy identified within the plan.

(e) Rail plan holders may receive credit for deployment drills conducted by PRCs if:

(i) The PRC is listed in the plan; and

(ii) The rail plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

(3) **Unannounced drills:** Unannounced drills may be initiated by ecology when specific problems are noted with individual rail plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(a) Immediately prior to the start of an unannounced drill, rail plan holders will be notified in writing of the drill objectives, expectations and scenario.

(b) Rail plan holders may request to be excused from an unannounced drill if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the rail plan holder is excused, ecology will conduct an unannounced drill at a future time.

(4) **Wildlife deployment drills:** Once every three years rail plan holders shall deploy regional mobile wildlife rehabilitation equipment and personnel necessary to set up the wildlife rehabilitation system found in the plan.

(5) Additional large-scale multiple plan holder equipment deployment drill requirement. At least once every three years all plan holders must participate in a multiple plan holder deployment exercise. The exercise location will be selected by ecology to ensure all plan holders have the opportunity to get credit based on the areas they operate or transit. This drill is a test of the functional ability for multiple contingency plans to be simultaneously activated in response to a spill. This drill may be incorporated into other drill requirements to avoid increasing the number of drills and equipment deployments otherwise required. This deployment may include the following objectives:

(a) Demonstration of dedicated and nondedicated equipment and trained contracted personnel;

(b) Demonstration of contracted vessel of opportunity response systems and crew performing operations appropriate to the vessel capabilities;

(c) Demonstration of multiple simultaneous tactics which may include, but is not limited to:

(i) On-water recovery task forces made up of complete systems which demonstrate storage, recovery, and enhanced skimming;

(ii) Protection task forces which deploy multiple GRPs;

(iii) Vessel and personnel decontamination and disposal;

(iv) Deployment of contracted aerial assessment assets and aerial observers to direct skimming operations;

(v) Personnel and equipment identified for night operations; and

(vi) Equipment necessary to address situations where oils, depending on their qualities, weathering, environmental factors, and methods of discharge, may submerge and sink.

(d) Verification of the operational readiness during both the first six hours of a spill and over multiple operational periods.

AMENDATORY SECTION (Amending WSR 16-18-052, filed 8/31/16, effective 10/1/16)

**WAC 173-186-530 Other ways to get drill credit.** (1) Drill credits for actual spills: Rail plan holders may request drill credit for a response to an actual spill, provided that ecology has an opportunity to participate during the spill and evaluate the spill response. Credit ~~((from spills shall not entirely alleviate the rail plan holder's responsibility to drill. To obtain credit.))~~ for a spill may only be used to replace the requirement to conduct a drill once per triennial cycle. If credit for a spill is requested more than once per triennial cycle, it is up to the discretion of ecology if additional credit. The requested additional spill credit may be granted if significant lessons learned from the spill or key response components were successfully demonstrated.

(a) The plan holder shall submit a written request to ecology within sixty days of completion of the cleanup operations.

The request shall include documentation supporting the components of WAC 173-186-520.

(b) Within ninety days, the rail plan holder shall submit a lessons learned summary supporting the request for drill credit.

(2) Rail plan holders may request drill credit for out-of-state tabletop drills if:

(a) Ecology has been invited to attend the drill;

(b) Ecology has an opportunity to participate in the planning process for the drill. There shall be a meeting to discuss the scope and scale of the exercise, the drill objectives and the types of criteria for which Washington credit may be applicable;

(c) Documentation of the drill and self-certification documentation shall be provided to ecology within thirty days of the drill; and

(d) Rail plan holders seeking credit for a scheduled out-of-state drill shall use the drill calendar to schedule the drill at least ninety days in advance, to provide ecology an opportunity to participate.

**PART IV: ((INSPECTION OF RECORDS, NONCOMPLIANCE, AND ENFORCEMENT)) OIL SPILL CONTINGENCY PLANS FOR TYPE B RAILROADS**

**Section A—Contingency Plan Format, Content and Implementation**

**NEW SECTION**

**WAC 173-186-601 Contingency plan format requirements.** (1) Rail plan holders shall format and maintain plans to maximize their usefulness during a spill. Information shall be readily accessible and plans shall contain job aids, diagrams and checklists for maximum utility. Plans shall be formatted to allow replacement of pages with revisions without requiring replacement of the entire plan.

(2) Plans shall be divided into a system of numbered, tabbed chapters, sections and annexes/appendices. Each plan shall include a detailed table of contents based on chapter, section, and annex/appendix numbers and titles, as well as tables and figures.

(3) Where provided by ecology, an easy-to-use boiler-plate plan for rail plan holders may be used.

**NEW SECTION**

**WAC 173-186-602 Binding agreement.** (1) Each plan shall contain a written agreement binding the contingency plan submitter to its use. The person(s) signing the agreement shall be authorized to make expenditures to implement the requirements in subsection (2) of this section. Form number ECY 070 612 may be used. The binding agreement shall be signed by:

(a) An authorized owner, or operator, or a designee with authority to bind the owners and operators of the facilities or vessels covered by the plan;

(b) An authorized representative(s) of a company contracted to the vessel or facility and approved by ecology to provide containment and clean-up services.

(2) The agreement is submitted with the plan and will include the name, address, phone number, email address and web site of the submitting party. The signator will:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(d) Verify authority and capability to make necessary and appropriate expenditures in order to implement plan provisions; and

(e) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

**NEW SECTION**

**WAC 173-186-603 Contingency plan general content.** (1) Contingency plans shall include all of the content and meet all the requirements in this section.

(2) In Washington state, the Northwest Area Contingency Plan (NWACP) serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060. Rail plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans shall include the following:

(a) Each plan shall state the name, location, type and address of the facility and the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill volume. If oil handling operations vary on different rail routes, more than one worst case spill volume may be submitted to ecology for consideration.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date and page of the amendment and the name of the authorized person making the change.

(d) Each plan shall have a table of contents and a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall provide a list and map of expected rail routes in Washington and a description of the operations covered by the plan, including locations where fueling occurs and an inventory of above ground storage tanks and the tank capacities.

An inventory of above ground storage tanks and tank capacities is not required if the total above ground storage capacity from containers with capacity of at least fifty-five gallons is less than one thousand three hundred twenty gallons.

(f) Each plan shall list all oil cargo transported, including region of origin, oil types, physical properties, and health and safety hazards of the oil cargo. A safety data sheet (SDS) or equivalent information may satisfy some of these requirements; the plan shall identify where the SDS or equivalent is kept for emergency response use.

(g) Each plan shall include contact information for PRC, SMT and WRSP resources listed in the plan. Contact information must include the name, address, twenty-four-hour phone number, or other means of contact at any time of the day.

(h) The plan must also include in the notifications section at least one approved SMT that could be called during a spill to assist in the management of the incident. This includes:

(i) An organizational diagram depicting the chain of command for the SMT for a worst case spill.

(ii) For the purpose of ensuring depth of the SMT, a table detailing the names of personnel to fill the following ICS roles or the name of the SMT listed to fill the roles. Personnel may be listed a maximum of two times. Personnel filling key roles do not need to be a resident in Washington state.

ICS Position	Name	Name	Name
Responsible party incident commander			
Public information officer			
Liaison officer			
Safety officer			
Operations section chief			
Planning section chief			
Finance section chief			
Logistics section chief			
Situation unit leader		X	X
Resources unit leader		X	X
Documentation unit leader		X	X
Environmental unit leader		X	X
Air operations branch director		X	X

X = Not required

The plan must identify incident commanders, if located out-of-state, that could arrive in state by six hours to form unified command. If a response contractor, SMT or WRSP is used to fill positions, they must be on the list of state approved PRCs, SMTs or WRSPs that ecology will make available and maintain.

When filling out the table, the name of a PRC, SMT, or WRSP company may be used rather than the name of an individual person.

(iii) A detailed description of the planning process or a reference to the incident management handbook with planning process descriptions and meeting agendas. A job description for each spill management position or a reference to the incident management handbook with position descriptions; except if the rail plan holder follows without deviation from the planning process or job descriptions contained in the NWACP. If the planning process or job descriptions are consistent with those contained in the NWACP, then the rail plan holder may reference the NWACP rather than repeat the information.

(iv) Include a description of the type and frequency of training that the SMT receives, which shall include at a minimum, dependent on the position, ICS, NWACP policies, use and location of geographic response plans (GRPs), the contents of the plan and worker health and safety. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(i) Each plan shall include procedures for immediately notifying appropriate parties that a spill or a substantial threat of a spill has occurred. The procedures shall establish a clear order of priority for immediate notification and include:

(i) A list of the names and phone numbers of required notifications to government agencies, response contractors and SMT members. The notification section shall include names and phone numbers, except that the portion of the list containing internal call down information need not be included in the plan, but shall be available for review by ecology upon request and verified during spills and drills.

(ii) Identify the central reporting office or individuals responsible for implementing the notification process.

(iii) Include a form to document those notifications.

(j) Each plan shall contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party shall provide waste disposal records to ecology upon request.

(k) Each plan shall state how an oil spill will be assessed for determining product type, potential spill volume, and environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(i) Each plan shall list procedures that will be used to confirm the occurrence, and estimate the quantity and nature of the spill. An updated notification report is required if the initially reported estimated quantity or the area extent of the contamination changes significantly. Rail plan holders and responsible parties are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation.

(ii) The plan shall contain a checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

(l) Each plan shall include a description of the methods to be used to promptly assess spills with the potential to impact groundwater, including contact information in the plan for resources typically used to investigate, contain and remediate/recover spills to groundwater.

(m) Each plan shall include concise procedures to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

(n) Each plan shall include a description of the sensitive areas and a description of how environmental protection will be achieved, including containment, enhanced collection and diversion tactics.

(i) The plan shall include information on natural, cultural and economic resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics; public beaches, water intakes including both drinking and agricultural water supplies, private and public wells that supply drinking water, and marinas; shellfish resources, significant economic resources and vulnerable populations to be protected in the geographic area covered by the plan.

(ii) Identification of sensitive resources will not be limited to surface and shoreline species at risk from floating oil spills but will also consider water column and benthic species at risk from sunken, submerged, or nonfloating oil spills. Identification of waterway depths, water density, sediment load, sea floor or river bottom types, and response options based on those factors and risks from nonfloating oil spills.

(iii) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If railroad facilities occur in areas where descriptions of the sensitive areas and a description of how environmental protection will be achieved do not exist, railroad plan holders will submit summary descriptions of the sensitive areas and prepare booming strategy "control points" for waterways in the vicinity of the railroad tracks.

(o) Each plan shall identify potential initial command post locations.

(p) Each plan shall contain a description of how the rail plan holder meets each applicable planning standard in Section C of this chapter.

#### NEW SECTION

**WAC 173-186-604 Field document.** (1) Each plan shall contain a field document which lists time-critical information for the initial emergency phase of a spill or a substantial threat of a spill. The owner or operator of the railroad shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations for use during an initial response. The locations where field documents are kept shall be listed in the plan.

(2) At a minimum, the field document shall contain:

- (a) Procedures to detect, assess and document the presence and size of a spill;
- (b) Spill notification procedures including a form to document them when made; and
- (c) The checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

#### NEW SECTION

**WAC 173-186-605 Wildlife rescue and rehabilitation.** (1) Plan holders must plan for potential spill impacts to wildlife (birds, marine mammals, turtles and other reptiles, and other water column and near shores species) that utilize habitats at risk from spills.

(2) The plan must include contact information for approved PRC and WRSP that maintain the required equipment and personnel for conducting wildlife response operations, to serve within the wildlife branch of the ICS, and coordinate with state, federal, tribal and other response partners to conduct wildlife reconnaissance, deterrence, and recovery.

#### **Section C—Plan Evaluation**

#### NEW SECTION

**WAC 173-186-700 Oil spill contingency plan best achievable protection five-year review cycle.** Using the procedures and criteria outlined in WAC 173-182-621, ecology will review the planning standards at five-year intervals to ensure the maintenance of best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety.

#### NEW SECTION

**WAC 173-186-710 Process for plan approval.** Rail owners or operators for new railroad operations shall submit plans to ecology no less than sixty-five days prior to their planned date for beginning of operations in Washington.

(1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the rail plan holder shall be notified of any deficiencies within five business days. The public review and comment period does not begin until a complete plan is received.

(2) Once a plan has been determined to be complete, ecology shall notify interested parties, including local and tribal governments and make the plan available for public review and comment. Ecology will accept comments on the plan for a period of thirty days after the plan has been made publicly available. No later than sixty-five days from the date of public notice of availability, ecology will make a written determination either approving, conditionally approving, or disapproving the plan. The written determination will be provided in the form of an order and subject to appeal as specified in chapter 43.21B RCW.

(a) If the plan is approved, the rail plan holder will receive a certificate of plan approval and the plan expiration date. Approved plans shall be valid for five years.

(b) If the plan is conditionally approved, ecology may require a rail plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. In the conditional approval ecology will describe:

- (i) Each specific restriction and the duration for which it applies;
- (ii) Each required item to bring the plan into compliance; and
- (iii) The schedule for rail plan holders to submit required updates, including a reference to the regulatory standard in question.

Restrictions may include, but are not limited to, additional information for the plan or additional requirements to ensure availability of response equipment.

Conditional approval expires no later than eighteen months from date of issue at which time the rail plan holder shall need to request an extension, which is subject to public review.

Ecology shall revoke its conditional approval prior to the expiration date when a rail plan holder fails to meet the terms of the conditional approval. The revocation will be in the form of an appealable order.

(c) If the plan is disapproved, the rail plan holder shall receive an explanation of the factors.

(3) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

(4) Public notice will be given of any approval, conditional approval, or disapproval of a plan.

#### NEW SECTION

**WAC 173-186-720 Process for public notice and opportunity for public review and comment period.** (1) The purpose of this section is to specify the procedures for notifying the public which includes interested local and tribal governments about contingency plan status and decisions in order to provide opportunities for the public to review and comment.

(2) In order to receive notification of the public review and comment period, interested public, local, and tribal governments should sign up on the ecology email list (listserv) for posting notice about plan review and comment. Ecology's web site will also be used to post notice of public review and comment periods.

(3) Public comment periods shall extend at least thirty days. Public notice, review, and comment periods are required in the following circumstances:

- (a) Plan submittals for railroads that have never submitted a plan in Washington;
  - (b) Plan updates required by WAC 173-186-130;
  - (c) The submittal of plans for five-year review as required by WAC 173-186-110;
  - (d) A permanent significant change to an approved plan.
- (4) Public notice, review, and comment period are not required in the following circumstances:

(a) Routine updates to names, phone numbers, formatting, or forms that do not change the approved content of the plan;

(b) Plan updates to resubmit the binding agreement based on changes to the binding agreement signer; and

(c) Annual plan reviews that result in a letter to ecology confirming that the existing plan is still accurate.

#### Section D—Drill Evaluation Program

##### NEW SECTION

**WAC 173-186-800 Drill participation, scheduling and evaluation.** (1) Rail plan holders will hold one basic tabletop drill once every three years. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Exercise Program (NPREP), is relied on to test each component of the plan.

(2) Tabletop drills are intended to demonstrate a rail plan holder's capability to manage a spill using the ICS. Role playing shall be required in this drill. The drill must involve some members of the SMT and WRSP described in the plan.

(3) **Ecology's participation in drills:** Rail plan holders shall ensure ecology is provided an opportunity to help design and evaluate the drill.

(4) **Scheduling drills:** The plan holder shall schedule the drill on the NWACP area exercise calendar at least ninety days in advance of the scheduled date.

(5) **Evaluating drills:** Ecology shall provide a written drill evaluation report to the rail plan holder following the drill. Credit will be granted for drill objectives that ecology determines to be successfully met.

(6) Objectives that are not successfully met shall be tested again in subsequent drills, except that significant failures will be retested within thirty days.

(7) Where plan deficiencies have been identified in the written evaluation, rail plan holders may be required to make specific amendments to the plan or conduct additional trainings to address the deficiencies.

(8) A rail plan holder may request an informal review with ecology of the ecology drill evaluation within thirty days of receipt of the report.

##### NEW SECTION

**WAC 173-186-810 Drill evaluation criteria.** The ecology drill evaluation process is based on the 2016 NPREP guidance document. The NPREP guidance document lists fifteen core components to be demonstrated during drills. Ecology adopts the fifteen core components as the criteria used to evaluate the basic tabletop drill.

The core components are as follows:

(1) **Notifications:** Test the notifications procedures identified in the plan.

(2) **Staff mobilization:** Demonstrate the ability to assemble the spill response organization identified in the plan.

(3) **Ability to operate within the response management system described in the plan:** This includes demonstration of the ICS staffing and process identified in the plan.

(4) **Source control:** Demonstrate the ability of the spill response organization to control and stop the discharge at the source, and to effectively coordinate source control activities within the response.

(5) **Assessment:** Demonstrate the ability of the spill response organization to provide an initial assessment of the discharge, or potential discharge, and provide continuing assessments of the effectiveness of the planning and tactical operations.

(6) **Containment:** Demonstrate the ability of the spill response organization to contain the discharge at the source or in various locations for recovery operations.

(7) **Mitigation:** Demonstrate the ability of the spill response organization to recover, mitigate, and remove the discharged product. This includes mitigation and removal activities such as dispersant use, in situ burn use, and bioremediation use, in addition to mechanical oil recovery.

(8) **Protection:** Demonstrate the ability of the spill response organization to protect the environmentally, culturally and economically sensitive areas identified in the NWACP and the plan.

(9) **Disposal:** Demonstrate the ability of the spill response organization to dispose of the recovered material and contaminated debris in compliance with guidance found in the NWACP.

(10) **Communications:** Demonstrate the ability to establish an effective communications system throughout the scope of the plan for the spill response organization.

(11) **Transportation:** Demonstrate the ability to provide effective multimodal transportation both for execution of the discharge and support functions.

(12) **Personnel support:** Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

(13) **Equipment maintenance and support:** Demonstrate the ability to maintain and support all equipment associated with the response.

(14) **Procurement:** Demonstrate the ability to establish an effective procurement system.

(15) **Documentation:** Demonstrate the ability of the rail plan holder's spill management organization to document all operational and support aspects of the response and provide detailed records of decisions and actions taken.

## PART V: OIL SPILL CONTINGENCY PLANS FOR TYPE C RAILROADS

### Section A—General Plan Content

##### NEW SECTION

**WAC 173-186-900 Contingency plan format and content.** (1) Rail plan holders shall format and maintain plans to maximize their usefulness during an incident. Contingency plan shall include all of the content and meet all the requirements in this section;

(2) Keep documentation of the contingency plan on file with the department at the plan holder's principal place of business and at dispatcher field offices of the railroad;

(3) Identify and include contact information for the chain of command and other personnel, including employees or spill response contractors, who will be involved in the railroad's response in the event of a spill;



(4) Include information related to the relevant accident insurance carried by the railroad and provide a certificate of insurance to ecology upon request;

(5) Develop a field document for use by personnel involved in oil handling operations that includes time-critical information regarding basic contingency plan procedures to be used in the initial response to a spill or a threatened spill.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-186-240 Plan implementation procedures.

WAC 173-186-600 Inspection of records.

WAC 173-186-610 Enforcement—Noncompliance.

WAC 173-186-620 Severability.

### **WSR 20-01-100**

#### **PERMANENT RULES**

#### **WASHINGTON STATE PATROL**

[Filed December 13, 2019, 5:45 a.m., effective January 13, 2020]

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

Purpose: To amend language in WAC 446-20-160 to specify that RCW 43.43.730 *s de novo* hearing process applies to the Washington state patrol (WSP), allow an individual to appear after a refusal by WSP to alter a record.

Citation of Rules Affected by this Order: Amending WAC 446-20-160.

Statutory Authority for Adoption: RCW 10.97.080.

Adopted under notice filed as WSR 19-22-055 on November 4, 2019.

A final cost-benefit analysis is available by contacting Kimberly Mathis, Agency Rules Coordinator, 106 11th Avenue S.W., Olympia, WA 98504, phone 360-596-4017, email [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov), website [wsp.wa.gov](http://wsp.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 Non-governmental Entity: New 0, Amended 1, 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: December 13, 2019.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-160 Review of refusal to alter record.** A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review must be in writing, and must be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410. If review is requested in the time allowed, the head of the agency whose record or submission has been challenged must complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he or she must state his or her reasons in a written decision, a copy of which must be provided to the subject of the record. Denial by the agency head will constitute a final decision under RCW ((34-04-130)) 34.05.570. Notwithstanding this section, RCW 43.43.730 governs an individual's request to the Washington state patrol identification and criminal history section to purge, modify, or supplement that individual's criminal history record information on file with the Washington state patrol identification and criminal history section.

### **WSR 20-01-101**

#### **PERMANENT RULES**

#### **STATE BOARD OF EDUCATION**

[Filed December 13, 2019, 10:47 a.m., effective January 13, 2020]

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

Purpose: The state board of education (SBE) has reviewed chapter 180-51 WAC to make changes as necessary to align rule to current policy or practice, correct references to law, implement recently passed legislation, improve readability of the rule, or make other changes identified during the review of the WAC chapter.

ESHB 2224 (chapter 31, Laws of 2017), SHB 2686 (chapter 229, Laws of 2018), SSHB [2SHB] 1896 (chapter 127, Laws of 2018), and E2SHB 1599 (chapter 252, Laws of 2019) make changes to high school graduation requirements that include but are not limited to civics, high school and beyond planning, and graduation pathways. To implement those provisions, SBE will amend rules related to graduation requirements.

The changes to chapter 180-51 WAC address the following:

- Implements E2SHB 1599.
  - Graduation pathways.
  - Automatic awarding of credit for high school level courses taken prior to high school.
  - Two-credit waiver for individual students for "unusual" circumstances, removing "unusual."
  - Updates to the high school and beyond plan (HSBP).
- SSHB [2SHB] 1896 for civics education.

- Implements ESHB 2224 and SHB 2686 that include updates to HSBP.
- Updates to align with statute and practice, and streamline the structure of the graduation requirements in rule.
- Add greater flexibility in social studies requirement by changing one credit for contemporary world problems to one-half credit. Total credits for social studies will remain at three.

Citation of Rules Affected by this Order: New WAC 180-51-056, 180-51-201, 180-51-210, 180-51-220 and 180-51-230; repealing WAC 180-51-001, 180-51-003, 180-51-060, 180-51-061, 180-51-066 and 180-51-075; and amending WAC 180-51-005, 180-51-025, 180-51-030, 180-51-035, 180-51-040, 180-51-050, 180-51-067, 180-51-068, 180-51-095, and 180-51-115.

Statutory Authority for Adoption: RCW 28A.230.090.

Adopted under notice filed as WSR 19-19-089 on September 18, 2019.

Changes Other than Editing from Proposed to Adopted Version: SBE made the following changes in the adopted version in response to comment received on the proposed version:

- The board revised the proposed rule in WAC 180-51-230 to add that career and technical education (CTE) course sequences that consist of courses in more than one CTE program area must be locally approved and approved by the office of superintendent of public instruction to be used as a graduation pathway option.
- The board revised the proposed rule in WAC 180-51-030 to specify that students and parents or guardian have until the end of the students' 11th grade to opt out of credit or a numerical grade for high school credit for courses taken before high school.
- The board revised the proposed rule to clarify that students with an individualized education program must be provided with needed accommodations to meet state and local credit graduation requirements, but credit requirements may not be exempted.
- The board revised the proposed rule in WAC 180-51-230 to allow for English language arts International Baccalaureate courses for this pathway option in WAC 180-51-230.
- The board revised the proposed rule in WAC 180-51-230 relevant to the Armed Services Vocational Aptitude Battery to clarify what information must be provided to students about student information that is shared with the Department of Defense, and about the ability of the student to opt out of sharing information.

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 4, Amended 3, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 9, Repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 9, Repealed 6.

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: December 13, 2019.

Randy Spaulding  
Executive Director

AMENDATORY SECTION (Amending WSR 00-23-032, filed 11/8/00, effective 12/9/00)

**WAC 180-51-005 Authority and purpose.** (1) The authority for this chapter is RCW 28A.230.090 which authorizes and requires the state board of education to establish state high school graduation requirements ((or equivalencies for students)).

(2) The purpose of this chapter is to establish high school graduation requirements, ((including policies and procedures for equivalencies;)) for students who commence the ninth grade or the equivalent of a four-year high school program subsequent to July 1, ((2004)) 2012. Graduation requirements and policies and procedures for equivalencies for students who commence the ninth grade or the equivalent of a four-year high school program prior to July 1, ((2004)) 2012, are codified in WAC ((180-51-060)) 180-51-056 and shall remain in effect for such students pursuant to WAC 180-51-035.

AMENDATORY SECTION (Amending WSR 00-19-108, filed 9/20/00, effective 10/21/00)

**WAC 180-51-025 Local school district application of state requirements.** The content of courses and the determination of which courses satisfy particular subject area requirements and whether a particular course may satisfy more than one subject area requirement shall be determined locally in accordance with written policies adopted by boards of directors of districts: Provided, that if a ((foreign)) world language graduation requirement is established, credits earned in American sign language shall count toward the completion of the requirement.

AMENDATORY SECTION (Amending WSR 00-19-108, filed 9/20/00, effective 10/21/00)

**WAC 180-51-030 High school credit for courses taken before attending high school.** ((See RCW 28A.230.090(4)-)) (1) A student who has completed high school courses as defined in RCW 28A.230.090(4) with a passing grade before attending high school shall automatically be given high school credit which shall be applied to fulfilling high school graduation requirements, unless requested otherwise by the student and the student's parent or guardian.

(2) At the request of the student and the student's parent or guardian, high school credit earned before high school may be transcribed with a nonnumerical grade, such as "pass" or "credit." A nonnumerical grade will not be included in the

student's high school grade point average calculation. High school credit earned prior to high school and transcribed with a nonnumerical grade will apply to fulfilling high school graduation requirements.

(3) A student and the student's parent or guardian must inform the school before the end of the 11th grade if they do not want credit for the course(s) taken before attending high school, or if they want to request that credit be transcribed with a nonnumerical grade.

AMENDATORY SECTION (Amending WSR 05-21-007, filed 10/6/05, effective 11/6/05)

**WAC 180-51-035 Applicable standards for graduation for students under age twenty-one—Applicable standards for graduation for students age twenty-one or older—Amendments to this chapter.** (1) All students entering a high school program in Washington state shall be assigned an expected graduation year as required by federal law and this section. Once students are assigned a graduation year, they will be aligned to the requirements for that specific graduating class and subject to the provisions of this section.

(a) Students shall be assigned an expected graduation year based on the year they commence (~~(9th)~~) ninth grade, or for out-of-district and out-of-state transfer students, based on local district policy (~~(= Provided, That)~~), provided that the expected graduation year for students receiving special education services shall be assigned and based on an individualized education program (IEP) team determination in the year in which the student turns sixteen.

(b) Students shall have the right and the obligation to meet the minimum graduation requirements in place for their (~~(expected graduation year designated)~~) ninth grade cohort at the time they enter a (~~(district)~~) public high school, regardless of whether their expected graduation year has been extended or what year they actually graduate.

~~(2) (A student under age twenty-one shall have the right to graduate in accordance with the standards in effect for the school of graduation for any year since such student commenced the ninth grade or the equivalent of a four-year high school program and until the student turns age twenty-one.~~

~~(3))~~ (a) A student age twenty-one or older who earns a high school diploma through the adult high school completion option under WAC 180-51-053 shall be required to meet the state minimum graduation credit (~~(requirements under WAC 180-51-060 or 180-51-061, depending on)~~) established when the student began their high school program. Such students shall not be required to (~~(meet the following state minimum graduation requirements under WAC 180-51-061:))~~ earn a certificate of academic achievement ((~~or~~), a certificate of individual achievement, or meet pathway graduation requirements under WAC 180-51-210;

(b) The state board of education reserves the prerogative to determine if and when the waived requirements under (a) of this subsection shall be required to earn an adult high school completion diploma.

~~((4))~~ (3) Unless otherwise required by statute, all subsequent amendments to ((this chapter)) credit graduation requirement rules and all subsequent local standards shall apply prospectively to the students who enter the ninth grade

or begin the equivalent of a four-year high school program subsequent to the amendments.

AMENDATORY SECTION (Amending WSR 00-19-108, filed 9/20/00, effective 10/21/00)

**WAC 180-51-040 Copies of graduation requirements for each year.** (1) Each high school shall keep on file for student and public inspection a copy of the state board of education rules and guidelines regarding high school graduation requirements and procedures for equivalencies applicable for the school year, including the preceding ten years. Any locally adopted high school graduation requirements and procedures for equivalencies shall also be kept on file with such state requirements. Copies of state requirements by year also shall be kept on file in the office of the state board of education.

(2) The state board of education and the superintendent of public instruction are not authorized by law to issue a high school diploma.

AMENDATORY SECTION (Amending WSR 12-03-052, filed 1/11/12, effective 2/11/12)

**WAC 180-51-050 High school credit—Definition.** As used in this chapter the term "high school credit" shall mean:

(1) Grades nine through twelve or the equivalent of a four-year high school program, or as otherwise provided in RCW 28A.230.090(4):

(a) Successful completion, as defined by written district policy, of courses taught to the state's (~~(essential academic learning requirements (EALR))~~) learning standards(~~(L)~~). If there are no state-adopted learning standards for a subject, the local governing board, or its designee, shall determine learning standards for the successful completion of that subject; or

(b) Satisfactory demonstration by a student of proficiency/competency, as defined by written district policy, of the state's (~~(essential academic learning requirements (EALR))~~) learning standards(~~(L)~~).

(2) College and university course work. At the college or university level, five quarter or three semester hours shall equal (~~(1.0)~~) one high school credit: Provided, that for the purpose of this subsection, "college and university course work" means course work that generally is designated 100 level or above by the college or university.

(3) Community/technical college high school completion program - Diploma awarded by community/technical colleges. Five quarter or three semester hours of community/technical college high school completion course work shall equal (~~(1.0)~~) one high school credit: Provided, that for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(4) Community/technical college high school completion program - Diploma awarded by school district. A minimum of (~~(.5)~~) one-half and a maximum of (~~(1.0)~~) one high school credit may be awarded for every five quarter or three

semester hours of community/technical college high school completion course work: Provided, that for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(5) Each high school district board of directors shall adopt a written policy for determining the awarding of equivalency credit authorized under subsection (4) of this section. The policy shall apply uniformly to all high schools in the district.

(6) Each high school district board of directors shall adopt a written policy regarding the recognition and acceptance of earned credits. The policy shall apply to all high schools in the district. The policy may include reliance on the professional judgment of the building principal or designee in determining whether or not a credit meets the district's standards for recognition and acceptance of a credit. The policy shall include an appeal procedure to the district if it includes reliance on the professional judgment of the building principal or designee.

(7) A student must first obtain a written release from their school district to enroll in a high school completion program under subsection (3) of this section if the student has not reached age eighteen or whose class has not graduated.

#### NEW SECTION

**WAC 180-51-056 Previous requirements for high school graduation.** This section describes the statewide minimum credit and subject areas requirements for high school graduation for students who entered the ninth grade or began the equivalent of a four-year high school program prior to July 1, 2012 (the class of 2015 and previous classes). This section applies to students of the applicable graduation cohorts in high school completion programs at community and technical colleges.

(1) The minimum credit and subject area requirements, except as noted in subsections (2) and (3) of this section, are as follows:

(a) Three **English** credits (reading, writing, and communications) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district.

(b) Two **science** credits (physical, life, and earth) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. At least one credit in laboratory science is required which shall be defined locally.

(c) Two and one-half **social studies** credits that at minimum align with the state's learning standards in civics, economics, geography, history, and social studies skills at grade ten and/or above plus content that is determined by the district. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(i) One credit shall be required in United States history and government which shall include study of the Constitution of the United States.

(ii) Under the provisions of RCW 28A.230.170 and 28A.230.090, one-half credit shall be required in Washington state history and government which shall include study of the Constitution of the state of Washington and shall include information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state. If taken in seventh or eighth grade, this course may meet the state history and government graduation requirement. However, the course may only count as a high school credit if the academic level of the course exceeds the requirements for seventh and eighth grade classes or is equivalent to a course offered at a high school in the district as determined by the school district board of directors (RCW 28A.230.090). The study of the United States and Washington state Constitutions shall not be waived but may be fulfilled through an alternative learning experience approved locally under written district policy. Secondary school students who have completed and passed a state history and government course of study in another state, and students who transferred from another state as eleventh or twelfth grade students who have or will have earned two credits in social studies at graduation, may have the Washington state history and government requirement waived.

(iii) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

(d) One-half credit of **health**.

(e) One and one-half credits of **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate proficiency/competency in the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies that should be based upon meeting both health and physical education curricula concepts as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(f) One **arts** credit that at minimum is aligned to learning standards.

(g) One credit in **career and technical education** or occupational education. Courses that meet this requirement include courses that are part of career and technical education programs, as defined in chapter 28A.700 RCW, or occupational education courses as identified by the district. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four (RCW 28A.150.210) and are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(i) An exception of the career and technical education requirement may be made for private schools as provided in WAC 180-90-160.

(ii) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course per RCW 28A.700.070, will not be required to pass a course in the noncareer and technical education subject to earn a credit in the noncareer and technical education subject. The single career and technical education course equivalency meets two graduation requirements, the career and technical education subject area graduation requirement and the noncareer and technical education subject area graduation requirement. The student therefore has an additional elective credit.

(h) Five and one-half credits of **electives**. Districts may replace these credits with local district requirements through written district policy.

(i) Each student shall have a **high school and beyond plan** for their high school experience, that informs course-taking and that is aligned with the student's postsecondary goals.

(2) For students who entered ninth grade prior to July 1, 2009 (graduating classes preceding the class of 2013), additional graduation requirements are as follows:

(a) The total minimum number of credits required for high school graduation is nineteen.

(b) Two mathematics credits that at minimum align with mathematics grade level expectations for ninth and tenth grade, plus content that is determined by the district.

(3) For students who entered ninth grade as of July 1, 2009, through June 30, 2012 (the class of 2013 through the class of 2015), additional graduation requirements are as follows:

(a) The total minimum number of credits required for high school graduation is twenty.

(b) Three mathematics credits that align with the high school mathematics standards as developed and revised by the office of the superintendent of public instruction and satisfy the requirements set forth below:

(i) Unless otherwise provided for in (b)(ii) of this subsection, the three mathematics credits required under this section must include:

- (A) Algebra 1 or integrated mathematics I;
- (B) Geometry or integrated mathematics II; and
- (C) Algebra 2 or integrated mathematics III.

(ii) A student may elect to pursue a third credit of high school-level mathematics, other than algebra 2 or integrated mathematics III, based on a career-oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student.

**AMENDATORY SECTION** (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

**WAC 180-51-067 State subject and credit requirements for high school graduation—Students entering the ninth grade on or after July 1, 2012, through June 30, 2015.** The statewide subject areas and credits required for high school graduation, beginning July 1, 2012, for students who enter the ninth grade or begin the equivalent of a four-year high school program, as of July 1, 2012, through June 30, 2015, except as provided in WAC 180-51-068(11), shall

total twenty as provided below. The credit and subject area requirements in this section apply to districts with a waiver to delay implementing WAC 180-51-068. For such districts, this section will apply to students who entered ninth grade between July 1, 2012, and June 30, 2016. All credits are to be aligned with the state's ~~((essential academic learning requirements-))~~ learning standards~~((s))~~ for the subject. The content of any course shall be determined by the local school district.

(1) Four **English** credits.

(2) Three **mathematics** credits that satisfy the requirements set forth below:

(a) Unless otherwise provided for in (d) through (g) of this subsection, the three mathematics credits required under this section must include:

- (i) Algebra 1 or integrated mathematics I;
- (ii) Geometry or integrated mathematics II; and
- (iii) Algebra 2 or integrated mathematics III.

(b) A student may elect to pursue a third credit of high school-level mathematics, other than algebra 2 or integrated mathematics III, if all of the following requirements are met:

(i) The student's elective choice is based on a career-oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student;

(ii) The student's parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection than algebra 2 or integrated mathematics III because it will better serve the student's education and career goals;

(iii) A meeting is held with the student, the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable), and a high school representative for the purpose of discussing the student's high school and beyond plan and advising the student of the requirements for credit bearing two- and four-year college level mathematics courses; and

(iv) The school has the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) sign a form acknowledging that the meeting with a high school representative has occurred, the information as required was discussed, and the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection given the student's education and career goals.

~~(c) ((Courses in (a) and (b) of this subsection may be taken concurrently in the following combinations:~~

~~(i) Algebra 1 or integrated mathematics I may be taken concurrently with geometry or integrated mathematics II.~~

~~(ii) Geometry or integrated mathematics II may be taken concurrently with algebra 2 or integrated mathematics III or a third credit of mathematics to the extent authorized in (b) of this subsection.~~

~~(d) Equivalent career and technical education (CTE) mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (a) of this subsection if the CTE mathematics courses are recorded on the student's~~

transcript using the equivalent academic high school department designation and course title.

(e) A student who prior to ninth grade successfully completed algebra I or integrated mathematics I; and/or geometry or integrated mathematics II, but does not request high school credit for such course(s) as provided in RCW 28A.230.090, may either:

(i) Repeat the course(s) for credit in high school; or

(ii) Complete three credits of mathematics as follows:

(A) A student who has successfully completed algebra I or integrated mathematics I shall:

- Earn the first high school credit in geometry or integrated mathematics II;

- Earn the second high school credit in algebra 2 or integrated mathematics III; and

- Earn the third high school credit in a math course that is consistent with the student's education and career goals.

(B) A student who has successfully completed algebra I or integrated mathematics I, and geometry or integrated mathematics II, shall:

- Earn the first high school credit in algebra 2 or integrated mathematics III; and

- Earn the second and third credits in mathematics courses that are consistent with the educational and career goals of the student.

(f) A student who satisfactorily demonstrates competency in algebra I or integrated mathematics I pursuant to a written district policy, but does not receive credit under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

- Earn the first high school credit in geometry or integrated mathematics II;

- Earn the second high school credit in algebra 2 or integrated mathematics III; and

- Earn the third credit in a mathematics course that is consistent with the student's education and career goals.

(g) A student who satisfactorily demonstrates competency in algebra I or integrated mathematics I and geometry or integrated mathematics II pursuant to a written district policy, but does not receive credit for the courses under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

- Earn the first high school credit in algebra 2 or integrated mathematics III;

- Earn the second and third high school credits in courses that are consistent with the educational and career goals of the student.)

Equivalent career and technical education mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (a) of this subsection if the career and technical education mathematics courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.

(d) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery/competency in high school math subjects and has received credit for them, may use these credits

to meet their math graduation requirements. Upon completion of algebra I or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, the student should be encouraged to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.

(e) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery/competency in these subjects but did not receive high school credits, may either:

(i) Repeat the course(s) for credit in high school; or

(ii) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra I or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already took the courses at a high school level.

(3) Two **science** credits, at least one of the two credits must be in laboratory science.

(4) Three **social studies** credits (~~((2-5))~~ two credits prescribed courses, plus ~~((a-5))~~ one credit social studies elective) and a noncredit requirement. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(a) One credit shall be required in United States history.

(b) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170; RCW 28A.230.090 and WAC 392-410-120, and shall ~~((consider including))~~ include information on the cultures, ~~((history))~~ historics, and governments of the American Indian peoples who ~~((were))~~ are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history and government requirement may be waived by the principal for students who: (i) Have successfully completed a state history and government course of study in another state; or (ii) are in eleventh or twelfth grade and who have not completed a course of study in Washington's history and state government because of previous residence outside the state.

(c) One-half credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(d) One-half credit shall be required in civics and include at a minimum the content listed in RCW 28A.230.093.

(5) ~~((Two health and fitness credits (5 credit health; 1.5 credits fitness)))~~ One-half credits of health.

(6) One and one-half credits of physical education. Students may be excused from the ~~((fitness))~~ physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate ~~((proficiency/competency in))~~ competency/mastery of the knowledge portion of

the ~~((fitness))~~ physical education requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

~~((6))~~ (7) One **arts** credit. The essential content in this subject area may be satisfied in the visual or performing arts.

~~((7))~~ (8) One credit in **career and technical education** or **occupational education**.

(a) "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education ~~((CTE))~~ program standards of the office of the superintendent of public instruction.

~~((a))~~ (b) Students who earn a graduation requirement credit through a ~~((CTE))~~ career and technical education course ~~((locally))~~ determined by the district or by the office of the superintendent of public instruction to be equivalent to a ~~((non-CTE))~~ noncareer and technical education course will not be required to earn a second credit in the ~~((non-CTE))~~ noncareer and technical education course subject~~((; the single CTE course meets two graduation requirements.~~

~~(b) Students who earn a graduation requirement credit in a non-CTE course locally determined to be equivalent to a CTE course will not be required to earn a second credit in the CTE course subject; the single non-CTE course meets two graduation requirements.~~

~~(c) Students satisfying the requirement in (a) or (b) of this subsection will need to earn five elective credits instead of four; total credits required for graduation will not change.~~

~~(8))~~ The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remains unchanged, and the student will need to earn an additional elective credit.

(9) Four credits of **electives**.

~~((9))~~ (10) Each student shall have a **high school and beyond plan** for their high school experience, ~~((including what they expect to do the year following graduation))~~ as described in WAC 180-51-220.

~~((10))~~ (11) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.-170, and chapter 28A.230 RCW.

~~((11))~~ A school district may obtain a two-year extension from the effective date for the implementation of the four credits of English and/or the three credits of social studies required under this section upon the filing of a written resolution by the district's school board with the state board of education stating the district's intent to delay implementation of the increased English and/or social studies requirements effective for the class of 2016. The resolution must be filed by June 1, 2012. A district filing a timely resolution with the

state board of education shall maintain the English, social studies, and elective credits in effect under WAC 180-51-066 for the period of the extension.) (12) A student with an individualized education program (IEP) must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan pursuant to WAC 180-51-115.

AMENDATORY SECTION (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

**WAC 180-51-068 State subject and credit requirements for high school graduation—Students entering the ninth grade on or after July 1, 2015, through June 30, 2017.** The statewide subject areas and credits required for high school graduation, beginning July 1, 2015, for students who enter the ninth grade or begin the equivalent of a four-year high school program (the class of 2019), shall total twenty-four as required in this section, except as otherwise provided in subsections ~~((11))~~ (12) and ~~((12))~~ (13) of this section. All credits are to be aligned with the state's ~~((essential academic))~~ learning ~~((requirements))~~ standards developed under RCW 28A.655.070 for the subject. The content of any course shall be determined by the local school district.

(1) Four **English** credits.

(2) Three **mathematics** credits that satisfy the requirements set forth in (a) through (e) of this subsection:

(a) Unless otherwise provided for in (b) of this subsection, the three mathematics credits required under this section must include:

(i) Algebra I or integrated mathematics I;

(ii) Geometry or integrated mathematics II; and

(iii) A third credit of high school mathematics, aligning with the student's interests and high school and beyond plan ~~((as provided in (10) of this section, and preparing the student to meet state standards for graduation under the assessment system in RCW 28A.655.061, with agreement of the student's parent or guardian, or, if the parent or guardian is unavailable or does not indicate a preference for a specific course, agreement of the school counselor or principal. A request for agreement of the student's parent or guardian should be made in the predominant language of a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible. The school must in all cases give precedence to the direction of the parent(s) or guardian(s), if provided, in election of the third credit to meet the requirements of this section;)),~~ with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, the school counselor or principal may provide agreement with the plan.

(b) A student who prior to ninth grade successfully ~~((completed algebra I or integrated mathematics I; and/or geometry or integrated mathematics II, but does not request~~

high school credit for such course(s) as provided in RCW 28A.230.090, may either:

- (i) Repeat the course(s) for credit in high school; or
- (ii) Complete three credits of mathematics as follows:
  - (A) A student who has successfully completed algebra I or integrated mathematics I shall:
    - (I) Earn the first high school credit in geometry or integrated mathematics II;
    - (II) Earn the second and third high school credits in courses aligning with the student's interests and high school and beyond plan and preparing the student to meet state standards for graduation under the assessment system in RCW 28A.655.061; and
    - (B) A student who has successfully completed algebra I or integrated mathematics I, and geometry or integrated mathematics II, shall: Earn the first, second and third high school credits in courses aligning with the student's interests and high school and beyond plan and preparing the student to meet state standards for graduation under the assessment system in RCW 28A.655.061.
  - (C) A student who satisfactorily demonstrates competency in algebra I or integrated mathematics I pursuant to a written district policy, but does not receive credit under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:
    - (i) Earn the first high school credit in geometry or integrated mathematics II;
    - (ii) Earn the second and third high school credits in courses aligning with the student's interests and high school and beyond plan and preparing the student to meet state standards for graduation under the assessment system in RCW 28A.655.061.
  - (D) A student who satisfactorily demonstrates competency in algebra I or integrated mathematics I and geometry or integrated mathematics II pursuant to a written district policy, but does not receive credit for the courses under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence: Earn the first, second and third credits in courses aligning with the student's interests and high school and beyond plan and preparing the student to meet state standards for graduation under the assessment system in RCW 28A.655.061.) completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery/competency in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Refer to WAC 180-51-030 for information about opting out of credits and numerical grades. Upon completion of algebra I or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, the student should be encouraged to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.
    - (c) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and

WAC 180-51-030, or a student who demonstrated mastery/competency in these subjects but did not receive high school credits, may either:

- (i) Repeat the course(s) for credit in high school; or
- (ii) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra I or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already took the courses at a high school level.
  - (3) Three **science** credits, at least two of which must be in laboratory science as provided in subsection ((1-5)) (17)(a) of this section. A student may choose the content of the third credit of science, based on the student's interests and high school and beyond plan, with agreement of the student's parent or guardian((, or,)). The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, agreement ((of the)) may be provided by the school counselor or principal. ((A request for agreement of the student's parent or guardian should be made in the predominant language of a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible. The school must in all cases give precedence to the direction of the parent(s) or guardian(s), if provided, in election of the third credit to meet the requirements of this section.))
    - (4) Three **social studies** credits (((2-5)) two credits prescribed courses, plus a ((-5)) one credit social studies elective) and a noncredit requirement. The social studies requirement shall consist of the following mandatory courses or equivalencies:
      - (a) One credit shall be required in United States history.
      - (b) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170, 28A.230.090 and WAC 392-410-120, and shall ((consider including)) include information on the cultures, ((history)) histories, and governments of the American Indian peoples who ((were)) are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history and government requirement may be waived by the principal for students who:
        - (i) Have successfully completed a state history and government course of study in another state; or
        - (ii) Are in eleventh or twelfth grade and who have not completed a course of study in Washington's history and state government because of previous residence outside the state.
        - (c) One-half credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.



(d) One-half credit shall be required in civics and include at a minimum the content listed in RCW 28A.230.093.

~~(5) ((Two health and fitness credits (-.5 credit health; 1.5 credits fitness))) One-half credit in health.~~

~~(6) One and one-half in physical education.~~ Students may be excused from the ~~((fitness)) physical education~~ requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate ~~((proficiency/competency in)) competency/mastery of~~ the knowledge portion of the fitness requirement, in accordance with written district policy. ~~Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.~~

~~((6)) (7) Two arts credits.~~ The essential content in this subject area may be satisfied in the visual or performing arts. One of the two arts credits may be replaced with a personalized pathway requirement as provided in subsection ~~((15)) (17)(c)~~ of this section.

~~((7)) (8) One credit in career and technical education.~~

~~(a) A career and technical education ((CTE)) credit means a credit resulting from a course in a ((CTE)) career and technical education program or occupational education credit as contained in the ((CTE)) career and technical education program standards of the office of the superintendent of public instruction. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the ((CTE)) career and technical education program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.~~

~~(b) An exception may be made for private schools as provided in WAC 180-90-160.~~

~~((a) Students who earn a graduation requirement credit through a CTE course determined to be equivalent to a non-CTE course will not be required to earn a second credit in the non-CTE course subject. The single CTE course meets two graduation requirements.~~

~~(b) Students who earn a graduation requirement credit in a non-CTE course determined to be equivalent to a CTE course will not be required to earn a second credit in the CTE course subject. The single non-CTE course meets two graduation requirements.~~

~~(c) Students satisfying the requirement in (a) or (b) of this subsection will need to earn five elective credits instead of four. Total credits required for graduation will not change.~~

~~(8)) (c) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education core course (RCW 28A.700.070 and subsection (14) of this section), will not be required to pass a course in the noncareer and technical education subject to earn a credit in that subject. The student earns one credit while meeting two graduation requirements,~~

a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remain unchanged, and the student will need to earn an additional elective credit.

~~(9) Two credits in world languages or personalized pathway requirements.~~ If the student has chosen a four-year degree pathway under subsection ~~((10)) (11)~~ of this section, the student shall be advised to earn two credits in world languages.

~~((9)) (10) Four credits of electives.~~

~~((10)) (11) Each student shall have a high school and beyond plan to guide his or her high school experience, ((including plans for post-secondary education or training and career. The process for completing the high school and beyond plan is locally determined and designed to help students select course work and other activities that will best prepare them for their post-secondary educational and career goals. Students shall create their high school and beyond plans in cooperation with parents/guardians and school staff. School staff shall work with students to update the plans during the years in which the plan is implemented in order to accommodate changing interests or goals.~~

~~((11)) as described in WAC 180-51-220.~~

~~(12) A school district wishing to implement the requirements for high school graduation for students who enter the ninth grade or begin the equivalent of a four-year high school program on July 1, 2016, or July 1, 2017, rather than July 1, 2015, may apply to the state board of education for a temporary waiver of the requirements of this section. The state board of education shall post an application form on its website for use by districts seeking this waiver.~~

~~(a) An application for a waiver must:~~

~~(i) Meet the requirements of chapter 217, Laws of 2014 (E2SSB 6552), which include describing why the waiver is being requested, the specific impediments preventing timely implementation of the high school graduation requirements established in subsections (1) through ((9)) (10) of this section, and the efforts that will be taken to achieve implementation with the graduating class proposed under the waiver.~~

~~(ii) Be accompanied by a resolution adopted by the district board of directors requesting the waiver. The resolution must state the entering freshman class or classes for whom the waiver is requested, and be signed by the board chair or president and the district superintendent.~~

~~(b) A district implementing a waiver shall continue to be subject to the requirements of WAC 180-51-067 during the school year or years for which the waiver has been granted.~~

~~(c) Nothing shall prevent a district granted a waiver from electing to implement subsections (1) through ((10)) (11) of this section during the term for which the waiver is granted. A district granted a waiver that elects to implement subsections (1) through ((10)) (11) of this section shall provide notification of such decision to the state board of education.~~

~~(d) The state board of education shall post the application for each waiver on its public website.~~

~~((12)) (13) A school district that grants high school diplomas may waive up to two of the credits required for graduation under this section for individual students for reason of ((unusual)) a student's circumstances, as defined by the district. Unless otherwise provided in law, students granted a~~

waiver under this subsection must earn the seventeen required subject credits in subsections (1) through (7) of this section, which may be by satisfactory demonstration of competence under WAC 180-51-050. The waiving of credits for individual students for reason of ~~((unusual))~~ a student's circumstances must be in accordance with written policies adopted by resolution of each board of directors of a district that grants diplomas.

~~((13))~~ Equivalent career and technical education (CTE) courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit in place of any of the courses set forth in subsections (1) through (6) of this section, if the courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.)

(14) Career and technical education courses determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course in accordance with RCW 28A.700.070 can be taken for credit in place of that course. Equivalencies may be determined for any of the core credit graduation requirements of subsections (1) through (7) of this section.

(15) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

~~((15))~~ (16) A student with an individualized education program must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan pursuant to WAC 180-51-115.

(17) Definitions:

(a) "Laboratory science" means any instruction that provides opportunities for students to interact directly with the material world, or with data drawn from the material world, using the tools, data collection techniques, models and theories of science. A laboratory science course meeting the requirement of subsection (3) of this section may include courses conducted in classroom facilities specially designed for laboratory science, or coursework in traditional classrooms, outdoor spaces, or other settings which accommodate elements of laboratory science as identified in this subsection;

(b) "Personalized pathway" means a locally determined body of coursework identified in a student's high school and beyond plan that is deemed necessary to attain the post-secondary career or educational goals chosen by the student;

(c) "Personalized pathway requirements" means up to three course credits chosen by a student under subsections ~~((6) and (8))~~ (7) and (9) of this section that are included in a student's personalized pathway and prepare the student to meet specific post-secondary career or educational goals.

AMENDATORY SECTION (Amending WSR 07-07-064, filed 3/14/07, effective 4/14/07)

**WAC 180-51-095 Temporary exemption from course and credit requirements.** Annual exemptions to the definition of an annualized high school credit may be granted upon

the request of an approved private school which offers evidence that delineates content, time, or competency assessments which are substantially equivalent to the definition stated in WAC 180-51-050. The waiver process shall be administered by the ~~((superintendent of public instruction))~~ state board of education.

AMENDATORY SECTION (Amending WSR 07-07-051, filed 3/14/07, effective 4/14/07)

**WAC 180-51-115 Procedures for granting high school graduation credits for students with special educational needs.** ~~((1))~~ No student shall be denied the opportunity to earn a high school diploma solely because of limitations on the student's ability. The board of directors of districts granting high school diplomas shall adopt written policies, including procedures, for meeting the unique limitations of each student. Such procedures may provide for:

(a) ~~The extension of time the student remains in school up to and including the school year in which such student reaches twenty-one years of age;~~

(b) ~~A special education program in accordance with chapter 28A.155 RCW if the student is eligible; and~~

(c) ~~Special accommodations for individual students, or in lieu thereof, exemption from any requirement in this chapter, if such requirement impedes the student's progress toward graduation and there is a direct relationship between the failure to meet the requirement and the student's limitation.~~

~~(2) Unless otherwise prohibited by federal or state special education laws, such procedures may not provide for exemption from the certificate of academic achievement graduation requirement under RCW 28A.655.060 (3)(c).)~~ A student with an individualized education program must be provided needed accommodations to progress in the general curriculum toward meeting state and local graduation requirements. In limited circumstances, when determined necessary by the individualized education program team due to the unique needs resulting from the student's disability, a graduation credit and subject area requirement may be substituted with comparable content course work, as identified in the individualized education program team course of study and aligned to the student's high school and beyond plan.

NEW SECTION

**WAC 180-51-201 Overview of the requirements for a high school diploma beginning in 2020.** For students who enter the ninth grade or begin the equivalent of a four-year high school program as of July 1, 2016, (the class of 2020) or later, the graduation requirements shall consist of:

(1) State credit and subject area requirements as established in WAC 180-51-067, 180-51-068, or 180-51-210 in this chapter, depending on the credit graduation requirements aligned with the year the student entered ninth grade; and, credit and subject area requirements established by local school boards. Students in the class of 2019 and the class of 2020 in districts with a waiver to delay implementation of WAC 180-51-068 shall graduate with the credit and subject area requirements of WAC 180-51-067 until the expiration of the waiver.

(2) A high school and beyond plan that must include the minimum requirements established in RCW 28A.230.090 and WAC 180-51-220 in this chapter. Local school boards may establish additional requirements for a high school and beyond plan to serve the needs and interests of its students. Any decision on whether a student has met the requirement of a high school and beyond plan shall be made by the district.

(3) A graduation pathway option. Students must meet the requirements of at least one of eight graduation pathway options in chapter 28A.655 RCW and WAC 180-51-230.

(4) By December 2022 the state board of education will make recommendations to the legislature for policy changes that would require new legislation to address including: Barriers school districts have to offering all of the graduation pathways, equitable student access to all of the graduation pathways, modifications or additions to the pathways, or other challenges to implementing graduation pathways. Based on the analysis of the pathways and/or other feedback received during implementation of graduation pathways the state board of education may initiate rule making to address changes allowed within current statute.

#### NEW SECTION

**WAC 180-51-210 State subject and credit requirements for high school graduation.** (1) Definitions. The definitions in this section apply throughout this chapter.

(a) "Laboratory science" means any instruction that provides opportunities for students to interact directly with the material world, or with data drawn from the material world, using the tools, data collection techniques, models and theories of science. A laboratory science course meeting the requirement of subsection (4) of this section may include courses conducted in classroom facilities specially designed for laboratory science, or course work in traditional classrooms, outdoor spaces, or other settings which accommodate elements of laboratory science as identified in this subsection;

(b) "Personalized pathway" means a locally determined body of course work identified in a student's high school and beyond plan that is deemed necessary to attain the postsecondary career or educational goals chosen by the student;

(c) "Personalized pathway requirements" means up to three course credits chosen by a student that are included in a student's personalized pathway, that prepare the student to meet specific postsecondary career or educational goals, and that align with the student's high school and beyond plan. A student's personalized pathway requirements are included in the student's flexible credits, as defined in this subsection.

(d) "Core credit" is a credit earned through course work or through mastery- or competency-based credit in the subject areas listed in subsection (4) of this section. Students subject to the graduation requirements in this section must earn seventeen core credits in high school. Core credits do not include electives or personalized pathway requirements and may not be waived under RCW 28A.230.090 (1)(e) or subsection (2) of this section.

(e) "Flexible credit" is a credit that is either an elective credit or a personalized pathway requirement. Flexible credits may be waived under RCW 28A.230.090 and subsection

(2) of this section, and are listed in subsection (5) of this section.

(2) A school district that grants high school diplomas may waive up to two of the flexible credits required for graduation under subsection (4) of this section for an individual student, based on the student's circumstances. Districts will grant any such waiver in accordance with written district policy. A student granted a waiver under this subsection must earn the core credits in subsection (4) of this section, but may graduate with as few as twenty-two credits, rather than twenty-four credits.

(3) The statewide subject areas and credits required for high school graduation, for students who enter the ninth grade or begin the equivalent of a four-year high school program on or after July 1, 2017, (the class of 2021 and beyond) shall total twenty-four, except as otherwise provided in this section. The twenty-four subject area credits for graduation include core credits and flexible credits listed in subsections (4) and (5) of this section. All credits are to be aligned with the state's learning standards developed under RCW 28A.655.070 for the subject and may be earned through mastery- or competency-based credit. The contents of any course shall be determined by the local school district. Districts are encouraged to adopt culturally-responsive curricula that is relevant to the district's students, including the incorporation of curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes as required by RCW 28A.320.170.

(4) Core credits are credits and subject areas that may not be waived under RCW 28A.230.090 (1)(e) and subsection (2) of this section. The core credits include:

(a) Four **English** credits.

(b) Three **mathematics** credits.

(i) Unless otherwise provided for in (b)(ii) of this subsection, the three mathematics credits required under this section must include:

(A) Algebra 1 or integrated mathematics I;

(B) Geometry or integrated mathematics II; and

(C) A third credit of high school mathematics, aligning with the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, agreement may be provided by the school counselor or principal.

(ii) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery/competency in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Refer to WAC 180-51-030 for information about opting out of credits and numerical grades. Upon completion of algebra 1 or integrated

math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, schools are urged to encourage the student to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.

(iii) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery/competency in these subjects but did not receive high school credits, may either:

(A) Repeat the course(s) for credit in high school; or

(B) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra 1 or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already passed the courses at a high school level.

(c) Three **science** credits, at least two of which must be in laboratory science. A student may choose the content of the third credit of science based on the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, the school counselor or principal may provide agreement with the plan.

(d) Three **social studies** credits (two credits prescribed courses, plus one credit social studies elective) and Washington state history and government, a noncredit requirement typically met in middle school. In accordance with RCW 28A.320.170, when a school district board of directors reviews or adopts its social studies curriculum, it shall incorporate curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn about the unique heritage and experience of those tribe or tribes. The social studies requirement shall consist of the following mandatory courses:

(i) One credit shall be required in United States history or its equivalent.

(ii) One-half credit shall be required in contemporary world history, geography, and problems, or its equivalent. Courses in economics, sociology, civics (through the class of 2023), political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(iii) One-half credit shall be required in civics, including at a minimum the content listed in RCW 28A.230.094. Starting with the class of 2024, districts must offer this graduation requirement as a stand-alone course, subject to the provisions of RCW 28A.230.094.

(iv) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170, 28A.230.090 and WAC 392-410-120, and shall include information on the cultures, histories, and governments of the American Indian peoples who are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history requirement may be waived by the principal for students who:

(A) Have successfully completed a state history course of study in another state; or

(B) Are in eleventh or twelfth grade and who have not completed a course of study in Washington's history because of previous residence outside the state.

(e) One-half credit of **health**.

(f) One and one-half credit of **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate competency/mastery in the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(g) One credit in **career and technical education**.

(i) Courses that meet this requirement include courses that are part of career and technical education programs, as defined in chapter 28A.700 RCW, or occupational education courses as identified by the district. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(ii) An exception of the career and technical education requirement may be made for private schools as provided in WAC 180-90-160.

(iii) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education core course (RCW 28A.700.070 and subsection (7) of this section), will not be required to pass a course in the noncareer and technical education subject to earn a credit in that subject. The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remain unchanged, and the student will need to earn an additional elective credit.

(h) One **arts** credit. The essential content in this subject area may be satisfied in dance, media arts, music, theater, and visual arts.

(5) Flexible credits are credits that may be waived under RCW 28A.230.090 and subsection (2) of this section. Districts may replace these credits with local district require-

ments through written district policy. Flexible credits include:

(a) One **arts** credit. The essential content in this subject area may be satisfied in dance, media arts, music, theater and visual arts. This credit may be replaced with a personalized pathway requirement as provided in subsection (1)(c) of this section.

(b) Two credits in **world languages**. These credits may be replaced with personalized pathway requirements as provided in subsection (1)(c) of this section. If the student has an educational goal of attaining a baccalaureate degree, the student shall be advised to earn at least two credits in the same world language. Students who earn a Seal of Biliteracy (RCW 28A.300.575) are considered to have met this requirement.

(c) Four credits of **electives**.

(6) Each student shall have a **high school and beyond plan** to guide his or her high school experience and prepare the student for postsecondary education, training, and career, as described in WAC 180-51-220.

(7) Career and technical education courses determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course in accordance with RCW 28A.700.070 can be taken for credit in place of that course. Equivalencies may be determined for any of the core credit graduation requirements of subsection (4) of this section.

(8) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

(9) A student with an individualized education program (IEP) must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan, pursuant to WAC 180-51-115.

#### NEW SECTION

##### **WAC 180-51-220 High school and beyond plan.** (1)

Each student must have a high school and beyond plan, initiated during seventh or eighth grade with the administration of a career interest and skills inventory, to guide the student's high school experience and inform course-taking that is aligned with the student's goals for education or training and career after high school. School districts are encouraged to develop and utilize high-quality high school and beyond plan tools. Beginning in the 2020-21 school year, each school district must have an electronic high school and beyond plan platform available to all students; districts may utilize one of the electronic platforms on the list that the office of the superintendent of public instruction creates and posts on its website. Districts are encouraged to utilize electronic high school and beyond platforms that meet the criteria specified in chapter 28A.230 RCW.

(2) Required elements of the high school and beyond plan include:

(a) Identification of career goals aided by a skills and interest assessment.

(b) Identification of education goals.

(c) A four-year plan for courses taken in high school that satisfies state and local graduation requirements and aligns with students' secondary and postsecondary goals that may include education, training, and careers.

(d) Identification of options for satisfying state and local graduation requirements, including academic acceleration pursuant to RCW 28A.320.195, that could include dual credit courses, career and technical education, and other programs that align with the student's educational and career goals. This includes identification of the graduation pathway option(s) the student intends to complete to meet their educational and career goals.

(e) A current resume or activity log that provides a written compilation of the student's education, any work experience, and any community service, and how the district recognizes community service pursuant to RCW 28A.320.193.

(f) Evidence that the student has received information on federal and state financial aid programs that help pay for the costs of postsecondary programs, including evidence that the student has received information about the following:

(i) Documentation necessary for completing financial aid applications, including at minimum the Free Application for Federal Student Aid (FAFSA) or the Washington application for state financial aid (WASFA).

(ii) Application timeliness and submission deadlines.

(iii) The importance of submitting applications early.

(iv) Information specific to students who have been in foster care.

(v) Information specific to students who are, or are at risk of, being homeless.

(vi) Information specific to students whose family member or guardians will be required to provide financial and tax information necessary to complete application.

(vii) Opportunities to participate in sessions that assist students and, when necessary, their family members or guardians, in filling out financial aid applications.

(viii) Information provided on the Washington student achievement council website concerning each of the state and federal financial aid applications in this subsection.

(ix) Information on college bound scholarship application and eligibility.

(g) As established by RCW 28A.230.097, if a student completes a career and technical education equivalency course that is transcribed as a core subject area course to meet graduation requirements, then a record showing that the career and technical education course was used to meet a core course must be retained in the student's high school and beyond plan. This record may be useful if the student pursues education, training, or a career in the same or related field as the career and technical education course.

(3) High school and beyond plan process and development.

(a) Each student's high school and beyond plan must be initiated by seventh or eighth grade. Before or at the initiation of the plan, each student must be administered a career interest and skills inventory that will help inform the student's ninth grade course taking and initial identification of their education and career goals.

(b) School districts are encouraged to involve parents and guardians in the process of developing and updating the high school and beyond plan. The plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district. Districts are also encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible.

(c) Seventh and eighth grade students must be informed of the college bound scholarship program established in chapter 28B.118 RCW. Students in foster care, students who are dependents of the state and ninth grade students who may be eligible must also be provided with information on the program. Students in the college bound scholarship program should be reminded about program requirements to remain eligible and provided with information about filling out a financial aid application in their senior year.

(d) Students who have not earned a score of level 3 or level 4 on the middle school math state assessment must include in their plan taking math courses in ninth and tenth grade. The math courses may include career and technical education equivalencies in math, established in RCW 28A.230.097.

(e) For students who have not earned a level 3 or level 4 on their middle school English language arts exam or their middle school science exam, districts are encouraged to inform students of supports and courses that will address the students' learning needs and be considered in the students' course-taking plans.

(f) The high school and beyond plan must be updated periodically at a minimum to address:

(i) High school assessment results and junior year course-taking.

(ii) A student's changing interests, goals, and needs, including identification of the graduation pathway option(s) the student intends to complete to meet their educational and career goals.

(iii) Available interventions, academic supports, and courses that will enable students to meet high school graduation credit requirements and graduation pathway requirements.

(g) For students meeting graduation requirements in WAC 180-51-068 and 180-51-210, the students' high school and beyond plans should be used to guide the choices of third credit of high school math and the third credit of high school science. These credits may be earned through career and technical education courses determined to be equivalent to math and science courses as established in RCW 28A.230.097.

(h) A student's high school and beyond plan must inform the student's choice of their graduation pathway option or options in accordance with WAC 180-51-230.

(4) For a student with an individualized education program (IEP), the student's IEP and high school and beyond plans must align. Students with an IEP transition plan, which begins during the school year in which they turn sixteen, may use their transition plan in support of, but not as a replacement for, their high school and beyond plan. The process for developing and updating the student's high school and beyond plans must be similar to and conducted with similar

school personnel as for all other students. The student's high school and beyond plans must be updated in alignment with the student's school to postschool transition plan.

(5) Any decision on whether a student has met the state board of education's high school graduation requirements for a high school and beyond plan shall remain at the local level. A district may establish additional, local requirements for a high school and beyond plan to serve the needs and interests of its students and the purposes of RCW 28A.230.090.

(6) Districts may offer core and elective courses that embed required elements and processes of high school and beyond planning, and are encouraged to provide credit-bearing options for the delivery and completion of high school and beyond plan elements. Conversely, a high school and beyond planning course may be counted as core or elective credit, as defined in WAC 180-51-210, if the learning standards of the content area are addressed.

#### NEW SECTION

**WAC 180-51-230 Graduation pathway options.** (1) Beginning with the graduating class of 2020, each student must meet the requirements of at least one of the eight graduation pathway options in this section. Each of the graduation pathway options are equally valid for earning a Washington state high school diploma.

(2) School districts are encouraged to make the eight graduation pathways specified below available to their students and to expand their pathway options until this goal is met, yet have discretion in determining which graduation pathway options they will offer.

(3) The graduation pathway option(s) used by a student must be in alignment with the student's high school and beyond plan.

(4) All assessment scores used for graduation pathways in subsection (5)(a) through (f) of this section will be posted on the state board of education website. Assessment scores that the state board of education is responsible for setting, will only be changed through a public process culminating in official board action in a public board meeting.

**(5) The following are the eight graduation pathway options:**

(a) **Statewide high school assessments.** Meet or exceed the graduation standard established by the state board of education under RCW 28A.305.130 on the statewide high school assessments in English language arts and mathematics as provided for under RCW 28A.655.070.

(b) **Dual credit courses.** Earn at least one high school credit in English language arts and at least one high school credit in mathematics in dual credit courses. For the purposes of this subsection, "dual credit course" means a course in which a student is eligible for both high school credit and college credit at the level of 100 or higher, upon successfully completing the course, by meeting the dual credit course or program criteria established by the local district and the applicable higher education entity. Dual credit courses include running start, college in the high school courses, and career and technical education dual credit courses. Nothing in this subsection requires a student to pay fees or claim college credit to meet this pathway.

(c) **Transition courses.** Earn high school credit in a high school transition course in English language arts and mathematics, an example of which includes a bridge to college course. For the purposes of this subsection, "high school transition course" means an English language arts or mathematics course offered in high school that, based on the final grade, allows the student to place directly into a credit-bearing college level course at participating institutions of higher education in RCW 28B.10.016, in accordance with established policy and criteria of the local school district and the applicable higher education entity. This definition includes transition courses identified through local agreements between colleges and school districts. English language arts and math high school transition courses must satisfy a student's core or elective credit graduation requirements established by the state board of education in WAC 180-51-210.

(d) **Advanced placement, international baccalaureate, or Cambridge international.** Meet either (d)(i) or (ii) of this subsection:

(i) Earn high school credit, with a grade of C+ or higher in each term, in the following advanced placement, international baccalaureate, or Cambridge international courses in English language arts and mathematics.

(A) For English language arts, successfully complete one high school credit in any of the following courses with a grade of C+ or higher in each term: Advanced placement English language and composition, advanced placement English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics; any of the international baccalaureate individuals and societies courses or English language and literature courses; or earn an E any of the following Cambridge advanced or Cambridge advanced subsidiary courses: English language, literature and English, English general paper, psychology, history, sociology, global perspectives and research, or law.

(B) For mathematics, successfully complete one high school credit in any of the following courses with a grade of C+ or higher: Advanced placement statistics, computer science A, computer science principles, or calculus; any of the international baccalaureate mathematics courses; or a Cambridge advanced or advanced subsidiary mathematics or further mathematics course.

(ii) Score a three or higher on advanced placement exams in one of the English language arts and one of the mathematics courses identified above; score a four or higher on international baccalaureate exams in one of the English language arts and one of the mathematics courses identified above; or score an E or higher on Cambridge international exams in one of the English language arts and one of the mathematics courses identified above.

(e) **SAT or ACT.** Meet or exceed the scores established by the state board of education for the mathematics portion and the reading, English, or writing portion of the SAT or ACT.

(f) **Combination.** Meet any combination of at least one English language arts option and at least one mathematics option established in pathway options (a) through (e) of this subsection.

(g) **Armed services vocational aptitude battery.**

(i) Meet standard on the armed forces qualification test portion of the armed services vocational aptitude battery by scoring at least the minimum established by the military for eligibility to serve in a branch of the armed services at the time that the student takes the assessment. The state board of education will post eligibility scores at least annually by September 1st. Each student may choose to meet either the posted minimum score the year a student takes the armed services vocational aptitude battery or the score posted by the state board of education on a later date prior to the student turning twenty-one years of age.

(ii) The school must inform the students taking the armed services vocational aptitude battery about the minimum eligibility score required by each branch of the military as well as information about eligibility requirements for specific military occupations. Schools are encouraged to schedule an armed services vocational aptitude battery career exploration program interpretation seminar after the test so students can participate in high school and beyond planning and learn about available military and nonmilitary occupations for which they have an aptitude. The state board of education will maintain a web page with information about military occupation requirements and minimum eligibility scores required by each branch of the military.

(iii) Schools that offer the armed services vocational aptitude battery must inform students regarding the ways in which their scores and personal information might be shared, per the agreement between the school and the United States Department of Defense which administers the armed services vocational aptitude battery. Each student must be given prior written notice of the option to decide whether the school can release the student's armed services vocational aptitude battery scores to military recruiters for contact. A school administrator, teacher, or counselor must also explain and offer this option to the students on the day of the test.

(iv) This pathway does not require students to meet the physical or other requirements for military enlistment, require enlistment, or require students to release their scores to the military for purposes of recruitment.

(v) Satisfying this pathway does not require students to meet the separate English and mathematics graduation pathway requirements of pathway options (a) through (f) of this subsection.

(h) **Career and technical education course sequence.** Complete the curriculum requirements of a core plus program relevant to the student's postsecondary goals outlined in the student's high school and beyond plan as defined in WAC 180-51-220 in aerospace, maritime, health care, information technology, or construction and manufacturing; or complete a sequence of at least two high school credits in career and technical education courses that meet the following criteria:

(i) The sequence is comprised of courses that are technically intensive and rigorous in a progression relevant to the student's postsecondary goals outlined in the student's high school and beyond plan as defined in WAC 180-51-220. Courses to satisfy this pathway must be comprised of either:

(A) Courses within the same career and technical program area; or

(B) A local sequence of courses within more than one career and technical program area if approved by a district's local school board, local board's designee, or the district's local vocational (career and technical education) advisory committee established under RCW 28A.150.500 and submitted to the office of the superintendent of public instruction for an expedited approval. A sequence submitted to the office of superintendent of public instruction for expedited approval will be deemed approved if a decision is not provided to the district within forty-five calendar days of submittal. If a sequence is denied approval, the office of superintendent of public instruction must provide the district with a written notification including the reason for denial. Once a local sequence has been approved by the office of superintendent of public instruction it may be implemented in other districts with notification of implementation to the office of superintendent of public instruction.

(ii) Each sequence of career and technical education courses must be comprised of courses that meet the minimum criteria identified in RCW 28A.700.030. Specifically, the courses must:

(A) Either:

(I) Lead to a certificate or credential that is state or nationally recognized by trades, industries, or other professional associations as necessary for employment or advancement in that field; or

(II) Allow students to earn dual credit for high school and college through tech prep (career technical education dual credit), advanced placement, or other agreements or programs.

(B) Be comprised of a sequenced progression of multiple courses that are technically intensive and rigorous; and

(C) Lead to workforce entry, state or nationally approved apprenticeships, or postsecondary education in a related field.

(iii) Satisfying the career technical education pathway does not require a student to take a course that is part of a career and technical education preparatory program that is approved under RCW 28A.700.030 nor does satisfying this pathway require students to meet the separate English and mathematics graduation pathway requirements of pathway options (a) through (f) of this subsection.

(iv) A course that is used to meet graduation pathway requirements may also be used to meet credit subject area requirements, including career and technical education course equivalencies per RCW 28A.700.070.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 180-51-001 Education reform vision.
- WAC 180-51-003 Intent of graduation requirements.
- WAC 180-51-060 Minimum subject areas for high school graduation—Students entering the ninth grade before July 1, 2004.

WAC 180-51-061 Minimum requirements for high school graduation—Students entering the ninth grade as of July 1, 2004 through June 30, 2009.

WAC 180-51-066 Minimum requirements for high school graduation—Students entering the ninth grade on or after July 1, 2009, through June 30, 2012.

WAC 180-51-075 Social studies requirement—Mandatory courses—Equivalencies.

#### **WSR 20-01-102**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

(Occupational Therapy Practice Board)

[Filed December 13, 2019, 10:59 a.m., effective May 15, 2020]

Effective Date of Rule: May 15, 2020.

Purpose: WAC 246-847-067 Occupational therapy, the occupational therapy practice board (board) is adopting a new rule section that establishes licensure rules for applicants who have an expired license in another state but are seeking Washington licensure.

Citation of Rules Affected by this Order: New WAC 246-847-067.

Statutory Authority for Adoption: RCW 18.59.130.

Adopted under notice filed as WSR 19-20-094 on October 1, 2019.

A final cost-benefit analysis is available by contacting Kathy Weed, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4883, fax 360-236-2901, TTY 360-833-6388 or 711, email [kathy.weed@doh.wa.gov](mailto:kathy.weed@doh.wa.gov), website [www.doh.wa.gov](http://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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 8, 2019.

Sheryl Zylstra, OT  
Chair



NEW SECTION

**WAC 246-847-067 Initial application for individuals who have an expired license in a different state and are seeking Washington licensure.** (1) An initial applicant with an expired license in a different state who has not practiced for less than three years must comply with the requirements for licensure as specified in chapter 18.59 RCW and this chapter.

(2) An initial applicant with an expired license in a different state who has not practiced for three or more years but less than five years from date of application must comply with the requirements for licensure as specified in chapter 18.59 RCW and this chapter and submit proof to the department of:

(a) Completion of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; and

(b) Completion of any additional requirements as required by the board.

(3) An initial applicant with an expired license in a different state who has not practiced for five or more years from date of application must comply with the requirements for licensure as specified in chapter 18.59 RCW and this chapter and submit proof to the department of:

(a) Completion of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period;

(b) Completion of a board-approved reentry program; and

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examinations specified in WAC 246-847-080.

(d) Completion of any additional requirements as required by the board.

(4) The applicant may be required to appear before the board for oral interview.

**WSR 20-01-103****PERMANENT RULES****BUILDING CODE COUNCIL**

[Filed December 13, 2019, 2:04 p.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

Purpose: The purpose of this permanent rule making is to adopt the 2018 International Building Code, as amended and adopted by the state building code council on November 8, 2019. The implementation date is July 1, 2020.

Citation of Rules Affected by this Order: Amending 6.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 19-16-158 on August 7, 2019.

Changes Other than Editing from Proposed to Adopted Version:

WAC	Section	Change
51-50-0403	403.3.2	These changes are now addressed in WSR 19-***.
51-50-0504	504.4.1	These changes are now addressed in WSR 19-***.
51-50-0909	909.6.3	These changes are now addressed in WSR 19-***.
51-50-1023	1023.11	These changes are now addressed in WSR 19-*****.

[See WSR 20-01-090.]

A final cost-benefit analysis is available by contacting Richard Brown, 1500 Jefferson Street S.E., phone 360-407-9277, email Richard.Brown@des.wa.gov, website www.sbcc.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 Non-governmental Entity: New 16, Amended 37, 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: November 8, 2019.

Doug Orth  
Chair

**Chapter 51-50 WAC**

**STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2015)) 2018 EDITION OF THE INTERNATIONAL BUILDING CODE**

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

**WAC 51-50-1008 Section 1008—((Reserved.))**  
**Means of egress illumination.**

**1008.2.3 Exit discharge.** This subsection not adopted.

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

**WAC 51-50-3006 Section 3006—((Reserved.))** **Elevators and conveying systems.**

**3006.3 Hoistway opening protection.** Where Section 3006.2 requires protection of the elevator hoistway door

opening, the protection shall be provided by one of the following:

1. An enclosed elevator lobby shall be provided at each floor to separate the elevator hoistway shaft enclosure doors from each floor by fire partitions in accordance with Section 708. In addition, doors protecting openings in the elevator lobby enclosure walls shall comply with Section 716.2.2.1 as required for corridor walls. Penetrations of the enclosed elevator lobby by ducts and air transfer openings shall be protected as required for corridors in accordance with Section 717.5.4.1.

2. An enclosed elevator lobby shall be provided at each floor to separate the elevator hoistway shaft enclosure doors from each floor by smoke partitions in accordance with Section 710 where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2. In addition, doors protecting openings in the smoke partitions shall comply with Sections 710.5.2.2, 710.5.2.3, and 716.2.6.1. Penetrations of the enclosed elevator lobby by ducts and air transfer openings shall be protected as required for corridors in accordance with Section 717.5.4.1.

3. Additional doors shall be provided at each elevator hoistway door opening in accordance with Section 3002.6. Such door shall comply with the smoke and draft control door assembly requirements in Section 716.2.2.1.1 when tested in accordance with UL 1784 without an artificial bottom seal.

4. The elevator hoistway shall be pressurized in accordance with Sections 909.6.3 and 909.21.

### WSR 20-01-109

#### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed December 13, 2019, 4:35 p.m., effective January 13, 2020]

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

Purpose: This rule-making order amends chapter 16-501 WAC, WSDA procedural rules—Commodity boards or commissions, by:

- Clarifying definitions;
- Clarifying that commodity commissions fund one-half of a full time equivalent employee;
- Clarifying what a commission's contribution is based on and the examples that explain how the total financial contribution is determined; and
- Amending the timeline that the department will determine the amount necessary to fund the commodity commissions coordinator position, bill the boards/commissions for their share of the total financial contribution and provide additional time for a commission to remit the billed amount to the department.

Citation of Rules Affected by this Order: Amending WAC 16-501-005, 16-501-010, and 16-501-015.

Statutory Authority for Adoption: RCW 43.23.033.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 19-22-059 on November 4, 2019.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, 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 0, Repealed 0.

Date Adopted: December 13, 2019.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 17-17-158, filed 8/23/17, effective 9/23/17)

**WAC 16-501-005 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout the chapter:

**"~~((Assessment level)) Annual assessment~~"** means the total annual assessment amount collected in a twelve-month period by an agricultural commodity board or commission under the provisions of its marketing order or authorizing statute. For the Washington beer commission, "annual assessment (~~level~~)" includes net proceeds collected from commission-sponsored beer festivals in addition to the total annual assessment collected by the commission.

**"Department"** means the Washington state department of agriculture (~~((WSDA))~~).

**"Total financial contribution"** means the contributions from all agricultural commodity boards and commissions to cover (~~one-half~~) the annual salary and benefits of the department's commodity commission coordinator for commodity boards and commissions plus the annual costs for goods and services, travel, training and equipment necessary to support the commodity commission coordinator. The total financial contribution is one-half full-time equivalent employee.

AMENDATORY SECTION (Amending WSR 02-16-045, filed 8/1/02, effective 9/1/02)

**WAC 16-501-010 Commodity commission financial contribution.** (1) Under the provisions of RCW (~~((43.23))~~) 43.23.033, the director may establish, by rule, a method to fund staff support for all commodity boards and commissions.

(2) (~~Before July 1 of each fiscal year~~) On or around September 1st, the department will determine the (~~total financial contribution required from all commodity boards or commissions and calculate, according to the provisions of~~) WAC 16-501-015, each board or commission's share of that

~~total contribution)) amount necessary to fund the commodity commission coordinator position.~~

~~(3) On or before October 1st, all commodity boards or commissions are required to report to the department the dollar value of the assessments collected during the board's or commission's previous fiscal year. The board or commission's contribution shall be based on the previous fiscal year's annual assessment (level). For commissions with the authority to suspend assessments, the contribution shall be based on the most recently collected annual assessment prior to suspension.~~

~~((3) On or around July 1st of each fiscal year) (4) During the month of October, the department will bill each commodity board or commission for its portion of the total financial contribution. The board or commission shall remit to the department the amount billed within (thirty) ninety days of the billing date.~~

~~((4)) (5) The department will provide each commodity board or commission with an annual report regarding the department's activities on behalf of the boards or commissions.~~

AMENDATORY SECTION (Amending WSR 02-16-045, filed 8/1/02, effective 9/1/02)

**WAC 16-501-015 Calculation of a commodity board or commission's contribution.** The ~~((total))~~ financial contribution for each commodity board or commission shall be calculated using the following steps:

(1)(a) Step 1 - Using the dollar value that a board or ~~((commission's))~~ commission receives from its annual assessment ~~((level))~~, the base ~~((assessment))~~ contribution portion of a commodity board or commission's share of the total financial contribution is established as follows:

**Contribution Categories**

Assessment Level	Base <del>((Assessment))</del> Contribution
<del>((&gt;))</del> ≤ \$100,000	\$250.00
100,001 - 250,000	500.00
250,001 - 500,000	750.00
500,001 - 1,000,000	1,000.00
1,000,001 - 5,000,000	2,000.00
5,000,001 - 10,000,000	3,000.00
10,000,001 and above	4,000.00

(b) A percentage is calculated for each board or commission by dividing the board or commission's base ~~((assessment))~~ contribution by the total base ~~((assessment))~~ contribution for all boards and commissions.

~~((For example, assuming commission A's base assessment is \$4,000 divided by an assumed total base assessment of \$80,000 results in 5% (.05))~~

(2)(a) Step 2 - The difference between the total financial contribution and the total base ~~((assessment))~~ contribution is

apportioned to each board or commission using the percentage calculated in ~~((subsection (1)))~~ step 1.

(b) The amount calculated in step 2 is subject to a \$7,500 cap on any one board or commission~~((;~~

~~For example, assuming a total financial contribution of \$105,000 minus the assumed total base assessment of \$80,000 results in a difference of \$25,000. \$25,000 multiplied by commission A's .05 equals \$1,250. This is commission A's portion of the difference).~~

(3) Step 3 - If any board or commission reaches the \$7,500 cap in step 2, the difference between the amount calculated for that board or commission in subsection (2)(a) of this section and \$7,500 would be ~~((recalculated))~~ apportioned among the remaining boards or commissions ~~((or boards))~~ using a percentage of each board's or commission's base ~~((assessment))~~ contribution to the total base ~~((assessment))~~ contribution less the base ~~((assessment))~~ contribution of the board or commission that reached the cap.

~~((For example, assume that commission A's percentage remains 5% but that the difference between the total financial contribution and the total base assessment is \$180,000. \$180,000 multiplied by .05 equals \$9,000. \$9,000 exceeds the \$7,500 cap for commission A by \$1,500. This \$1,500 would be apportioned between the other boards and commissions excluding commission A.~~

~~For example, assume that commission B's base assessment is \$3,000. The total base assessment excluding commission A is now \$76,000 (\$80,000 less commission A's \$4,000). Commission B's base assessment of \$3,000 divided by \$76,000 results in .04 rounded (4%). \$1,500 (the excess over the cap for commission A) multiplied by .04 equals \$60, which is commission B's share of the excess.)~~

(4) Step 4 - A commodity ~~((commission or board's))~~ board or commission's contribution is the sum of ~~((the))~~ its base ~~((assessment))~~ contribution from ~~((subsection (1)))~~ step 1 and the calculations in ~~((subsections (2) or (3) whichever is applicable.~~

~~For example, using the calculations in subsection (2), commission A's contribution is \$5,250 (\$4,000 base assessment plus \$1,250 apportioned share).~~

~~Using the calculations in subsection (3), commission A's contribution is \$11,500 (\$4,000 base assessment plus the \$7,500 cap.)~~ steps 2 and 3.

(5) The following example is a hypothetical scenario used to illustrate how the formula is applied:

(a) Commission A reports an annual assessment of \$200,000, therefore its base contribution is \$500.

(b) Assuming the total base contribution for all boards and commissions is \$23,750, a percentage is calculated for commission A by dividing its base contribution of \$500 by the total base contribution of \$23,750, which is 2.11 percent.

(c) Assuming a total financial contribution of \$100,000, the difference between the total financial contribution

(\$100,000) and the total base contribution (\$23,750) is \$76,250. This amount (\$76,250) is apportioned to each commission using the percentage calculated in step 1. For commission A, \$76,250 multiplied by 2.11 percent is rounded to \$1,605, which is commission A's initial portion of the total financial contribution.

(d) Next, commission A's base assessment (\$500) is added to its portion calculated in step 2 (\$1,605), which equals \$2,105.

(e) If any board or commission hits the \$7,500 cap provided for in step 2, the difference between the amount calculated and \$7,500 is apportioned among the other boards and commissions not reaching the cap.

(f) For example, commission B has a base contribution of \$3,000 and exceeds the \$7,500 cap by \$2,132. That \$2,132 would be apportioned on a percentage basis among the other boards and commissions, excluding commission B.

(g) To find the number in (f) of this subsection for commission A, take the number calculated for commission A in step 2 (\$1,605) and divide it by the total step 2 calculations for all boards and commissions, excluding commission B. Assuming the total for all boards and commissions, excluding commission B, is \$66,621, the number for commission A is 2.41. Multiply that by the total amount in step 2, including commission B, which equals \$51 for commission A.

(h) The total amount owed by commission A is the base assessment in step 1 (\$500), plus the amount in step 2 (\$1,605), plus the amount in step 3 (\$51) for a total contribution of \$2,156.

(i) The total amount owed by commission B is the base assessment in step 1 (\$3,000), plus the amount in step 2 (\$7,500) for a total of \$10,500.

**WSR 20-01-114**  
**PERMANENT RULES**  
**RECREATION AND CONSERVATION**  
**OFFICE**

[Filed December 16, 2019, 8:21 a.m., effective January 16, 2020]

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

Purpose: Proposed amendments to clarify the local process framework intended by the Salmon Recovery Act (chapter 77.85 RCW). These are technical amendments not anticipated to affect the existing process. New sections added to capture the roles and responsibilities of lead entities, regional recovery organizations, and the governor's salmon recovery office. There are two new definitions, as well as two definition changes to provide technical clarity.

Citation of Rules Affected by this Order: New WAC 420-04-065; chapter 420-08 WAC; and amending WAC 420-04-010.

Statutory Authority for Adoption: RCW 77.85.120 (1)(d).

Adopted under notice filed as WSR 19-22-063 on November 5, 2019.

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 Non-governmental 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: December 12, 2019.

Katie Pruitt  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-07-085, filed 3/17/16, effective 4/17/16)

**WAC 420-04-010 Definitions.** For purposes of Title 420 WAC, the definitions in RCW 77.85.010 apply. In addition, unless the context clearly indicates otherwise, the following definitions also apply:

"Acquisition project" means a project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access or trail easements, covenants, water rights, leases, and mineral rights.

"Agreement" or "project agreement" means the accord accepted by the office and the sponsor for the project and includes any attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the project agreement subject to any limitations on their effect.

"Applicant" means any party that meets qualifying standards as described in RCW 77.85.010(6), including deadlines, for submission of an application soliciting a grant of funds from the board.

"Application" means the documents and other materials that an applicant submits to the office to support the applicant's request for grant funds.

"Board" means the salmon recovery funding board as described in RCW 77.85.110.

"Capacity funding" is a grant to lead entities and regional organizations as described in RCW 77.85.130(4) to assist in carrying out functions to implement chapter 77.85 RCW.

"Chair" means the chair of the board described in RCW 77.85.110.

"Citizens committee" means a committee established by a lead entity that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests as described in RCW 77.85.050.

"Director" means the director of the office or that person's designee, as described in RCW 79A.25.150.

"Enhancement project" or "hatchery and harvest enhancement project" means a project that supports hatchery reform to improve hatchery effectiveness to minimize

impacts to wild fish populations, ensure compatibility between hatchery production and salmon recovery programs, or support sustainable fisheries.

"Habitat project list" means the list of projects as described in RCW 77.85.010(3) compiled by a citizens' committee and submitted by a lead entity to the board as described in RCW 77.85.050(3). The habitat project list shall establish priorities for individual projects and define the sequence for project implementation as described in RCW 77.85.050. The list of projects in the habitat project list must be within the lead entity area as described in RCW 77.85.050 (2). The habitat project list includes the lead entity ranked project list.

"Initiating governments" means the counties, cities, and tribal governments that choose to participate in the formation of a lead entity area.

"Lead entity" means a city, county, conservation district, special purposes district, tribal government, regional recovery organization or other entity that is designated jointly by any one or more of the counties, cities, and Native American tribes within the lead entity area as described in RCW 77.85.050.

"Lead entity area" means the geographic area designated jointly by any one or more of the counties, cities, and Native American tribes within that area, which is based, at a minimum, on a watershed resource inventory area, as described in RCW 77.85.010(13), combination of water resource inventory areas, or any other area as described in RCW 77.85.050 (2) that does not overlap with another lead entity area for the same salmon species.

"Lead entity ranked project list (~~," also known as the "habitat work schedule.")~~" means those projects on the habitat project list that will be implemented in the current funding cycle per RCW 77.85.010(4) and as described in RCW 77.85.060.

"Manual(s)" means a compilation of state and federal laws; board rules, policies and procedures; and director procedures, forms, and instructions assembled in manual form for dissemination to parties that participate in the board's or office's grant program(s).

"Match" or "matching share" means the portion of the total project cost in the project agreement provided by the project sponsor.

"Monitoring or research project" means a project that monitors the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

"Noninitiating governments" means the counties, cities, and tribal governments that decline to participate in the selection of a lead entity area. Any government that declines to participate in the formation of a lead entity area, with or without formal notification, is a noninitiating government. Noninitiating governments may participate in other functions of the lead entity.

"Office" means the recreation and conservation office as described in RCW 79A.25.010.

"Planning project" means a project that results in a study, assessment, project design, or inventory.

"Preagreement cost" means a project cost incurred before the period of performance identified in the project agreement.

"Project" means the undertaking which is, or may be, funded in whole or in part with funds administered by the office on behalf of the board.

"Project area" means the area consistent with the geographic limits of the scope of work of the project. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired in the project.

"Regional recovery organization" or "regional salmon recovery organization" means an organization described in RCW 77.85.010(7).

"Reimbursement" means the payment of funds from the office to the sponsor for eligible and allowable project costs that have already been paid by the sponsor per the terms of an agreement.

"Restoration project" means to bring a site back to its historic function as part of a natural ecosystem or improving or enhancing the ecological functionality of a site.

"Salmon recovery region" means a geographic area as described in RCW 77.85.010(10).

"Sponsor" means an eligible applicant under RCW 77.85.010(6) who has been awarded a grant of funds and is bound by an executed project agreement; includes its officers, employees, agents, and successors.

#### NEW SECTION

**WAC 420-04-065 Duties of the governor's salmon recovery office.** The purpose and duties of the governor's salmon recovery office are described in RCW 77.85.030. Among other duties, the governor's salmon recovery office must maintain and revise a statewide salmon recovery strategy as described in RCW 77.85.150.

### **Chapter 420-08 WAC**

#### **LOCAL AND REGIONAL ORGANIZATION RULES**

#### NEW SECTION

**WAC 420-08-010 Forming a lead entity.** (1) All counties, cities, and tribal governments within a lead entity area must have an opportunity to determine whether they wish to initiate the formation of a lead entity area and the selection of a lead entity.

(2) Initiating governments must jointly designate, by resolution or letters of support, a lead entity area and select an entity or organization to act as a lead entity through an adopted resolution or letter of support as described in RCW 77.85.050.

(3) If a lead entity and lead entity area already exists and the initiating governments agree that the lead entity should be changed to another organization, they must do so by following subsections (1) and (2) of this section.

(4) If a noninitiating government decides to participate in the lead entity after it has been acknowledged by the office,

they must adopt a resolution or letter of support and provide it to the office. Noninitiating governments may participate in other salmon recovery activities described in this title.

#### NEW SECTION

**WAC 420-08-020 Duties of a lead entity and citizens committee.** (1) A lead entity administers a local process to identify salmon habitat restoration and acquisition projects and activities that support salmon recovery efforts critical to implementing salmon recovery plans. To accomplish this purpose, a lead entity must hire a coordinator to:

(a) Facilitate the work of a citizens committee;

(b) Work closely with a regional salmon recovery organization, if within a recognized region, to develop a local strategy to restore salmon habitat that meets the needs identified in a salmon recovery plan; and

(c) Recruit organizations to implement salmon habitat restoration projects and activities identified in a local strategy.

(2) A lead entity must establish a citizens committee as described in RCW 77.85.050. A lead entity, or its fiscal agent, shall not designate itself as the citizens committee. A lead entity shall not make decisions on behalf of the citizens committee. The citizen committee must be comprised of people within the lead entity area that represent initiating governments, businesses, interest groups, and private citizens interested in salmon recovery. The citizen committee may include noninitiating governments.

(3) A lead entity must adopt a conflict of interest policy consistent with state guidance that applies to the lead entity and the citizens committee and other committees convened by the lead entity.

(4) The main purpose of a citizens committee is to develop a habitat project list as described in RCW 77.85.050, including a lead entity ranked list, that:

(a) Is based on the critical pathways methodology as described in RCW 77.85.060;

(b) Gives a preference for funding projects in areas that contain salmon species listed or proposed for listing under the federal Endangered Species Act as described in RCW 77.85.050 or supports tribal treaty fishing rights;

(c) Defines a sequence for project implementation and establishes priorities for individual projects as described in RCW 77.85.050 Habitat project lists; and

(d) Identifies federal, state, local, or private funding sources for individual projects as described in RCW 77.85.050.

(5) A lead entity must submit a habitat project list compiled by a citizens committee, including a lead entity ranked project list, to the board by the deadline established by the board and described in RCW 77.85.140. A lead entity must not reorder or substantively alter the habitat project list compiled by a citizens committee without citizens committee's approval.

(6) A citizens committee or lead entity may designate a local technical advisory group as described in RCW 77.85.060. The main purpose of a local technical advisory group is to:

(a) Assist in evaluating the technical merits of individual projects to ensure projects are scientifically valid;

(b) Assist with implementing the critical pathways methodology, including limiting factors analyses;

(c) Advise on prioritizing projects; and

(d) Provide consultation to project sponsors and landowners on how to implement projects.

#### NEW SECTION

**WAC 420-08-030 Duties of a regional recovery organization.** (1) The main purpose of a regional recovery organization is to coordinate salmon recovery planning and implementation. A regional recovery organization works directly with the federal government to develop, implement, and monitor a regional salmon recovery plan. A regional recovery organization also works directly with the lead entities within the salmon recovery region to develop and implement the recovery plan.

(2) A regional organization may be selected as a lead entity per WAC 420-08-010 Forming a lead entity.

(3) Lead entities within a salmon recovery region may request the governor's salmon recovery office to recognize them as a regional salmon recovery organization as described in RCW 77.85.090 except for those lead entities within the areas covered by the Lower Columbia fish recovery board and Puget Sound leadership council.

(4) A regional organization must submit all federally recognized salmon recovery plans and amendments to the governor's salmon recovery office for incorporation into the statewide salmon recovery strategy.

(5) A regional organization shall advise the board on whether a project on a habitat project list submitted by a lead entity is a priority in the regional salmon recovery plan or strategy. The board will consider the regional organizations advice before it makes a decision on whether to fund a project.

#### NEW SECTION

**WAC 420-08-040 Capacity funding.** (1) The board may award capacity grants to regional salmon recovery organizations as described in RCW 77.85.030 and 77.85.090 and lead entities as described under RCW 77.85.130 for administrative support to implement salmon recovery activities. The governor's salmon recovery office shall administer capacity grants through an executed agreement as described in RCW 77.85.050.

(2) The office will execute an agreement for a capacity grant to a lead entity after the initiating governments select a lead entity area and a lead entity. If the office has an existing agreement for a capacity grant and a lack of consensus on a lead entity area or a lead entity develops, the office may suspend, terminate, or fail to renew the agreement with that lead entity until the initiating governments agree.

**WSR 20-01-117**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

[Filed December 16, 2019, 8:27 a.m., effective January 16, 2020]

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

Purpose: The agency is amending this section to correct a WAC cross-reference and remove age restrictions on tax dependent individuals. This change reflects agency policy that the agency supports applications of individuals who are tax dependent regardless of age.

Citation of Rules Affected by this Order: Amending WAC 182-503-0010.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 19-22-019 on October 28, 2019.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 16, 2019.

Wendy Barcus  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-12-017, filed 5/30/17, effective 6/30/17)

**WAC 182-503-0010 Washington apple health—Who may apply.** (1) You may apply for Washington apple health for yourself.

(2) You may apply for apple health for another person if you are:

(a) A legal guardian;

(b) An authorized representative (as described in WAC ~~((182-500-0010))~~ 182-503-0130);

(c) A parent or caretaker relative of a child age eighteen or younger;

(d) A tax filer applying for a tax dependent (~~(age eighteen or younger)~~);

(e) A spouse; or

(f) A person applying for someone who is unable to apply on their own due to a medical condition and who is in need of long-term care services.

(3) If you reside in an institution of mental diseases (as defined in WAC 182-500-0050(1)) or a public institution (as defined in WAC 182-500-0050(4)), including a Washington state department of corrections facility, city, tribal, or county

jail, or secure community transition facility or total confinement facility (as defined in RCW 71.09.020), you, your representative, or the facility may apply for you to get the apple health coverage for which you are determined eligible.

(4) You are automatically enrolled in apple health and do not need to submit an application if you are a:

(a) Supplemental security income (SSI) recipient;

(b) Person deemed to be an SSI recipient under 1619(b) of the SSA;

(c) Newborn as described in WAC 182-505-0210; or

(d) Child in foster care placement as described in WAC 182-505-0211.

(5) You are the primary applicant on an application if you complete and sign the application on behalf of your household.

(6) If you are an SSI recipient, then you, your authorized representative as defined in WAC 182-500-0010, or another person applying on your behalf as described in subsection (2) of this section, must turn in a signed application to apply for long-term care services as described in WAC 182-513-1315.

**WSR 20-01-119**  
**PERMANENT RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2016-05—Filed December 16, 2019, 12:31 p.m., effective January 16, 2020]

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

Purpose: Independent escrow agents are currently licensed by the department of financial institutions (DFI) and are subject to extensive rules and regulations by DFI, from which title insurance companies are exempt. The commissioner seeks to adopt similar rules regulating the escrow practices of title insurance agents.

Citation of Rules Affected by this Order: New WAC 284-29-300, 284-29-310, 284-29-320, 284-29-330, and 284-29-340.

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.005.

Other Authority: None.

Adopted under notice filed as WSR 19-20-109 on October 2, 2019.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40360, Olympia, WA 98502, phone 360-725-7170, email TabbaA@oic.wa.gov, website www.insurance.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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, 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: December 16, 2019.

Mike Kreidler  
Insurance Commissioner

#### NEW SECTION

**WAC 284-29-300 Definitions.** For purposes of WAC 284-29-300 through 284-29-340:

(1) "Closing" means the process of completing a real estate transaction in accordance with the written escrow instructions of the principle parties during which: Deeds, deeds of trust, mortgages, leases, and other required documents are either executed or delivered, or both; an accounting between the parties is made; the funds are disbursed; and the appropriate documents are recorded.

(2) "Escrow" has the meaning set forth in RCW 18.44-011(7).

(3) "Escrow agent" has the meaning set forth in RCW 18.44.011(8).

(4) "Escrow instructions" are the instructions, signed by the principal parties to the transaction, that identify the duties and responsibilities of the title insurance agent in carrying out the escrow, that identify the thing or things of value held by the title insurance agent, and the specified condition or set of conditions under which the thing or things of value are to be transferred.

(5) "Escrow trust account" means an account to hold funds in trust for third parties.

(6) "Federally insured financial institution" means a financial institution that has its deposits insured by an instrumentality of the federal government, including the Federal Deposit Insurance Corporation (FDIC), Federal Savings and Loan Insurance Corporation (FSLIC) and National Credit Union Administration (NCUA).

(7) "Positive pay" or "reverse positive pay" means any system by which the authenticity of a check is determined before payment is made by the financial institution against which the check is drawn.

(8) "Trial balance" means a list of all open individual escrow ledger record balances at the end of the reconciliation period.

(9) "Three-way reconciliation" means a method for discovering shortages (intentional or otherwise), charges that must be reimbursed or any type of errors or omissions that must be corrected in relation to an escrow trust account.

(10) "Unclaimed fund" means any fund that is abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

#### NEW SECTION

**WAC 284-29-310 Title insurance agent employment restrictions.** A title insurance agent must not, without the written consent of the commissioner, employ any person that has been convicted of, or plead no contest to either:

(1) A felony involving dishonesty or a breach of trust within the last ten years; or

(2) A gross misdemeanor involving theft, fraud, forgery, embezzlement or the mishandling of funds, within the last year.

#### NEW SECTION

**WAC 284-29-320 Title insurance agent escrow records.** Under RCW 48.29.190 title insurance agents are required to keep adequate records of all transactions handled by the title insurance agent. These records must be in an organized form and must include and conform with the following requirements:

(1) An individual ledger for each escrow trust account for which funds are received. All of the transactions in the individual ledger must be accurate, posted, and kept current to the date of the most recent activity.

(2) All receipts and disbursements must be posted in the individual ledger, including:

(a) Credit entries that show the date of the deposit, amount, and name of the remitter;

(b) Debit entries that show the date of payment, amount of payment, name of the payee, wire transfer reference number, electronic payment reference number, or check number; and

(c) A monthly trial balance of each individual ledger.

(3) All documents pertinent to all individual trust account transaction activity must be retained, including:

(a) Original or imaged copies of checks clearing the bank (both front and back of the check);

(b) Bank debit memos when funds are disbursed via wire transfer and a copy of the instructions signed by the owner of the funds to be wire transferred identifying the receiving entity and account number;

(c) ACH confirmation or a copy of the confirmation screen. This retained documentation must, at a minimum, include payee, payment date, escrow account number debited, and the confirmation number assigned to the ACH transaction;

(d) Voided items and documents supporting all adjustments. All voided transactions must be posted or reflected in the individual client ledger and the receipts and disbursements ledger; and

(e) Bank statements.

(4) Transaction files containing all escrow instructions, closing statements, correspondence for each transaction, agreements, contracts, leases, and any other pertinent supporting documents necessary to validate the transaction.

(5) A computerized accounting system must:

(a) Provide a capability to back-up all data files; and

(b) At least monthly the receipt and check registers, bank reconciliation, client trial balance and transaction activity must be printed out or imaged and retained as a permanent record.

(6) At least quarterly, do the following:

(a) Conduct a review of all open client escrows and ensure that all outstanding payments are made for the purpose of resolving client escrow accounts and identifying unclaimed funds; and



(b) Contact the department of revenue for disposition instructions under chapter 63.29 RCW in the event that the title agent finds unclaimed funds. All correspondence related to unclaimed funds must be retained for five years.

#### NEW SECTION

##### **WAC 284-29-330 Controls for escrow trust accounts.**

(1) All escrow trust account funds received by a title insurance agent must be deposited in the account not later than the first banking day following the receipt thereof.

(2) A title insurance agent must not make any disbursement from an escrow trust account unless it is in compliance with RCW 48.29.190 (1)(c).

(3) Escrow trust accounts and operating accounts of the title insurance agent must be separately maintained and not commingled with the title insurance agent's operating account or an employee or manager's personal account.

(4) On at least a monthly basis, the title insurance agent must prepare trial balances for all escrow trust accounts using a three-way reconciliation method which requires that the escrow trial balance, the book balance, and the reconciled bank balance be verified on all open escrow balances. If all three parts of the three-way reconciliation do not agree, the title insurance agent must identify and reconcile the difference within a commercially reasonable period of time.

(5) On at least a daily basis, reconciliation of the receipts and disbursements of the escrow trust account must be performed.

(6) Segregation of duties must be in place to ensure the reliability of the reconciliation and reconciliations must be conducted by someone other than those with signing authority.

(7) Results of the reconciliation must be reviewed and approved by management.

(8) Appropriate identification must appear on all account-related documentation including bank statements, bank agreements, disbursement checks, and deposit tickets to identify the account as an escrow trust account.

(9) Outstanding escrow trust account file balances must be documented.

(10) Appropriate authorization levels must be set by the title insurance agent and reviewed annually for updates. Former employees must immediately be deleted as listed signatories on all bank accounts of the title insurance agent.

(11) Unless directed by the beneficial owner, all escrow trust accounts must be maintained in federally insured financial institutions.

(12) The title insurance agent must use positive pay or reverse positive pay, automated clearing house blocks and international wire blocks, if available.

#### NEW SECTION

**WAC 284-29-340 Retention of records after closure of business—Notice.** (1) Every title insurance agent providing escrow services must retain and preserve business and accounting records for five years after each transaction as required by RCW 48.29.190, 48.17.470, WAC 284-12-080, and 284-29-265 and must continue to do so after the business is closed.

(2) Every title insurance agent must provide the commissioner thirty days' advance written notice of its intent to close the business. This notice must provide the following:

(a) The most recently completed reconciliation of the escrow fund account to the trial balance and all supporting accounting records, including the escrow bank statement;

(b) A valid contact name, address, phone number, and email address;

(c) The location of the business records and how they are being retained; and

(d) A description how the records will be made available for inspection by the commissioner for five years after the date of completion of the escrow transactions as required by RCW 48.17.470.

#### **WSR 20-01-121**

##### **PERMANENT RULES**

##### **CRIMINAL JUSTICE**

##### **TRAINING COMMISSION**

[Filed December 16, 2019, 1:02 p.m., effective January 16, 2020]

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

Purpose: The wording that was agreed upon to be adopted was filed incorrectly. This is a correction to the first section adopted (WAC 139-12-010).

Citation of Rules Affected by this Order: New WAC 139-12-010.

Statutory Authority for Adoption: RCW 9A.16.040 (found in chapter 1, Laws of 2019) and 43.101.080.

Adopted under notice filed as WSR 19-21-178 on October 23, 2019.

Changes Other than Editing from Proposed to Adopted Version: WAC 139-12-010 Purpose, the independent investigation is conducted in the same manner as a criminal investigation and state law requires an "independent investigation" completely independent of the involved agency.

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 Non-governmental 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 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: December 16, 2019.

Derek Zable  
Human Resources and  
Government Affairs Manager

## Chapter 139-12 WAC

## LAW ENFORCEMENT TRAINING AND COMMUNITY SAFETY ACT—INDEPENDENT INVESTIGATIONS CRITERIA (LETCSA)

NEW SECTION

**WAC 139-12-010 Purpose.** In 2015 the U.S. Department of Justice issued a final report from the 21st Century Task Force on Policing. A core focus of that report addressed strategies for improving relationships, increasing community engagement, and fostering cooperation. The report recommended clear and comprehensive policies on the use of force, training on the importance of de-escalation, crisis intervention and mental health, the provision of first aid, and recommended external and independent investigations in officer involved shootings resulting in injury or death. Initiative 940 and SHB 1064 incorporated those recommendations and these WACs implement the requirement of an independent investigation that is completely independent of the involved agency. The goal of this requirement is to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.

Ultimately, this is about the sanctity of all human life; the lives of police officers and the lives of the people they serve and protect. The preservation of life should be at the heart of American policing. RCW 9A.16.040 provides a legal justification for officers whose use of deadly force meets the "good faith" standard. RCW 10.114.011 requires that where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The independent investigation is conducted in the same manner as a criminal investigation and state law requires an "independent investigation" completely independent of the involved agency.

**WSR 20-01-124**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 19-307—Filed December 16, 2019, 3:07 p.m., effective January 16, 2020]

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

Purpose: The department needs to amend rules to conform to state law and clarify pricing for customers.

Citation of Rules Affected by this Order: Amending WAC 220-220-320.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.240, 77.12.800, 77.32.090, 77.32.470.

Adopted under notice filed as WSR 19-21-126 on October 18, 2019.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 13, 2019.

Larry Carpenter, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 18-19-021, filed 9/11/18, effective 10/12/18)

**WAC 220-220-320 Recreational license dealer's fees.**

The department and license dealers may charge a license issuance fee as follows:

(1) Two dollars for the issuance of any of the following fishing licenses:

- (a) A combination license.
- (b) A saltwater license.
- (c) A freshwater license.
- (d) A one-, two-, or three-day temporary fishing license.
- (e) A family fishing weekend license.
- (f) A shellfish and seaweed license.
- (g) A razor clam license.

(2) Two dollars for the issuance of any of the following hunting licenses:

- (a) A big game combination license.
- (b) A small game license.
- (c) A three-consecutive day small game license.
- (d) A hunter education deferral for a big game license.
- (e) A hunter education deferral for a small game license.
- (f) A second animal license.
- (g) A special hunt license for mountain goat, bighorn sheep, or moose.
- (h) A Western Washington pheasant license.
- (i) A three-day Western Washington pheasant license.

(3) Notwithstanding the provisions of this section, if any two or more licenses are issued at the same time, or the fish and wildlife lands vehicle access pass is issued with any recreational license, the license issuance fee for the document is two dollars. Tags or other endorsements are additive to the two dollar license issuance fee.

(4) Two dollars for the issuance of an annual discover pass.

(5) Two dollars for the issuance of an aquatic invasive species prevention permit.

(6) Fifty cents for the issuance of any of the following:

- (a) A deer, elk, bear, cougar, mountain goat, mountain sheep, moose, or turkey transport tag.
- (b) An application for a special permit hunt.
- (c) Migratory bird harvest report cards issued with a hunt authorization.

- (d) A replacement of substitute special hunting season permit.
- (e) A migratory bird permit.
- (f) Additional fishing catch record cards.
- (g) A Puget Sound crab endorsement.
- (h) A temporary Puget Sound crab endorsement.
- (i) A two-pole endorsement.
- (j) ~~((A Columbia River salmon/steelhead endorsement~~  
~~(k)))~~ A one-day discover pass.
- ~~((H))~~ (k) Raffle tickets.

Date Adopted: December 16, 2019.

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

### Chapter 392-139 WAC

#### FINANCE—~~((MAINTENANCE AND OPERATION))~~ ENRICHMENT LEVIES

AMENDATORY SECTION (Amending WSR 00-09-017, filed 4/11/00, effective 5/12/00)

**WAC 392-139-005 Purposes.** The purposes of this chapter are to define the annual procedures that the superintendent of public instruction shall use to determine for each school district:

(1) The maximum dollar amount which may be levied on its behalf for ~~((general fund maintenance and operation))~~ enrichment support pursuant to RCW 84.52.053 and 84.52.0531; and

(2) The local effort assistance to be allocated to it pursuant to chapter 28A.500 RCW.

AMENDATORY SECTION (Amending WSR 03-21-040, filed 10/8/03, effective 11/8/03)

**WAC 392-139-008 Effective date.** This chapter applies to levy authority and local effort assistance calculations for the ~~((2005))~~ 2019 calendar year and thereafter. Levy authority and local effort assistance calculations for prior calendar years are governed by rules in effect as of January 1<sup>st</sup> of the calendar year.

AMENDATORY SECTION (Amending WSR 88-03-007, filed 1/8/88)

**WAC 392-139-050 Definition~~((—School year))~~.** ~~((As used in this chapter, "school year" means the same as defined in WAC 392-121-031.))~~ ((1) As used in this chapter, "calendar year" means the period commencing on January 1st and ending on December 31st. Unless otherwise stated, calendar year references including numeric references (e.g., 1994) are to the calendar year for which levy authority and local effort assistance are being calculated pursuant to this chapter.

((2) As used in this chapter, "certified excess levy" means the amount certified pursuant to RCW 84.52.020 by or on behalf of a school district to the board or boards of county commissioners of the county or counties of the school district for collection in a given calendar year for general fund enrichment support of the school district pursuant to RCW 84.52.053.

((3) As used in this chapter, the term "excess levy authority" means the maximum allowed dollar amount of a school district's certified excess levy for a given calendar year as determined pursuant to this chapter.

((4) "School year" means the same as defined in WAC 392-121-031.

### WSR 20-01-137

#### PERMANENT RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 17, 2019, 11:09 a.m., effective January 17, 2020]

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

Purpose: These proposed rules are related to school district levy authority and would create alignment with the revised levy statutes that were implemented on January 1, 2019. EHB 2242 (2017) changed office of superintendent of public instruction's (OSPI's) process and calculations in determining maximum school district levies starting in 2019. These proposed changes align OSPI's fiscal rules with existing RCW created around new levy policies implemented on January 1, 2019.

Citation of Rules Affected by this Order: Repealing WAC 392-139-007, 392-139-051, 392-139-052, 392-139-055, 392-139-058, 392-139-100, 392-139-105, 392-139-110, 392-139-115, 392-139-200, 392-139-205, 392-139-210, 392-139-215, 392-139-230, 392-139-235, 392-139-245, 392-139-310, 392-139-320, 392-139-330, 392-139-340, 392-139-345, 392-139-350 and 392-139-901; and amending WAC 392-139-005, 392-139-008, 392-139-050, 392-139-297, 392-139-300, 392-139-665, 392-139-900, 392-139-902, and 392-139-905.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 19-21-145 on October 22, 2019.

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 9, Repealed 23.

Number of Sections Adopted at the Request of a Non-governmental 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.

~~((DEFINITIONS FOR EXCESS LEVY AUTHORITY))~~

AMENDATORY SECTION (Amending WSR 89-23-121, filed 11/22/89, effective 12/23/89)

**WAC 392-139-297 General procedures.** All processes, calculations, and procedures used by the superintendent of public instruction in the administration of this chapter shall be conditioned on the following:

(1) Only data collected and approved by the superintendent of public instruction shall be used.

(2) All calculations (~~(, except those related to levy reduction funds,))~~ that are dependent on data which are not final at the time the calculation is (~~(performed))~~ performed shall be based on estimates prepared by the superintendent of public instruction.

(3) ~~((The calculation of levy reduction funds dependent on data that is not final at the time of the calculation will be calculated using prior school year data.~~

(4)) The following rounding procedures shall be used:

(a) Dollars to the nearest whole;

(b) Student enrollments to the nearest two decimal places;

(c) Percentages to the nearest two decimal places;

(d) Ratios to the nearest three decimal places; and

(e) Levy rates to the nearest six decimal places.

~~((5))~~ (4) The superintendent of public instruction shall provide each school district by August 31st of each year with the appropriate procedures for all calculations performed in this chapter.

~~((DETERMINATION OF)) EXCESS LEVY AUTHORITY~~

AMENDATORY SECTION (Amending WSR 01-22-098, filed 11/6/01, effective 12/7/01)

**WAC 392-139-300 Establishment of excess levy authority for school districts—General.** The maximum dollar amount of any school district's certified excess levy for any given calendar year shall equal the excess levy authority established by the superintendent of public instruction as (~~(follows))~~ the lesser of the following:

(1) ~~((Multiply the school district's excess levy base determined pursuant to WAC 392-139-310 by the school district's maximum excess levy percentage determined pursuant to WAC 392-139-320;~~

(2) ~~Adjust the result obtained in subsection (1) of this section by the amount of the school district's excess levy authority transfers determined pursuant to WAC 392-139-330, 392-139-340, and 392-139-901; and~~

(3) ~~Subtract the school district's maximum local effort assistance determined pursuant to WAC 392-139-660.)~~ The school district's maximum levy authority as calculated by the superintendent of public instruction pursuant to RCW 84.52.-0531; or

(2) The maximum certified excess levy.

DETERMINATION OF LOCAL EFFORT ASSISTANCE ~~((FOR 1998 AND THEREAFTER))~~

AMENDATORY SECTION (Amending WSR 89-23-121, filed 11/22/89, effective 12/23/89)

**WAC 392-139-665 Reporting of certified excess levy amounts.** No later than the third Wednesday in December of each year, each educational service district shall report to the superintendent of public instruction the certified excess levies for the next calendar for school districts in the educational service district. ~~((Such))~~ The report shall include copies of the documents used to certify excess levies to the board or boards of county commissioners pursuant to RCW 84.52.-020.

AMENDATORY SECTION (Amending WSR 90-12-080, filed 6/1/90, effective 7/2/90)

**WAC 392-139-900 Notification of amounts calculated.** The superintendent of public instruction shall provide notice of amounts calculated pursuant to this chapter as follows:

(1) Prior to ~~((October))~~ April 15<sup>th</sup> of each year, the superintendent of public instruction shall notify each school district of the results of calculations made for the school district for the ~~((next))~~ current calendar year including the following:

(a) Excess levy authority;

(b) ~~((Maximum excess levy percentage;~~

~~(e))~~ Eligibility for local effort assistance; and

~~((c))~~ (c) If eligible for local effort assistance:

(i) Maximum local effort assistance;

(ii) ~~((State matching ratio;))~~ Local effort assistance per thousand dollars of assessed valuation in the school district;

(iii) Certified excess levy necessary to qualify for maximum local effort assistance; and

(iv) ~~((Projected))~~ Local effort assistance allocation based on the superintendent of public instruction's estimate of certified excess levies for the ~~((next))~~ current calendar year at the time of the notice.

(2) ~~((Prior to November 15 of each year, the superintendent of public instruction shall notify the county assessor and chairman of the board of county commissioners of each county of excess levy authority for the next calendar year for those school districts headquartered in the county.~~

~~(3))~~ (3) At the time of the ~~((January))~~ April apportionment payment each year, the superintendent of public instruction shall notify each eligible school district of the amount of the school district's local effort assistance allocations for the year.

AMENDATORY SECTION (Amending WSR 93-21-092, filed 10/20/93, effective 11/20/93)

**WAC 392-139-902 Requests for review.** At any time prior to ~~((October))~~ April 15<sup>th</sup> of the ~~((prior))~~ current calendar year, a school district may request review of calculations made pursuant to this chapter. The request shall be in writing and shall be signed by the school district superintendent or authorized official. The superintendent of public instruction

will review calculations and respond to the district on or before ~~((November 1))~~ May 15th of the current calendar year.

AMENDATORY SECTION (Amending WSR 90-12-080, filed 6/1/90, effective 7/2/90)

**WAC 392-139-905 Submission of revised assessed valuation data and recalculation.** Within fifteen days from the date of the notice provided pursuant to WAC 392-139-900(1), any school district may submit to the superintendent of public instruction revised assessed valuation data for taxes collected in the current calendar year. Revised assessed valuation data shall be documented in writing by the county assessor or assessors from the county or counties in which the school district is located. The superintendent of public instruction shall recalculate excess levy authority and local effort assistance based on the revised assessed valuation data and shall notify the school district submitting revised assessed valuation data and any other affected school districts of the results of the recalculation prior to ~~((November 1))~~ May 15th.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-139-007 Organization of this chapter.
- WAC 392-139-051 Definition—Prior school year.
- WAC 392-139-052 Definition—Current school year.
- WAC 392-139-055 Definition—Calendar year.
- WAC 392-139-058 Definition—Prior year and prior calendar year.
- WAC 392-139-100 Definition—Certified excess levy.
- WAC 392-139-105 Definition—Excess levy authority.
- WAC 392-139-110 Definition—Report 1191.
- WAC 392-139-115 Definition—Basic education allocation.
- WAC 392-139-200 Definition—Report 1197.
- WAC 392-139-205 Definition—F-195.
- WAC 392-139-210 Definition—Annual average full-time equivalent (AAFTE) students.
- WAC 392-139-215 Definition—P-223H.
- WAC 392-139-230 Definition—P-213.
- WAC 392-139-235 Definition—Annual average full-time equivalent (AAFTE) resident enrollment.
- WAC 392-139-245 Definition—Levy reduction funds.
- WAC 392-139-310 Determination of excess levy base.
- WAC 392-139-320 Determination of maximum excess levy percentage.
- WAC 392-139-330 Determination of excess levy authority transfers for interdistrict cooperation programs.

- WAC 392-139-340 Determination of excess levy authority transfers from high school districts to nonhigh school districts.
- WAC 392-139-345 Definition—F-196.
- WAC 392-139-350 Definition—Revenues in the levy base received as a fiscal agent.
- WAC 392-139-901 Petitions for levy base adjustments.

#### **WSR 20-01-144**

##### **PERMANENT RULES**

##### **DEPARTMENT OF TRANSPORTATION**

[Filed December 17, 2019, 1:25 p.m., effective April 10, 2020]

Effective Date of Rule: April 10, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: At the request of the transportation commission, the definition of the transportation commission has been edited in WAC 468-305-001 reflecting its statutory authority.

Purpose: The effective date for this rule making is changed to April 10, 2020. Rules are needed to define customer requirements to use toll facilities and Washington state department of transportation procedures for processing transactions and penalties. This rule making is required to update specific requirements and procedures that will change when a new toll back office system becomes operational.

Citation of Rules Affected by this Order: Amending WAC 468-305-001, 468-305-100, 468-305-105, 468-305-125, 468-305-131, 468-305-133, 468-305-150, 468-305-160, 468-305-210, 468-305-220, 468-305-300, 468-305-315, 468-305-316, 468-305-320, 468-305-330, 468-305-340, 468-305-400, 468-305-526, 468-305-527, 468-305-528, 468-305-529, 468-305-540, 468-305-570, and 468-305-580.

Statutory Authority for Adoption: RCW 46.63.160(5), 47.01.101(5), 47.56.030(1), and 47.56.795.

Adopted under notice filed as WSR 19-09-069 on April 16, 2019.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, 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: December 17, 2019.

Kara Larsen, Director  
Risk Management  
and Legal Services

**WSR 20-01-145**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed December 17, 2019, 1:49 p.m., effective January 17, 2020]

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

Purpose: To implement chapter 189, Laws of 2019 (SB 5350), allowing members to purchase a lifetime annuity benefit from the state of Washington.

Citation of Rules Affected by this Order: Amending WAC 415-02-178 May I purchase an annuity?

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 19-21-164 on October 22, 2019.

Changes Other than Editing from Proposed to Adopted Version: None, the text being adopted is identical to the text that was proposed in WSR 19-21-164.

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 Non-governmental 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: December 17, 2019.

Tracy Guerin  
Director

AMENDATORY SECTION (Amending WSR 17-07-021, filed 3/7/17, effective 4/7/17)

**WAC 415-02-178 May I purchase an annuity? (1) Am I eligible to purchase an annuity?** You are eligible to purchase ~~((an))~~ a defined benefit plan annuity at the time of retirement ~~((from your defined benefit plan))~~ if you are a member of TRS (RCW 41.32.067), WSPRS (RCW 43.43.-315), LEOFF Plan 1 (RCW 41.26.105), ~~((or))~~ LEOFF Plan 2 (RCW 41.26.463), PERS (RCW 41.40.131), SERS (RCW 41.35.235), or PSERS Plan 2 (RCW 41.37.295). This annuity provides a lifetime increase to your monthly benefit. (For purchasing an annuity from your Plan 3 defined contribution account, refer to WAC 415-111-320.)

(2) **Can I purchase an annuity if I take a lump sum payment?** You may not purchase an annuity if you elect a lump sum payment instead of a monthly benefit.

(3) **Are there limits to the annuity amount I may purchase?** There is no maximum limit on the purchase amount. If you are a LEOFF or WSPRS member the minimum purchase amount is \$25,000. If you are a PERS, SERS, or PSERS member, the minimum purchase amount is \$5,000. There is no minimum required for TRS members.

(4) **When can I apply to purchase an annuity?** You must submit your request to purchase an annuity to the department at the time you apply for retirement.

(5) **How much will my monthly benefit increase if I purchase an annuity?** The increase in your monthly benefit will be calculated using the following formula:

$$\text{Purchase Annuity Amount} \times \text{Annuity Factor} = \text{Increase to Monthly Benefit}$$

The annuity factor is determined by your age on the later of your retirement date or the date your retirement application is submitted to the department.

**Example:** John is a member of LEOFF Plan 2. He applies for retirement and requests to purchase an annuity for \$45,000. For illustration purposes in this example only, we will use 0.0051025 as the corresponding annuity factor (factors change periodically). John's monthly benefit will increase by \$229.61 per month, calculated as follows:

$$\text{Purchase Annuity Amount} \times \text{Annuity Factor} = \text{Increase to Monthly Benefit}$$

$$\$45,000 \times 0.0051025 = \$229.61$$

(6) **How and when do I pay for the annuity?** The department will generate a bill to you for the cost of the annuity after we receive your request to purchase.

(a) For all TRS members, payment may be made by making a one-time personal payment (however, IRS regulations limit the amount of after-tax dollars you may use); or you may roll over funds from another tax-deferred retirement account.

(b) For LEOFF ~~((and))~~, WSPRS, PERS, SERS, and PSERS members, the annuity must be purchased by rolling over funds from an "eligible retirement plan" which is a tax qualified plan offered by a governmental employer (like the state of Washington's deferred compensation program).

(c) Payment must be made in full by ninety days after the later of your retirement date or bill issue date. Your annuity will begin once your payment is received and your retirement is processed. The effective date for the start of this benefit is the later of your retirement date or the payment in full date plus one day.

(7) **What are the survivor options for my annuity?** The survivor option you designate for your retirement benefit will also be used for your annuity purchase, with the exception of WSPRS Plan 1 Option A and LEOFF Plan 1.

If you are a WSPRS Plan 1 member who chose Option A or you are a LEOFF Plan 1 member, your annuity will be paid for your lifetime only. Under these two survivor options, even though the retirement benefit may be paid over two lifetimes, there is no actuarial reduction. No actuarial reduction

can be applied to the annuity, therefore the annuity can only be treated as if a single life option was chosen.

If you choose a benefit option with a survivor feature and your survivor dies before you, your monthly annuity payment will increase to the amount it would have been had you not selected a survivor option.

**(8) Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the purchased annuity?**

~~((a))~~ If you are eligible for an annual COLA adjustment on your monthly benefit, you will receive the same COLA percentage on this annuity.

~~((b) If you retire from TRS Plan 1 you must elect the optional auto COLA in order to receive a COLA on the annuity amount.)~~

**(9) If I purchase an annuity and then return to work, how will the annuity portion of my benefit be affected? You will continue to receive the annuity portion of your**

monthly benefit payment even if you return to work, or return to membership.

**(10) If I retire then return to membership and rere-tire, may I purchase another annuity?** Yes. You may purchase another annuity when you rere-tire provided you are rere-tiring from an eligible plan that allows an annuity purchase.

**(11) May I purchase an annuity from more than one retirement plan?**

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase an annuity from each dual member plan that allows an annuity purchase.

(b) If you are not a dual member and retire separately from more than one plan you may purchase an annuity from each eligible plan that allows an annuity purchase.

**(12) What happens to my annuity upon my death (and the death of my survivor, if applicable)?**

System Plan	Benefit Option	Annuity Payment Upon Death
TRS 1	Maximum Option	At the time of your death the annuity payment stops.
TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2, PERS 1, PERS 2, PERS 3, SERS 2, SERS 3, and PSERS 2	Option 1 (single life)	At the time of your death the annuity payments stop. The original amount you paid for your annuity, less any payments you have received, will be paid to your designated beneficiary.
WSPRS 1	Option A	
LEOFF 1	Automatic Survivor	
TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2, PERS 1, PERS 2, PERS 3, SERS 2, SERS 3, and PSERS 2	Option 2, 3, 4 (joint life)	At the time of your death, payments will continue to your survivor. At the time of your survivor's death, the original amount you paid for your annuity, less any payments you and your survivor have received, will be paid to your designated beneficiary.
WSPRS 1	Option B (joint life)	

**WSR 20-01-152  
PERMANENT RULES  
DEPARTMENT OF COMMERCE**

[Filed December 17, 2019, 3:17 p.m., effective January 17, 2020]

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

Purpose: The department is amending chapter 365-220 WAC, Developmental disabilities endowment trust fund, as follows: Clarifying WAC 365-220-070, 365-220-075, and 365-220-100 to have consistent language regarding reversion of state match when an account is closed.

Citation of Rules Affected by this Order: Amending WAC 365-220-070, 365-220-075, and 365-220-100.

Statutory Authority for Adoption: RCW 43.330.430 through 43.330.437.

Adopted under notice filed as WSR 19-19-087 on September 18, 2019.

Changes Other than Editing from Proposed to Adopted Version: Changes in WAC 365-220-070 and 365-220-075 included a format edit that moved the proposed subsection (3) language about the state match reversion to subsection (2) options A and C. Although a bit repetitive, the change provides the clarity needed for each appropriate option versus

qualifying all three options (A-C) when subsection (2) option B needed no qualification.

Changes in WAC 365-220-100 included deleting the newest language from the previous rule making regarding transferring funds to an ABLE account not requiring governing board approval. Since WAC 365-220-025 defines ABLE as an eligible disbursement, moving money to an ABLE account is not a transfer, and the whole sentence in WAC 365-220-100 is irrelevant and therefore deleted. Further, the proposed last sentence in this section is deleted since disbursements for allowable and eligible expenditures include any state match funds available to the beneficiary. The sentence is irrelevant in the context of a disbursement to an ABLE account. The proposed language and previous change were not necessary because these are not transfers of funds to ABLE accounts. The original language about how to initiate a funds transfer is still pertinent.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Date Adopted: December 17, 2019.

Sarah Coggins  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 19-07-034, filed 3/13/19, effective 4/13/19)

**WAC 365-220-070 What happens if a beneficiary moves out of the state of Washington?** If the beneficiary moves out of the state of Washington:

(1) The primary representative is required to notify the trust manager in writing within thirty days of the beneficiary's move out of the state of Washington.

(2) The governing board may elect, in its discretion, one of three options:

- A The balance of the beneficiary's individual trust account will be ~~((placed in))~~ transferred to another existing special needs trust established for the beneficiary. Any costs relating to the transfer will be charged to the beneficiary's individual trust account. Any unexpended state matching money shall revert to the developmental disabilities endowment trust fund.

-OR-

- B The individual trust account will remain open, and the account will be assessed fees at a level that will support all costs of maintaining the account. The beneficiary will no longer be eligible for the state match as of the date the beneficiary ceases to be a resident of Washington.

-OR-

- C The beneficiary's individual trust account will be terminated and distributed as if the beneficiary had died. Any unexpended state matching money shall revert to the developmental disabilities endowment trust fund.

**AMENDATORY SECTION** (Amending WSR 19-07-034, filed 3/13/19, effective 4/13/19)

**WAC 365-220-075 What happens if a beneficiary is determined to no longer meet the Washington state definition of developmental disability in RCW 71A.10.020(5)?** (1) The primary representative is required to notify the trust manager in writing if the beneficiary is found to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(5) within thirty days of the decision.

(2) If the beneficiary is determined to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(5), the governing board may elect, at its discretion, one of three options:

- A The balance of the beneficiary's individual trust account will be ~~((placed in))~~ transferred to another existing special needs trust established for the beneficiary. Any costs relating to the transfer will be charged to the beneficiary's individual trust account. Any unexpended state matching money shall revert to the developmental disabilities endowment trust fund.

-OR-

- B The beneficiary's individual trust account will remain open, and the account will be assessed fees at a level that will support all costs of maintaining the account. The beneficiary will no longer be eligible for the state match as of the date the beneficiary is determined to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(5). New contributions will not be accepted into the individual trust account during any period when the beneficiary does not meet the definition of the person with a developmental disability in RCW 71A.10.020(5).

-OR-

- C The trust manager will make or direct distributions to or for the benefit of the beneficiary or to an achieving a better life experience (ABLE) account of the beneficiary, after first, the taxes and administrative expenses are paid and after second, the medicaid payback is enforced (if applicable).

**AMENDATORY SECTION** (Amending WSR 19-07-034, filed 3/13/19, effective 4/13/19)

**WAC 365-220-100 When and how may individual accounts be transferred?** A primary representative may request governing board approval for a transfer of an account to another special needs trust. This must be done through written correspondence to the governing board stating the reasons for the request. The governing board shall review all requests for transfers. Only the governing board or its designee may approve transfers. Any such transfers shall be consistent with the master trust and federal and state law.

~~((Transferring funds from an individual trust account to a qualified achieving a better life experience (ABLE) 529A account for the same beneficiary does not require governing board approval.))~~ The primary representative must contact the trust manager to initiate the funds transfer.

**WSR 20-01-162**  
**PERMANENT RULES**  
**BUILDING CODE COUNCIL**

[Filed December 18, 2019, 8:56 a.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.



Purpose: The purpose of this permanent rule making is to amend the 2018 International Fire Code, as directed by the state building code council on October 11, 2019. The implementation date is July 1, 2020.

Citation of Rules Affected by this Order: New 3; and amending 19.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 19-16-157 on August 7, 2019.

Changes Other than Editing from Proposed to Adopted Version: Proposed changes to WAC 51-54A-0105 Scope and general requirements, were dropped.

A final cost-benefit analysis is available by contacting Richard Brown, 1500 Jefferson Street S.E., phone 360-407-9277, email Richard.Brown@des.wa.gov, website www.sbcc.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 Non-governmental Entity: New 3, Amended 19, 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 11, 2019.

Doug Orth  
Chair

**Chapter 51-54A WAC**

**STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2015)) 2018 EDITION OF THE INTERNATIONAL FIRE CODE**

AMENDATORY SECTION (Amending WSR 16-05-065, filed 2/12/16, effective 7/1/16)

**WAC 51-54A-0101 Section 101—Scope and general requirements.**

**101.2.1 Appendices.** Provisions in the appendices shall not apply unless specifically adopted. ((The State Building Code Council has determined that a local ordinance adopting Appendix N Wildland Urban Interface Code may be adopted by any local government upon notification of the council.))

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

**WAC 51-54A-0405 ((Emergency evacuation drills.)) Reserved.**

~~((405.1 General. Emergency drills complying with the provisions of this section shall be conducted at least annually in the occupancies listed in Section 405.2.1 or when required by the fire code official. Drills shall be designed in cooperation with the local authorities.~~

~~**405.2 Frequency.** Required emergency drills shall be held at the intervals specified in Table 405.2 or more frequently where necessary to familiarize all occupants with the drill procedure.~~

~~**405.2.1 Group E occupancies.** The occupancy shall conduct at a minimum the following drills during the year:~~

~~1. One drill using the school mapping information system.~~

~~EXCEPTION: Day cares not collocated on a school campus.~~

~~2. Three fire evacuation drills.~~

~~3. One shelter in place drill.~~

~~4. Additional drills shall be as required by RCW 28A.320.125.~~

**Table 405.2**

**Fire and Evacuation Drill Frequency and Participation**

<b>Group or Occupancy</b>	<b>Frequency</b>	<b>Participation</b>
Group A	Quarterly	Employees
Group B <sup>b</sup>	Annually	All Occupants
Group B <sup>b,e</sup> (Ambulatory Care Facilities)	Annually	Employees
Group B <sup>b</sup> (Clinic, outpatient)	Annually	Employees
Group E	Monthly <sup>a,e</sup>	All Occupants
Group F	Annually	Employees
Group I-1	Semiannually on each shift	All Occupants
Group I-2	Quarterly on each shift <sup>a</sup>	Employees
Group I-3	Quarterly on each shift <sup>a</sup>	Employees
Group I-4	Quarterly on each shift <sup>a</sup>	All Occupants
Group R-1	Quarterly on each shift	Employees
Group R-2 <sup>f</sup>	Quarterly on each shift	Employees
Group R-2 <sup>g</sup>	Four Annually	All Occupants
High rise buildings	Annually	Employees

<sup>a</sup> In severe climates, the fire code official shall have the authority to modify the emergency evacuation drill frequency.

- b. Emergency evacuation drills are required in Group B buildings having an occupant load of 500 or more persons or more than 100 persons above or below the level of exit discharge.
- c. Emergency evacuation drills are required in ambulatory care facilities in accordance with Section 403.3.
- d. Emergency evacuation drills in Group R-2 college and university buildings shall be in accordance with Section 403.10.2.1. Other Group R-2 occupancies shall be in accordance with Section 403.10.2.2.
- e. Day cares collocated on a Group E campus shall participate in emergency drills occurring on the campus.
- f. Applicable to group homes licensed by the state of Washington. Emergency evacuation drills for assisted living facilities and residential treatment facilities licensed by the state of Washington are required to meet the requirements of Group I-1.

**405.4 Time.** Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in case of an emergency.

**405.5 Recordkeeping.** Records shall be maintained of required emergency evacuation drills and include the following information:

1. Identity of the person conducting the drill.
2. Date and time of the drill.
3. Notification method used.
4. Staff members on duty and participating.
5. Number of occupants participating.
6. Special conditions simulated.
7. Problems encountered and corrective actions taken.
8. Weather conditions when occupants were evacuated.
9. Time required to accomplish complete evacuation, or shelter in place.

**405.6 Notification.** Where required by the fire code official, prior notification of emergency evacuation drills shall be given to the fire code official.

**405.7 Initiation.** Emergency drills shall be initiated in accordance with Sections 405.7.1 through 405.7.2.

**405.7.1 Fire evacuation drills.** Where a fire alarm system is provided, emergency evacuation drills shall be initiated by activating the fire alarm system. The fire alarm monitoring company shall be notified prior to the activation of the fire alarm system for drills proposed and again at the conclusion of the transmission and restoration of the fire alarm system to normal mode.

**EXCEPTION:** Drills conducted between the hours of 9:00 p.m. and 6:00 a.m., in assisted living facilities, group homes, and residential treatment facilities licensed by the state of Washington.

**405.7.2 Shelter in place drills.** Shelter in place drills shall be initiated by the shelter in place alert signal, generated by an alerting system in accordance with Section 907.5.2.

**405.8 Accountability.** As building occupants arrive at the assembly point, efforts shall be made to determine if all occupants have been successfully evacuated and/or have been accounted for in the shelter in place.

**405.9 Recall and reentry.** The recall signal initiation shall be manually operated and under the control of the person in charge of the premises or the official in charge of the inci-

dent. No one shall reenter the premises until authorized to do so by the official in charge.)

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-0406 Employee training and response procedures.**

**406.1 General.** Employees in the occupancies listed in Section 403 shall be trained in the emergency procedures described in their emergency plans. Training shall be based on these plans and as described in Section ((404.2 and 404.3)) 406.2 and 406.3.

**406.2 Frequency.** Employees shall receive training in the contents of the emergency plans and their duties as part of new employee orientation and at least annually thereafter. Records shall be kept and made available to the fire code official upon request.

**406.3 Employee training program.** Employees shall be trained in fire prevention, evacuation, sheltering-in-place, and fire safety in accordance with Sections 406.3.1 through 406.3.3.

((~~406.3.1 Fire prevention training.~~ Employees shall be apprised of the fire hazards of the materials and processes to which they are exposed. Each employee shall be instructed in the proper procedures for preventing fires in the conduct of their assigned duties.

~~406.3.2 Evacuation training.~~ Employees shall be familiarized with the fire alarm and evacuation signals, their assigned duties in the event of an alarm or emergency, evacuation routes, areas of refuge, exterior assembly areas and procedures for evacuation.

~~406.3.3 Fire safety training.~~ Employees assigned firefighting duties shall be trained to know the locations and proper use of portable fire extinguishers or other manual firefighting equipment and the protective clothing or equipment required for its safe and proper use.

~~406.3.4)~~ **406.3.5 Emergency shelter-in-place training.** Where a facility has a shelter-in-place plan, employees shall be trained on the alert and recall signals, communication system, location of emergency supplies, the use of the incident notification and alarm system, and their assigned duties and procedures in the event of an alarm or emergency.

**406.4 Emergency lockdown training.** This section is not adopted.

AMENDATORY SECTION (Amending WSR 17-18-060, filed 9/1/17, effective 10/2/17)

**WAC 51-54A-0605 ((Electrical equipment, wiring and hazards.)) Reserved.**

((~~605.11 Solar photovoltaic power systems.~~ Installation, modification, or alteration of solar photovoltaic power systems shall comply with this section. Due to the emerging technologies in the solar photovoltaic industry, it is understood fire code officials may need to amend prescriptive

requirements of this section to meet the requirements for fire-fighter access and product installations. Section 104.9 Alternative materials and methods of this code shall be considered when approving the installation of solar photovoltaic power systems. Solar photovoltaic power systems shall be installed in accordance with Sections 605.11.1 through 605.11.2, the *International Building Code* and chapter 19.28 RCW.

**605.11.1.1 Roof access points.** Roof access points shall be located in areas that do not require the placement of ground ladders over openings such as windows or doors, and located at strong points of building construction in locations where the access point does not conflict with overhead obstructions such as tree limbs, wires or signs.

**605.11.1.2 Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code*.** Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code* shall comply with Sections 605.11.1.2.1 through 605.11.1.2.5.

- EXCEPTIONS:
1. Residential dwellings with an approved automatic fire sprinkler system installed.
  2. Residential dwellings with approved mechanical or passive ventilation systems.
  3. Where the fire code official determines that the slope of the roof is too steep for emergency access.
  4. Where the fire code official determines that vertical ventilation tactics will not be utilized.
  5. These requirements shall not apply to roofs where the total combined area of the solar array does not exceed thirty-three percent as measured in plan view of the total roof area of the structure, where the solar array will measure 1,000 sq. ft. or less in area, and where a minimum eighteen inches unobstructed pathway shall be maintained along each side of any horizontal ridge.

**605.11.1.2.1 Size of solar photovoltaic array.**

1. Each photovoltaic array shall be limited to 150 feet (45,720 mm) by 150 feet (45,720 mm). Multiple arrays shall be separated by a 3-foot wide (914 mm) clear access pathway.

2. Panels/modules shall be located up to the roof ridge where an alternative ventilation method approved by the fire code official has determined vertical ventilation techniques will not be employed.

**605.11.1.2.5 Allowance for smoke ventilation operations.** Panels and modules installed on Group R-3 residential and buildings built under the *International Residential Code* shall be located not less than 18 inches (457 mm) from the ridge in order to allow for fire department smoke ventilation operations.

- EXCEPTION:
- Panels and modules shall be permitted to be located up to the roof ridge where an alternative ventilation method approved by the fire chief has been provided or where the fire chief has determined vertical ventilation techniques will not be employed.

**605.11.2 Ground-mounted photovoltaic arrays.** Ground-mounted photovoltaic arrays shall comply with Section 605.11 and this section. Setback requirements shall not apply to ground-mounted, free-standing photovoltaic arrays.))

NEW SECTION

**WAC 51-54A-0607 Section 607—Commercial kitchen hoods.**

**[M]607.2 Where required.** A Type I hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease laden vapors.

- EXCEPTIONS:
1. Factory-built commercial exhaust hoods that are listed and labeled in accordance with UL 710, and installed in accordance with Section 304.1 of the *International Mechanical Code*, shall not be required to comply with Sections 507.1.5, 507.2.3, 507.2.5, 507.2.8, 507.3.1, 507.3.3, 507.4 and 507.5 of the *International Mechanical Code*.
  2. Factory-built commercial cooking recirculating systems that are listed and labeled in accordance with UL 710B, and installed in accordance with Section 304.1 of the *International Mechanical Code*, shall not be required to comply with Sections 507.1.5, 507.2.3, 507.2.5, 507.2.8, 507.3.1, 507.3.3, 507.4 and 507.5 of the *International Mechanical Code*. Spaces in which such systems are located shall be considered to be kitchens and shall be ventilated in accordance with Table 403.3.1.1 of the *International Mechanical Code*. For the purpose of determining the floor area required to be ventilated, each individual appliance shall be considered as occupying not less than 100 square feet (9.3 m<sup>2</sup>).
  3. Where cooking appliances are equipped with integral down-draft exhaust systems and such appliances and exhaust systems are listed and labeled for the application in accordance with NFPA 96, a hood shall not be required at or above them.
  4. A Type I hood shall not be required for an electric cooking appliance where an approved testing agency provides documentation that the appliance effluent contains 5 mg/m<sup>3</sup> or less of grease when tested at an exhaust flow rate of 500 cfm (0.236 m<sup>3</sup>/s) in accordance with UL 710B.
  5. A Type I hood shall not be required to be installed in an R-2 occupancy with not more than 16 residents.

**607.2.1 Domestic cooking appliances used for commercial purposes.** Domestic cooking appliances utilized for commercial purposes shall be provided with Type I, Type II, or residential hoods as required for the type of appliances and processes in accordance with Table 607.2.1 and Sections 507.2, 507.2.1 and 507.2.2 of the *International Mechanical Code*.

**Table 607.2.1**

**Type of Hood Required for Domestic Cooking Appliances in the Following Spaces<sup>a,b</sup>**

Type of Space	Type of Cooking	Type of Hood
Church	1. Boiling, steaming, and warming precooked food	Type II hood <sup>c</sup>
	2. Roasting, pan frying, and deep frying	Type I hood

Type of Space	Type of Cooking	Type of Hood
Community or party room in apartment and condominium	1. Boiling, steaming, and warming precooked food	Residential hood <sup>d</sup> or Type II hood <sup>d,e</sup>
	2. Roasting, pan frying, and deep frying	Type I hood
Day care	1. Boiling, steaming, and warming precooked food	Residential hood <sup>d</sup> or Type II hood <sup>d,e</sup>
	2. Roasting, pan frying, and deep frying	Type I hood
Dormitory, assisted living facility, nursing home	1. Boiling, steaming, and warming precooked food	Type II hood <sup>e</sup>
	2. Roasting, pan frying, and deep frying	Type I hood
Office lunch room	1. Boiling, steaming, and warming precooked food	Residential hood <sup>d</sup> or Type II hood <sup>d,e</sup>
	2. Roasting, pan frying, and deep frying	Type I hood

- a Commercial cooking appliances shall comply with Section 507.2 of the *International Mechanical Code*.
- b Requirements in this table apply to electric or gas fuel appliances only. Solid fuel appliances or charbroilers require Type I hoods.
- c Residential hood shall ventilate to the outside.
- d Type II hood required when more than one appliance is used.
- e Hoods are not required where the HVAC design meets IMC 507.3.

**607.3 Operations, inspection, and maintenance.** Commercial cooking systems shall be operated, inspected, and maintained in accordance with Sections 607.3.1 through 607.3.4 and Chapter 11 of NFPA 96.

AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

**WAC 51-54A-0701 General.**

~~(701.3)~~ **701.6 Owner's responsibility.** The owner shall maintain an inventory of all required fire-resistance-rated construction, construction installed to resist the passage of smoke and the construction included in Sections 703 through 707 and Sections 602.4.1 and 602.4.2 of the *International Building Code*. Such construction shall be visually inspected by the owner annually and properly repaired, restored or replaced where damaged, altered, breached or penetrated. Records of inspections and repairs shall be maintained. Where concealed, such elements shall not be required to be visually inspected by the owner unless the concealed space is

accessible by the removal or movement of a panel, access door, ceiling tile or similar movable entry to the space.

AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

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

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

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or
2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:
  - 2.1 The ability to broadcast voice messages or customized announcements;
  - 2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;
  - 2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;
  - 2.4 The ability for two-way communications;
  - 2.5 The ability for individual room calling;
  - 2.6 The ability for a manual override;
  - 2.7 Installation in accordance with NFPA 72;
  - 2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and
  - 2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

- EXCEPTIONS:
1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
  2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
  3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:
    - 3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or
    - 3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).
  4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
    - 4.1 Interior corridors are protected by smoke detectors.

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

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

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

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

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

5.3 Manual activation is provided from a normally occupied location.

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

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

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

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

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

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

2. Smoke detection is not required for exterior balconies.

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

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

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

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

~~((907.10))~~ **907.10.3 Testing/maintenance:** All inspection, testing, maintenance and programing not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II or ESA/NTS Certified Fire Alarm Technician (CFAT) Level II Fire in fire alarms (effective July 1, 2018).

**907.11 NICET: National Institute for Certification in Engineering Technologies and ESA/NTS: Electronic Security Association/National Training School.**

~~((907.10.4))~~ **907.11.1 Scope.** This section shall apply to new and existing fire alarm systems.

~~((907.10.2))~~ **907.11.2 Design review:** All construction documents shall be reviewed by a NICET III, an ESA/NTS Certified Fire Alarm Designer (CFAD) Level III Fire in fire alarms, or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction (effective July 1, 2018).

~~((907.10.3 Testing/maintenance: All inspection, testing, maintenance and programing not defined as "electrical construction trade" by chapter 19.28 RCW shall be completed by a NICET II or ESA/NTS Certified Fire Alarm Technician (CFAT) Level II Fire in fire alarms (effective July 1, 2018).))~~

**AMENDATORY SECTION** (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-0909 Smoke control systems.**

**909.6.3 Pressurized stairways and elevator hoistways.** Where stairways or elevator hoistways are pressurized, such pressurization systems shall comply with the requirements of Section 909.20 of this code for stair pressurization and 909.21 of the *International Building Code and Fire Code* as necessary to determine that the stairway or elevator hoistways meet the pressurization requirements of the code. Stairway and elevator hoistway pressurization systems in high-rise buildings, underground buildings, and in airport traffic

control towers shall comply with IBC and IFC Sections 909 as smoke control systems.

Stairway pressurization systems in other than high-rise buildings, underground buildings, or airport traffic control towers are smoke control systems but shall only be required to comply with the following IBC 909 Sections: 909.1, 909.2, 909.3, 909.6 with the exception of Section 909.6.1, 909.10 with the exception of Sections 909.10.2, 909.11 with the exception of Section 909.11.1, 909.12 with the exception of Sections 909.12.3.2, 909.13, 909.14, 909.17, 909.18 with the exception of Sections 909.18.2 and 909.18.9, 909.19, 909.20.5, and 909.20.6. Design drawings shall include a description of system operation, the conditions for system testing and the criteria for system acceptance to achieve the code minimum performance of the smoke control system. Stairway pressurization systems shall be maintained in accordance with Section 909.20 of this code.

Elevator hoistway pressurization systems in other than high-rise buildings, underground buildings, or airport traffic control towers are smoke control systems but shall only be required to comply with the following IBC 909 Sections: 909.1, 909.2, 909.3, 909.6 with the exception of Section 909.6.1, 909.10 with the exception of Sections 909.10.2, 909.11 with the exception of Section 909.11.1, 909.12 with the exception of Sections 909.12.3.2, 909.13, 909.14, 909.17, 909.18 with the exception of Sections 909.18.2 and 909.18.9, 909.19, and 909.21 with the exception of Sections 909.21.2, 909.21.9, and 909.21.10. Design drawings shall include a description of system operation, the conditions for system testing and the criteria for system acceptance to achieve the code minimum performance of the smoke control system. Elevator hoistway pressurization systems shall be maintained in accordance with Section 909.20 of this code.

**909.21.12 Hoistway venting.** Hoistway venting required by Section 3009 of the state building code need not be provided for pressurized elevator shafts.

**909.21.13 Machine rooms.** Elevator machine rooms shall be pressurized in accordance with this section unless separated from the hoistway shaft by construction in accordance with Section 707 of the *International Building Code*.

**AMENDATORY SECTION** (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-0915 Carbon monoxide detection.**

**915.1 General.** Carbon monoxide detection shall be installed in new buildings in accordance with Sections 915.1.1 through 915.6. Carbon monoxide detection shall be installed in existing buildings in accordance with Chapter 11 of the *International Fire Code*.

**915.1.1 Where required.** Carbon monoxide detection shall be provided in Group I and R occupancies and in classrooms in Group E occupancies in the locations specified in Section 915.2 where any of the conditions in Sections 915.1.2 through 915.1.6 exist.

EXCEPTIONS: 1. R-2 occupancies, with the exception of R-2 college dormitories, are required to install carbon monoxide detectors without exception.

2. Sleeping units or dwelling units in I and R-1 occupancies and R-2 college dormitories, hotel, DOC prisons and work releases and assisted living facilities and residential treatment facilities licensed by the state of Washington, which do not themselves contain a fuel-burning appliance, a fuel-burning fireplace, or have an attached garage, need not be provided with carbon monoxide alarms provided that they comply with the exceptions of Section 915.1.4.

~~(915.1.2 Fuel-burning appliances and fuel-burning fireplaces.~~ Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms that contain a fuel-burning appliance or a fuel-burning fireplace.

~~915.1.3 Forced air furnaces.~~ Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms served by a fuel-burning, forced air furnace.

EXCEPTION: Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms where carbon monoxide detection is provided in the first room or area served by each main duct leaving the furnace, and the carbon monoxide alarm signals are automatically transmitted to an approved location.

~~915.1.4 Fuel-burning appliances outside of dwelling units, sleeping units and classrooms.~~ Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms located in buildings that contain fuel-burning appliances or fuel-burning fireplaces.

EXCEPTIONS:

1. Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms where there are no communicating openings between the fuel-burning appliance or fuel-burning fireplace and the dwelling unit, sleeping unit or classroom.
2. Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms where carbon monoxide detection is provided in one of the following locations:
  - 2.1 In an approved location between the fuel-burning appliance or fuel-burning fireplace, and the dwelling unit, sleeping unit or classroom.
  - 2.2 On the ceiling of the room containing the fuel-burning appliance or fuel-burning fireplace.

~~915.1.5 Private garages.~~ Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms in buildings with attached private garages.

EXCEPTIONS:

1. Carbon monoxide detection shall not be required where there are no communicating openings between the private garage and the dwelling unit, sleeping unit or classroom.
2. Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms located more than one story above or below a private garage.
3. Carbon monoxide detection shall not be required where the private garage connects to the building through an open-ended corridor.
4. Where carbon monoxide detection is provided in an approved location between openings to a private garage and dwelling units, sleeping units or classrooms, carbon monoxide detection shall not be required in the dwelling units, sleeping units or classrooms.

**915.1.6 Exempt garages.** For determining compliance with Section 915.1.5, an open parking garage complying with Sec-

tion 406.5 of the *International Building Code* or an enclosed parking garage complying with Section 406.6 of the *International Building Code* shall not be considered a private garage.

**915.2 Locations.** Where required by Section 915.1.1, carbon monoxide detection shall be installed in the locations specified in Sections 915.2.1 through 915.2.3.))

**915.2.1 Dwelling units.** Carbon monoxide detection shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each level of the dwelling. Where a fuel-burning appliance or a fuel-burning fireplace is located within a bedroom or its attached bathroom, carbon monoxide detection shall be installed within the bedroom.

**915.2.2 Sleeping units.** Carbon monoxide detection shall be installed in *sleeping units*.

EXCEPTION: Carbon monoxide detection shall be allowed to be installed outside of each separate sleeping area in the immediate vicinity of the sleeping unit where the sleeping unit or its attached bathroom does not contain a fuel-burning appliance or fuel-burning fireplace and is not served by a forced air furnace.

**915.2.3 Group E occupancies.** When required by Section 915.1 in new buildings, or by Chapter 11 of the *International Fire Code*, carbon monoxide detection shall be installed in classrooms in Group E occupancies. Carbon monoxide alarm signals shall be automatically transmitted to an on-site location that is staffed by school personnel.

EXCEPTIONS:

1. Carbon monoxide alarm signals shall not be required to be automatically transmitted to an on-site location that is staffed by school personnel in Group E occupancies with an occupant load of 50 or less.
2. Carbon monoxide alarm signals shall not be required to be automatically transmitted to an on-site location that is staffed by school personnel in Group E occupancies where an exception contained in Section 915.1 applies, or in Group E occupancies where signals are transmitted to an off-site service monitored by a third party, such as a service that monitors fire protection systems in the building.

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-0916 ((Alerting systems.)) Reserved.**

~~((916.1 General. An approved alerting system shall be provided in buildings and structures as required in Chapter 4 and this section, unless other requirements are provided by another section of this code.~~

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

~~**916.2 Power source.** Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."~~

EXCEPTION: Systems which do not require electrical power to operate.

~~**916.3 Duration of operation.** The alerting system shall be capable of operating under nonalarm condition (quiescent~~

load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

~~**916.4 Combination system.** Alerting system components and equipment shall be allowed to be used for other purposes.~~

~~**916.4.1 System priority.** The alerting system use shall take precedence over any other use.~~

~~**916.4.2 Fire alarm system.** Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.~~

~~**916.4.2.1 Signal priority.** Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.~~

~~**916.4.2.2 Temporary deactivation.** Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm initiated audible messages or signals during the time period required to transmit the alert signal.~~

~~**916.4.2.3 Supervisory signal.** Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.~~

~~**916.5 Audibility.** Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.~~

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 916.6.

~~**916.6 Visibility.** Visible and textual notification appliances shall be permitted in addition to alert signal audibility.))~~

NEW SECTION

**WAC 51-54A-0918 Alerting systems.**

**918.1 General.** An approved alerting system shall be provided in buildings and structures as required in Chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

**918.2 Power source.** Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

**918.3 Duration of operation.** The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

**918.4 Combination system.** Alerting system components and equipment shall be allowed to be used for other purposes.

**918.4.1 System priority.** The alerting system use shall take precedence over any other use.

**918.4.2 Fire alarm system.** Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

**918.4.2.1 Signal priority.** Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

**918.4.2.2 Temporary deactivation.** Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

**918.4.2.3 Supervisory signal.** Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.

**918.5 Audibility.** Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 916.6.

**918.6 Visibility.** Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-1009 Accessible means of egress.**

**1009.1 Accessible means of egress required.** Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress is required by Section 1006.2 or 1006.3 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

EXCEPTIONS: 1. (~~Accessible means of egress are not required in alterations to existing buildings.~~  
2.) One accessible means of egress is required from an accessible mezzanine level in accordance with Section 1009.3, 1009.4 or 1009.5.  
(3.) 2. In assembly areas with ramped aisles or stepped aisles one accessible means of egress is permitted where the common path of egress travel is accessible and meets the requirements in Section 1029.8.  
(4.) 3. In parking garages, accessible means of egress are not required to serve parking areas that do not contain accessible parking spaces.

**1009.8 Two-way communication.** A two-way communication system complying with Sections 1009.8.1 and 1009.8.2 shall be provided at the landing serving each elevator or bank

of elevators on each accessible floor that is one or more stories above or below the level of exit discharge.

EXCEPTIONS: 1. Two-way communication systems are not required at the landing serving each elevator or bank of elevators where the two-way communication system is provided within areas of refuge in accordance with Section 1009.6.5.  
2. Two-way communication systems are not required on floors provided with ramps that provide a direct path of egress travel to grade or the level of exit discharge conforming to the provisions of Section 1012.  
3. Two-way communication systems are not required at the landings serving only service elevators that are not designated as part of the accessible means of egress or serve as part of the required accessible route into a facility.  
4. Two-way communication systems are not required at the landings serving only freight elevators.  
5. Two-way communication systems are not required at the landing serving a private residence elevator.  
6. Two-way communication systems are not required in Group I-2 or I-3 facilities.

**1009.8.1 System requirements.** Two-way communication systems shall provide communication between each required location and the fire command center or a central control point location approved by the fire department. Where the central control point is not a constantly attended location, a two-way communication system shall have a timed automatic telephone dial-out capability to a monitoring location. The two-way communication system shall include both audible and visible signals. The two-way communication system shall have a battery backup or an approved alternate source of power that is capable of 90 minutes use upon failure of the normal power source.

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-1028 ((Exit discharge.)) Reserved.**

~~((1028.4.1 Width or capacity. The required capacity of egress courts shall be determined as specified in Section 1005.1, but the minimum width shall be not less than 44 inches (1118 mm), except as specified herein. Egress courts serving Group R-3 and U occupancies shall be not less than 36 inches (914 mm) in width. The required capacity and width of egress courts shall be unobstructed to a height of 7 feet (2134 mm).))~~

EXCEPTION: Egress courts complying with Section 1005.7.)

NEW SECTION

**WAC 51-54A-1204 Section 1204—Solar photovoltaic power systems.**

**1204.1 General.** Installation, modification, or alteration of solar photovoltaic power systems shall comply with this section. Due to the emerging technologies in the solar photovoltaic industry, it is understood fire code officials may need to amend prescriptive requirements of this section to meet the requirements for firefighter access and product installations. Section 104.9 Alternative materials and methods of this code



shall be considered when approving the installation of solar photovoltaic power systems. Solar photovoltaic power systems shall be installed in accordance with Sections 605.11.1 through 605.11.2, the *International Building Code* and chapter 19.28 RCW.

**1204.4.1 Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code*.** Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code* shall comply with Sections 1204.2.1.1 through 1204.2.1.3.

EXCEPTIONS:

1. Residential dwellings with an approved automatic fire sprinkler system installed.
2. Residential dwellings with approved mechanical or passive ventilation systems.
3. Where the fire code official determines that the slope of the roof is too steep for emergency access.
4. Where the fire code official determines that vertical ventilation tactics will not be utilized.
5. These requirements shall not apply to roofs where the total combined area of the solar array does not exceed thirty-three percent as measured in plan view of the total roof area of the structure, where the solar array will measure 1,000 sq. ft. or less in area, and where a minimum eighteen inches unobstructed pathway shall be maintained along each side of any horizontal ridge.

#### 1204.6 Size of solar photovoltaic array.

1. Each photovoltaic array shall be limited to 150 feet (45,720 mm) by 150 feet (45,720 mm). Multiple arrays shall be separated by a 3-foot wide (914 mm) clear access pathway.

2. Panels/modules shall be located up to the roof ridge where an alternative ventilation method approved by the fire code official has determined vertical ventilation techniques will not be employed.

AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

**WAC 51-54A-3308 Owner's responsibility for fire protection.**

~~((3308.8))~~ **3308.9 Fire safety requirements for buildings of Types IV-A, IV-B, and IV-C construction.** Buildings of Types IV-A, IV-B, and IV-C construction designed to be greater than six stories above grade plane shall meet the following requirements during construction unless otherwise approved by the fire code official.

1. Standpipes shall be provided in accordance with Section 3313.

2. A water supply for fire department operations, as approved by the fire code official and the fire chief.

3. Where building construction exceeds six stories above grade plane, at least one layer of noncombustible protection where required by Section 602.4 of the *International Building Code* shall be installed on all building elements more than four floor levels, including mezzanines, below active mass timber construction before erecting additional floor levels.

EXCEPTION: Shafts and vertical exit enclosures shall not be considered a part of the active mass timber construction.

4. Where building construction exceeds six stories above grade plane required exterior wall coverings shall be installed on all floor levels more than four floor levels, including mezzanines, below active mass timber construction before erecting additional floor level.

EXCEPTION: Shafts and vertical exit enclosures shall not be considered a part of the active mass timber construction.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

#### WAC 51-54A-3601 Marinas—Scope.

~~((3601.1.2))~~ **3601.3 Permits.** For permits to operate marine motor fuel-dispensing stations, application of flammable or combustible finishes, and hot works, see Section 105.6.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

#### WAC 51-54A-5306 Medical gas systems.

**5306.1 General.** Compressed gases at hospitals and similar facilities intended for inhalation or sedation including, but not limited to, analgesia systems for dentistry, podiatry, veterinary and similar uses shall comply with Sections 5306.2 through 5306.4 in addition to other requirements of this chapter.

EXCEPTION: All new distribution piping, supply manifolds, connections, regulators, valves, alarms, sensors and associated equipment shall be in accordance with the Plumbing Code.

~~((5306.4))~~ **5306.5 Medical gas systems.** The maintenance and testing of medical gas systems including, but not limited to, distribution piping, supply manifolds, connections, pressure regulators and relief devices and valves, shall comply with the maintenance and testing requirements of NFPA 99 and the general provisions of this chapter.

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

**WAC 51-54A-5307 ~~((Carbon dioxide (CO<sub>2</sub>)) systems))~~ Reserved.**

~~((5307.1 General. Carbon dioxide systems with more than 100 pounds (45.4 kg) of carbon dioxide shall comply with Sections 5307.2 through 5307.5.2.))~~

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

#### WAC 51-54A-5601 General.

**5601.1 Scope.** The provisions of this chapter shall govern the possession, manufacture, storage, handling, sale and use of explosives, explosive materials, and small arms ammunition. The manufacture, storage, handling, sale and use of fireworks shall be governed by chapter 70.77 RCW, and by chapter 212-17 WAC and local ordinances consistent with chapter 212-17 WAC.

- EXCEPTIONS:
1. The Armed Forces of the United States, Coast Guard or National Guard.
  2. Explosives in forms prescribed by the official United States Pharmacopoeia.
  3. The possession, storage and use of small arms ammunition when packaged in accordance with DOT packaging requirements.
  4. The possession, storage and use of not more than 1 pound (0.454 kg) of commercially manufactured sporting black powder, 20 pounds (9 kg) of smokeless powder and 10,000 small arms primers for hand loading of small arms ammunition for personal consumption.
  5. The use of explosive materials by federal, state and local regulatory, law enforcement and fire agencies acting in their official capacities.
  6. Special industrial explosive devices which in the aggregate contain less than 50 pounds (23 kg) of explosive materials.
  7. The possession, storage and use of blank industrial-power load cartridges when packaged in accordance with DOT packaging regulations.
  8. Transportation in accordance with DOT 49 C.F.R. Parts ~~((400-178))~~ 100-185.
  9. Items preempted by federal regulations.

**5601.1.1 Explosive material standard.** In addition to the requirements of this chapter, NFPA 495 shall govern the manufacture, transportation, storage, sale, handling and use of explosive materials. See also chapter 70.74 RCW and chapter 296-52 WAC.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

**WAC 51-54A-5704 Storage.**

**5704.2.11 Underground tanks.** Underground storage of flammable and combustible liquids in tanks shall comply with Section ~~((3404.2))~~ 5704.2 and Sections ~~((3404.2.11.1))~~ 5704.2.11.1 through ~~((3404.2.11.5.2))~~ 5704.2.11.4.2. Corrosion protection shall comply with WAC 173-360-305.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

**WAC 51-54A-6108 Fire protection.**

**6108.1 ((Scope)) General.** Storage, handling and transportation of liquefied petroleum gas (LP-gas) and the installation of LP-gas equipment pertinent to systems for such uses shall comply with this chapter and NFPA 58. Properties of LP-gas shall be determined in accordance with Appendix B of NFPA 58.

EXCEPTION: The use and storage of listed propane fired barbecue grills on R-2 decks and balconies with an approved container not exceeding a water capacity of 20 pounds (9 kg) that maintain a minimum clearance of 18 inches on all sides, unless listed for lesser clearances.

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

**WAC 51-54A-8200 ~~((Appendix N--))~~ International Wildland-Urban Interface Code.**

**~~((N))~~101.5 Additions or alterations.** Additions or alterations may be made to any building or structure without requiring the existing building or structure to comply with all of the requirements of this code, provided the addition or alteration conforms to that required for a new building or structure.

EXCEPTION: Provisions of this code that specifically apply to existing conditions are retroactive. See Sections 402.3, 601.1 and Appendix A.

Additions or alterations shall not cause the existing building or structure to become unsafe. An unsafe condition shall be deemed to have been created if an addition or alteration will cause the existing building or structure to become structurally unsafe or overloaded; will not provide adequate access in compliance with the provisions of this code or will obstruct existing exits or access; will create a fire hazard; will reduce required fire resistance or will otherwise create conditions dangerous to human life.

**~~((N))~~108.3 Site plan.** In addition to the requirements for plans in the *International Building Code*, the code official may require site plans which include topography, width and percent of grade of access roads, landscape and vegetation details, locations of structures or building envelopes, existing or proposed overhead utilities, occupancy classification of buildings, types of ignition resistant construction of buildings, structures and their appendages, roof classification of buildings, and site water supply systems. The code official is authorized to waive or modify the requirement for a site plan.

**~~((N))~~108.4 Vegetation management plans.** When required by the code official or when utilized by the permit applicant pursuant to Section 502, vegetation management plans shall be prepared and shall be submitted to the code official for review and approval as part of the plans required for a permit. See Appendix B.

**~~((N))~~108.7 Vicinity plan.** When required by the code official, the requirements for site plans shall include details regarding the vicinity within 300 feet (91,440 mm) of property lines, including other structures, slope, vegetation, fuel breaks, water supply systems and access roads.

**~~((N))~~402.1.1 Access.** New subdivisions, as determined by this jurisdiction, shall be provided with fire apparatus access roads in accordance with the *International Fire Code*.

**~~((N))~~402.1.2 Water supply.** New subdivisions, as determined by this jurisdiction, shall be provided with water supply in accordance with the *International Fire Code*.

**~~((N))~~402.2 Individual structures.** Individual structures shall comply with Sections 402.2.1 and 402.2.2.

**~~((N))~~402.2.1 Access.** Individual structures hereafter constructed or relocated into or within wildland-urban interface areas shall be provided with fire apparatus access in accordance with the *International Fire Code*.

**~~((N))~~402.2.2 Water supply.** Individual structures hereafter constructed or relocated into or within wildland-urban interface areas shall be provided with a conforming water supply in accordance with the *International Fire Code*.

EXCEPTIONS: 1. Structures constructed to meet the requirements for the class of ignition-resistant construction specified in Table N503.1 for a nonconforming water supply.  
 2. Buildings containing only private garages, carports, sheds and agricultural buildings with a floor area of not more than 600 square feet (56 m<sup>2</sup>).

**((N))402.3 Existing conditions.** Existing address markers, roads and fire protection equipment shall be in accordance with the *International Fire Code*.

**Table ((N))503.1  
 Ignition-Resistant Construction<sup>a</sup>**

	Fire Hazard Severity					
	Moderate Hazard		High Hazard		Extreme Hazard	
	Water Supply <sup>b</sup>		Water Supply <sup>b</sup>		Water Supply <sup>b</sup>	
<b>Defensible Space<sup>c</sup></b>	Conforming	Nonconforming	Conforming	Nonconforming	Conforming	Nonconforming
Nonconforming	IR 2	IR 1	IR 1	IR 1 N.C.	IR 1 N.C.	Not Permitted
Conforming	IR 3	IR 2	IR 2	IR 1	IR 1	IR 1 N.C.
1.5 x Conforming	Not Required	IR 3	IR 3	IR 2	IR 2	IR 1

<sup>a</sup>Access shall be in accordance with Section 402.

<sup>b</sup>Water supply shall be in accordance with Section 402.1.

IR 1 = Ignition-resistant construction in accordance with Section 504.

IR 2 = Ignition-resistant construction in accordance with Section 505.

IR 3 = Ignition-resistant construction in accordance with Section 506.

N.C. = Exterior walls shall have a fire-resistance rating of not less than 1 hour and the exterior surfaces of such walls shall be noncombustible.

Usage of log wall construction is allowed.

<sup>c</sup>Conformance based on Section 603.

**((N))403 Access.** This section not adopted.

**((N))404 Water supply.** This section not adopted.

APPENDIX B-VEGETATION MANAGEMENT PLAN - THIS APPENDIX IS ADOPTED.

APPENDIX ((E)) D-FIRE DANGER RATING SYSTEM - THIS APPENDIX IS ADOPTED.

- Enhance requirements for readiness for spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink.
- Update drill requirements to reflect legislative direction.
- Update planning standards to align vessel and facility requirements and ensure best achievable protection is maintained in contingency plans.
- Enhance planning standards for oiled wildlife response.
- Make other edits to address inconsistent or unclear direction in the rule, or other administrative edits.

Citation of Rules Affected by this Order: Amending chapter 173-182 WAC.

Statutory Authority for Adoption: RCW 88.46.0601, 88.46.060, 88.46.120, 88.46.068, 90.56.2101, 90.56.210, 90.56.240, 90.56.569, 90.56.050, and 90.56.005.

Other Authority: Not applicable.

Adopted under notice filed as WSR 19-17-095 on August 21, 2019.

Changes Other than Editing from Proposed to Adopted Version: The following content summarizes the changes between the rule proposal language and the adopted language and provides ecology's reasons for making them.

**WAC 173-182-030 Definitions,** in response to comments received, a definition of non-floating oils was included in the rule as adopted.

**WAC 173-182-130 Phase in language for vessel and facility plan holders,** in response to comments received, the phase in timeline for the wildlife planning standard (WAC 173-182-540) was shortened and the language was updated to clarify when contracting and personnel requirements for the wildlife planning standard are required. This change ensures that significant contracting and rehabilitation facility

**WSR 20-01-165  
 PERMANENT RULES  
 DEPARTMENT OF ECOLOGY**

[Order 18-10—Filed December 18, 2019, 10:17 a.m., effective January 18, 2020]

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

Purpose: Ecology is adopting amendments to the oil spill contingency plan rule (chapter 173-182 WAC) to implement E2SSB 6269 passed in 2018 and codified as RCW 88.46.0601, 88.46.060, 88.46.220, 90.56.2101, 90.56.210, 90.56.240, and 90.56.569.

Rule revisions are needed to address legislative direction that came out of the 2018 session that requires a rule update by December 31, 2019. E2SSB 6269 directed an update to our contingency planning rule to enhance preparedness for spills of nonfloating oils, require facilities to participate in large scale multi-plan holder drills, and require spill management teams to apply to and be approved by ecology in order to be cited in contingency plans.

This rule amendment will:

- Establish requirements for review and approval of spill management teams including entities providing wildlife rehabilitation and recovery services.

enhancements in wildlife response capability phase-in within twelve months of the rule effective date. Additionally, in response to comments received, the phase in requirements for including benthic and seafloor resources at risk from non-floating oils in contingency plans was updated to reflect that plan holders have thirty days from the date the Geographic Response Plan is published to update their plans.

**WAC 173-182-240 Field Document**, in response to comments received, the standard was amended to clarify that in addition to the requirement to list procedures to detect, assess, and document the size of the spill, the equipment required to conduct the assessment must also be detailed. This equipment may be air monitoring equipment, personal protective equipment, or other equipment and technologies that support assessment.

**WAC 173-182-323 Planning standards for spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink**, in response to comments received, this section was amended to clarify the requirement to have both personnel and equipment within the specified timeframes. The standard was also strengthened through the identification of additional resources necessary for a rapid, aggressive, and well-coordinated response to potentially non-floating oils.

**WAC 173-182-330 Planning standards for in situ burning**, in response to comments received, the standard specifically requires plan holders to identify the locations of personal protective equipment necessary to protect worker safety during in situ burning operations.

**WAC 173-182-540 Planning standards for wildlife response**, in response to comments received, a statement was added to clarify that all wildlife response actions shall be conducted in accordance with applicable federal and state regulations and the northwest area contingency plan. Commenters identified concerns with planning for wildlife response actions, including deterrents, which cannot be conducted without federal and state permits, authorities, and approvals. The planning standard establishes requirements for enhanced wildlife response capacity in the region through contracts, and investments in equipment and training of key personnel. The process for vetting and equipping vessels to conduct hazing of whales, including southern resident killer whales, will be further detailed in the rule implementation plan. The language was also updated to reflect comments that all whales at risk during an oil spill would be deterred to the maximum extent practicable, not just southern resident killer whales.

**WAC 173-182-621 Oil spill contingency plan best achievable protection five-year review cycle**, updates were made to clarify that the best achievable protection cycle will be used to evaluate the processes for improving equipment, training, and techniques associated with oiled wildlife response.

**WAC 173-182-710 Type and frequency of drills**, in response to comments received, the new requirement to test equipment and personnel to conduct monitoring and deterrence operations is no longer limited to southern resident killer whales. The requirement has been updated to reflect the deployment drill will be used to demonstrate readiness for

deterrence operations for whales that may be at risk from oil spills.

**WAC 173-182-850 Significant changes in spill management team (SMT) or wildlife response service provider (WRSP) applications require notification**, in response to comments received, the requirement to notify ecology about the modification or discontinuing of any mutual aid, letter of intent, or contract agreement was updated to also include permits. The change was made to ensure that state approved WRSPs maintain all necessary permits and make ecology aware of any change in their permit status within twenty-four hours of awareness.

A final cost-benefit analysis is available by contacting Sonja Larson, Department of Ecology, P.O. Box 47600, Spill Prevention Preparedness and Response Program, Olympia, WA 98507-47600, phone 360-480-2263, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email [sonja.larson@ecy.wa.gov](mailto:sonja.larson@ecy.wa.gov), website <https://fortress.wa.gov/ecy/publications/SummaryPages/1908026.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 3, Amended 11, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 5, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 9, Repealed 5.

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

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

Date Adopted: December 18, 2019.

Maia D. Bellon  
Director

**AMENDATORY SECTION** (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-010 Purpose.** The purpose of this chapter is to establish covered vessel and facility oil spill contingency plan requirements (Part II), drill and equipment verification requirements (Part III), primary response contractor, spill management team, and wildlife response service provider standards (Part IV), and recordkeeping and compliance information (Part V).

(1) The provisions of this chapter, when followed, should be implemented and construed so that they will:

(a) Maximize the effectiveness and timeliness of oil spill response by plan holders, spill management teams, wildlife response service providers, and primary response contractors;

(b) Ensure continual readiness, maintenance of equipment and training of personnel;

(c) Support coordination with state, federal, tribal and other contingency planning efforts;

(d) Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills; and

(e) Provide the highest level of protection that can be met through the use of best achievable technology and those staffing levels, training procedures, and operational methods that constitute best achievable protection (BAP) as informed by the BAP five year review cycle (WAC 173-182-621) and as determined by ecology.

(2) The planning standards described in this chapter do not constitute clean-up standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this chapter does not constitute failure to comply with a contingency plan, for purposes of this chapter or for the purpose of imposing administrative, civil, or criminal penalties under any other law so that all reasonable efforts are made to do so. In a spill or drill, deployment of equipment and personnel shall be guided by safety considerations. The responsible party must take all actions necessary and appropriate to immediately collect and remove, contain, treat, burn and disperse oil entering waters of the state and address the entire volume of an actual spill regardless of the planning standards.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-015 Applicability.** (1) This chapter applies to owners and operators of onshore facilities, offshore facilities, and covered vessels required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(2) This chapter applies to any person submitting a contingency plan on behalf of a covered vessel, multiple covered vessels, onshore facilities and offshore facilities, or any combination thereof.

(3) This chapter applies to response contractors that must be approved by ecology before they may serve as primary response contractors (PRCs) for a contingency plan.

(4) This chapter applies to spill management teams (SMTs) that must be approved by ecology before they may serve as SMTs for a contingency plan.

(5) This chapter applies to wildlife response service providers (WRSPs) that must be approved by ecology before they may serve as WRSPs for a contingency plan.

(6) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

~~((5))~~ (7) Railroads are facilities for the purposes of contingency planning under RCW 90.56.210. Railroad contingency planning regulations are described in chapter 173-186 WAC.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

**WAC 173-182-020 Authority.** RCW 88.46.060, 88.46.0601, 88.46.068, 88.46.070, 88.46.080, 88.46.090, 88.46.100, 88.46.120, 88.46.160, 90.48.080, 90.56.050, 90.56.060, 90.56.210, 90.56.2101, 90.56.240, 90.56.270, 90.56.275, 90.56.280, 90.56.310, 90.56.320, 90.56.340, and

chapter 316, Laws of 2006, provide statutory authority for the contingency plan preparation and review requirements, drill and response contractor standards established by this chapter for onshore and offshore facilities and covered vessels.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-030 Definitions.** (1) "Aerial observer" means a trained observer that monitors, records and reports the spill characteristics including the shoreline impacts, area oiled, color, and thickness of the oil. Observers also provide data to the command post through the development of detailed maps of the area oiled and the resources in the field as well as other photographs, videos, or documents developed to support planning.

(2) "Aerial oil spill spotter" (spotter) means personnel trained to:

- (a) Direct vessels to the heaviest concentrations of oil;
- (b) Direct dispersant resources;
- (c) Direct in situ burn resources; and
- (d) Observe, document and report the effectiveness of response operations.

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

- (a) The additional protection provided by the measures;
- (b) The technological achievability of the measures; and
- (c) The cost of the measures.

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

- (a) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development;
- (b) Processes that are currently in use; and
- (c) In determining what is best achievable technology, ecology shall consider the effectiveness, engineering feasibility, and the commercial availability of the technology.

(5) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the ASTM International F 1523-94 ~~((2007))~~ 2013) and ASTM International ~~((F 625-94 (reapproved 2006))~~ ASTM F265/F625M-94 (2017), and the *Resource Typing Guidelines* found in the ~~((Western))~~ Worldwide Response Resource List (WRRL) user manual.

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

(7) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons((7)) including, but not limited to, commercial fish processing vessels and freighters.

(8) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(9) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor, spill management team, wildlife response service provider, or other provider, or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that summarizes the contract terms: Identifies personnel, equipment and services capable of being provided by the primary response contractor, spill management team, wildlife response service provider, or other provider, within stipulated planning standard times; acknowledges that the primary response contractor or other provider commits the identified resources in the event of an oil spill.

(10) "Control point" means a location along the pipeline, or rail line, pre-identified as an initial control or containment strategy to minimize impacts of spilled oil. The objective of a control point may be to contain, collect, divert or exclude oil from further impacting sensitive environmental, economic or cultural resources. Control points are designed and maintained by plan holders.

(11) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.

((11)) (12) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

((12)) (13) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

((13)) (14) "Director" means the director of the state of Washington department of ecology.

((14)) (15) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

((15)) (16) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

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

((17)) (18) "Effective daily recovery capacity((1)) (EDRC)" means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

((18)) (19) "Emergency response towing vessel" means a towing vessel stationed at Neah Bay that is available to respond to vessel emergencies upon call out under the contingency plan. The emergency response towing vessel shall be

available to the owner or operator of the covered vessel transiting to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks Light, Vancouver Island, Canada.

((19)) (20) "Facility" means:

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

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

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

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

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

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

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

((20)) (21) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

((21)) (22) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

((22)) (23) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

((23)) (24) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

((24)) (25) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

((25)) (26) "Lower Columbia River" means the Columbia River waters west of Bonneville Dam.

((26)) (27) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

((27)) (28) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

((28)) (29) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are

subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

~~((29))~~ (30) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

~~((30))~~ (31) "Nonfloating oil" means those oils that exhibit qualities that could potentially cause the oils to submerge or sink, due to the oil characteristics, weathering, environmental factors, or how they were discharged. Examples of these types of oils include, but are not limited to, diluted bitumen (dilbit), Group V Residual Fuel Oils (GPVRF0), Low American Petroleum Institute Oil (LAPIO), decant, crude, asphalt, and asphalt products.

(32) "Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(i) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(ii) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(b) A nonpetroleum oil with a specific gravity less than 0.8.

~~((31))~~ (33) "Nonpetroleum oil" means oil of any kind that is not petroleum-based(~~(s)~~) including, but not limited to: Biological oils such as fats and greases of animals and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

~~((32))~~ (34) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

~~((33))~~ (35) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

~~((34))~~ (36) "Oil" or "oils" means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof(~~(s)~~) including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 102(a) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

~~((35))~~ (37) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

~~((36))~~ (38) "Onshore facility" means any facility, as defined in subsection ~~((19))~~ (20) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

~~((37))~~ (39) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications (~~(will be)~~) are determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems ASTM International (~~(F-625-94 (reapproved 2006))~~) ASTM F625/F625M-94 (2017).

~~((38))~~ (40) "Operational period" means the period of time scheduled for execution of a given set of operational actions as specified in the incident action plan. The operational period coincides with the completion of one planning cycle.

~~((39))~~ (41) "Owner" or "operator" means:

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

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

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

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

~~((40))~~ (42) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

~~((41))~~ (43) "Passive recovery" means a tactic that uses absorbent material to mitigate impacts to shorelines.

~~((42))~~ (44) "Persistent oil" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

~~((43))~~ (45) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

~~((44))~~ (46) "Control point" means a location along the pipeline, or rail line, pre-identified as an initial control or containment strategy to minimize impacts of spilled oil. The objective of a control point may be to contain, collect, divert or exclude oil from further impacting sensitive environmental, economic or cultural resources. Control points are designed and maintained by plan holders.

~~((45))~~ (46) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

~~((46))~~ (47) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

~~((47))~~ (48) "Plan holder" means a person who submits and implements a contingency plan consistent with RCW 88.46.060 and 90.56.210 on the person's own behalf or on behalf of one or more persons. Where a plan is submitted on behalf of multiple persons, those covered under that plan are not considered plan holders for purposes of this chapter.

~~((48))~~ (49) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

~~((49))~~ (50) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

~~((50))~~ (51) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

~~((51))~~ (52) "Recovery system" means a skimming device, storage, work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

~~((52))~~ (53) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessel of opportunity response system to respond when needed and available.

~~((53))~~ (54) "Resident" means the spill response resources are staged at a location within the described planning area.

~~((54))~~ (55) "Response zone" means a geographic area either along a length of a pipeline or including multiple pipelines, containing one or more adjacent line sections, for which the operator must plan for the deployment of, and provide, spill response capabilities. The size of the zone is determined by the operator while considering available capability, resources, and geographic characteristics.

~~((55))~~ (56) "Responsible party" means a person liable under RCW 90.56.370.

~~((56))~~ (57) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((57))~~ (58) "Shorelines of statewide significance" means those shorelines of statewide significance defined in the Shoreline Management Act (SMA), RCW 90.58.030.

~~((58))~~ (59) "Spill" means an unauthorized discharge of oil which enters waters of the state.

~~((59))~~ (60) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

~~((60))~~ (61) "Spill management team (SMT)" means representatives and assigned personnel who are qualified and capable of integrating into an incident command system or unified command system and managing a spill. A company internal SMT is approved through the contingency plan and a contracted SMT is approved by ecology through the SMT application process and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(62) "Systems approach" means the infrastructure and support resources necessary to mobilize, transport, deploy, sustain, and support the equipment to meet the planning standards, including mobilization time, trained personnel, personnel call out mechanisms, vehicles, trailers, response vessels, cranes, boom, pumps, storage devices, etc.

~~((61))~~ (63) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

- (a) Operates on the waters of the state; or
- (b) Transfers oil in a port or place subject to the jurisdiction of this state.

~~((62))~~ (64) "Technical manual" means a manual intended to be used as a planning document to support the evaluation of best achievable protection systems for potential response capability of plan holder owned and PRC dedicated and nondedicated equipment.

~~((63))~~ (65) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

~~((64))~~ (66) "Transmission pipeline" means all parts of a pipeline whether interstate or intrastate, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units metering and delivery stations and fabricated assemblies therein, and breakout tanks.

~~((65))~~ (67) "Umbrella plan" means a single plan submitted on behalf of multiple covered vessels that is prepared by a nonprofit corporation.

~~((66))~~ (68) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

~~((67))~~ (69) "Vessels of opportunity response system" means nondedicated vessels and operating personnel, including fishing and other vessels, available to assist in spill response when necessary. The vessels of opportunity are under contract with and equipped by contingency plan holders to assist with oil spill response activities including, but not limited to, on-water oil recovery in the near shore environment, the placement of oil spill containment booms to protect sensitive habitats, and providing support of logistical or other tactical actions.



~~((68))~~ (70) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

~~((69))~~ (71) "Wildlife response service provider (WRSP)" means representatives and assigned personnel who are qualified and capable of assuming the responsibilities of the wildlife branch and of staffing and managing the operational components of wildlife response activities during an oil spill. WRSP personnel will coordinate with state, federal, tribal, and other response partners to initiate and conduct wildlife reconnaissance, deterrence, capture, stabilization, and rehabilitation operations as needed. A wildlife response service provider is approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approvable written agreement.

(72) "~~(Western)~~ Worldwide Response Resource List (WRRL)" means ~~(a regional)~~ an equipment list established and maintained by spill response equipment owners (in the northwest area).

~~((70))~~ (73) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

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

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, response zones, or volume of the largest breakout tank. For each it is the largest volume determined from the following three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

For planning purposes, the total time to detect the release and shutdown the pipeline should be based on historic discharge data or, in the absence of such historic data, the operator's best estimate. At a minimum the total time to detect and shut down the pipeline(7) must be equal to or greater than thirty minutes.

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks within a single secondary containment system.

Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume in the contingency plan.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-130 Phase in language for vessel and facility plan holders.** (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, ~~(and)~~ primary response contractors (PRCs) with approved applications, and spill management teams (SMTs) and wildlife response service providers (WRSPs) that apply for ecology approval to be cited in contingency plans. Each update must contain all necessary content and meet the requirements of this chapter.

(2) ~~(For existing approved facility plan holders within six months after the effective date of this chapter, all facility plan holders must update their plans to comply with the following sections as applicable to the facility:~~

~~(a) Binding agreement (WAC 173-182-220).~~

~~(b) Contingency plan general content (WAC 173-182-230 (8)), claims procedures.~~

~~(c) Contingency plan general content (WAC 173-182-230 (4)(c)(i) through (v)), products handled.~~

~~(d) Facility spills to ground notifications (WAC 173-182-264).~~

~~(e) Planning standards for dispersants (WAC 173-182-325).~~

~~(f) Planning standard for Group 5 Oils (WAC 173-182-324).~~

~~(g) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.~~

~~(3) For existing approved tank vessel plan holders and vessel umbrella plan holders, the following is required, as applicable to the plan holder:~~

~~(a) Within six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:~~

~~(i) Binding agreement (WAC 173-182-220).~~

~~(ii) Contingency plan general content (WAC 173-182-230 (3)(b)(ii)).~~

~~(iii) Contingency plan general content (WAC 173-182-230 (5)(f) and (g)).~~

~~(iv) Contingency plan general content (WAC 173-182-230 (6)(a)(i) through (vii) and (7)).~~

~~(v) Contingency plan general content (WAC 173-182-230 (8)), claims procedures.~~

~~(vi) Aerial surveillance planning standard (WAC 173-182-321(2)), Additional surveillance assets.~~

~~(vii) Planning standard for dispersants (WAC 173-182-325).~~

~~(viii) Planning standard for Group 5 Oils (WAC 173-182-324).~~

~~(ix) Requirements for vessel umbrella plan holders maintaining additional agreements for supplemental resources (WAC 173-182-232).~~

~~(x) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.~~

~~(b) Within eighteen months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella~~

plan holders must update their plans to comply with the following sections:

~~(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 1 – Cape Flattery/Strait of Juan De Fuca.~~

~~(ii) Aerial surveillance planning standard (WAC 173-182-321(1)), Helicopter/fixed wing.~~

~~(iii) Dedicated on-water storage (WAC 173-182-335), at least twenty-five percent of the total worst case discharge requirement.~~

~~(iv) San Juan County planning standard (WAC 173-182-370), four hour planning standard.~~

~~(v) Neah Bay staging area (WAC 173-182-395), four hour planning standard.~~

~~(vi) Covered vessel planning standard for shoreline cleanup (WAC 173-182-522).~~

~~(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.~~

~~(e) Within thirty-six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:~~

~~(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 2 – San Juan Islands/North Puget Sound.~~

~~(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 4 – Lower Columbia River.~~

~~(iii) Provide proposal for ecology review of the aerial surveillance planning standard (WAC 173-182-321(3)), Helicopter/fixed wing with forward looking infrared. Plan holder shall have an additional twelve months to have this asset staged and all plan updates finalized as applicable.~~

~~(iv) Covered vessel plan holder's technical manual requirement (WAC 173-182-349).~~

~~(v) Commencement Bay Quartermaster Harbor planning standard (WAC 173-182-380), four hour planning standard.~~

~~(vi) Cathlamet staging area (WAC 173-182-415), four hour planning standard.~~

~~(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.~~

~~(d) Within forty-eight months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:~~

~~(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 6 – Grays Harbor.~~

~~(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 3 – South Puget Sound and Central Puget Sound.~~

~~(iii) Vessels of opportunity planning standard (WAC 173-182-317), Region 5 – Admiralty Inlet, Hood Canal and North Puget Sound.~~

~~(iv) Grays Harbor planning standard (WAC 173-182-450), four hour planning standard.~~

~~(v) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.~~

~~(4) Within eighteen months after the effective date of this chapter, all primary response contractors must update their applications to comply with the following section: Pri-~~

~~mary response contractor application content, submittal and review (WAC 173-182-810).~~

~~(5)) Within six months from rule effective date, SMTs and WRSPs shall begin to submit applications for review and approval in accordance with WAC 173-182-830, 173-182-840, and 173-182-850.~~

~~(3) Within twelve months from rule effective date, plan holders shall update their plans to comply with the following as applicable to the plan holder:~~

~~(a) Contingency plan general content (WAC 173-182-230 (3)(e)), contractor contact information.~~

~~(b) Spill management teams (WAC 173-182-280).~~

~~(c) Transfer sites for covered vessels at locations where transfers occur, and for facilities with a vessel terminal (WAC 173-182-355).~~

~~(d) Planning standards for shoreline cleanup (WAC 173-182-522).~~

~~(e) Binding agreement (WAC 173-182-220).~~

~~(f) Field document (WAC 173-182-240(2)).~~

~~(g) Type and frequency of drills (WAC 173-182-710(6)), commitment to participating in the multiple plan holder deployment drill.~~

~~(h) Planning standards for air monitoring to protect oil spill responders and the public (WAC 173-182-535).~~

~~(i) Planning standards for in situ burning (WAC 173-182-330).~~

~~(j) Planning standards for dispersants (WAC 173-182-325).~~

~~(k) Planning standard for spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink (WAC 173-182-323).~~

~~(l) Planning standards for wildlife response (WAC 173-182-540 (1), (2)(a), (b), (c), (e) and (f), (3), and (4)).~~

~~(4) Within eighteen months from rule effective date, vessels enrolling under either an umbrella contingency plan or a multiple vessel contingency plan must ensure that their enrollment includes contracted access to a state-approved SMT or in-house team which meets the requirements of WAC 173-182-280, 173-182-830, 173-182-840, and 173-182-850.~~

~~(5) Within eighteen months from rule effective date, plan holders must include details about benthic and seafloor resources at risk from nonfloating oil spills in accordance with requirements for response and protection strategies under WAC 173-182-510. This requirement may be met by citing the geographic response plans developed as annexes to the northwest area contingency plan. If the relevant GRPs have not been updated by the phase-in date, then plan holders shall have thirty days from the date the GRP is published to ensure the plan is updated to reference the GRP and incorporate relevant details in their contingency plan in accordance with WAC 173-182-510 (2)(b).~~

~~(6) Within twenty-four months of the effective date, plan holders shall meet the requirements in WAC 173-182-540 (2)(d).~~

~~(7) To the extent to which plan holders rely on primary response contractor (PRC) applications, spill management team (SMT) applications, or wildlife response service provider (WRSP) applications to demonstrate compliance for~~

plan holder planning standards, these applications must also be updated correspondingly.

(8) Each plan update will be given a thirty day public review and comment period. Ecology will approve, disapprove, or conditionally approve the plan update no later than sixty-five days from the update submittal date.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-150 Post-spill review and documentation procedures.** Plan holders are required to conduct post-spill review procedures to review both the effectiveness of the plan and make plan improvements. Debriefs with ecology and other participating agencies and organizations may be appropriate if ~~(5)~~ unified command has been established during a spill, and are required when significant plan updates are identified or significant lessons can be recorded and implemented.

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

**WAC 173-182-220 Binding agreement.** (1) Each plan shall contain a written statement binding the contingency plan ((holder)) submitter to its use. ~~((Form number ECY 070-217 may be used.))~~ The person(s) signing the agreement shall be authorized to make expenditures to implement the requirements in subsection (2) of this section. The binding agreement shall be signed by ~~((each of the following))~~:

~~(a) ((The plan holder, (b) the owner or operator, or a designee with authority to bind the owners and operators of the facilities or vessels covered by the plan.))~~ An authorized representative(s) of a nonprofit corporation established to provide oil spill contingency plan coverage;

(b) An authorized owner, or operator, or a designee with authority to bind the owners and operators of the facilities or vessels covered by the plan;

(c) An authorized resident agent of the vessel(s) submitting the plan;

(d) An authorized representative(s) of a company contracted to the vessel or facility and approved by ecology to provide containment and clean-up services.

(2) The binding agreement ((is)) must be submitted with the plan ((and will)). Form number ECY 070-612 may be used. If an alternative form is used, it must include the name, address, phone number, ((and if appropriate the)) email address, and website of the submitting party. ((2) In the statement, the signator will:)) In the binding agreement the signatory shall:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(d) Verify authority and capability to make necessary and appropriate expenditures in order to implement plan provisions; and

(e) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-230 Contingency plan general content.** (1) Contingency plans must include all of the content and meet all the requirements in this section.

(2) In Washington state, the NWACP serves as the state-wide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill.

(i) For transmission pipelines, more than one worst case spill volume for different line sections or response zones on the entire pipeline may be submitted to ecology for consideration. The methods and calculations used to determine the worst case discharge volumes must be included in the plan.

(ii) For vessel umbrella plans that enroll both tank vessels and nontank covered vessels and that rely on supplemental resources for approval, specify the worst case discharge volume and product type for both tank and nontank covered vessels for each port covered by the contingency plan.

(iii) For multiple facilities using a single plan, separate worst case spill volumes are required for each facility.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall ~~((have the PRC's))~~ include contact information for any PRC, SMT, or WRSP contracted resources necessary to meet plan holder planning standards. Contact information must include the name, address, twenty-four-hour phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, SMT, or WRSP shall be included in the plan.

(ii) If the entire contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a

copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC, SMT, WRSP or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(v) If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(4) Additional facility plan content.

Facility plans shall include:

(a) The name, location, type and address of the facility;

(b) Starting date of operations;

(c) Description of the operations covered by the plan:

(i) List the oil handling operations that occur at the facility location.

(ii) Inventory all tanks and list the tank capacity.

(iii) All oil(s) or product(s) handled by name and include; density, gravity, API, oil group number, and sulfur content (sweet/sour).

(iv) Include a written description and map indicating site topography, stormwater and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(v) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(vi) For pipelines, a narrative describing how the response zone was identified shall be submitted as part of the plan.

(5) Additional vessel plan content. Except as provided in subsections (6) and (7) of this section, vessel plans shall also include:

(a) Name of each vessel covered under the plan;

(b) The name, location, and address of the owner or operator;

(c) Official identification code or call sign;

(d) Country of registry;

(e) All ports of call or areas of expected operation in Washington waters;

(f) List all oil(s) or product(s) by name and include; density, gravity, API, oil group number, sulfur content (sweet/sour) and general ship capacity for amounts carried as cargo or fuel;

(g) Description of the operations covered by the plan; and

(h) A diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.

(6) Plans covering multiple vessels with different owners shall also include the following:

(a) In lieu of providing vessels names, call signs and country of registry, plan holders shall maintain accurate enrollment or member lists with vessel specific information provided by covered vessels and shall provide ecology twenty-four hour access to the enrolled vessels list via the

internet in a format acceptable to ecology. The list shall be updated daily, or at a minimum every three days. The list must at a minimum include the following:

(i) Vessel name;

(ii) Vessel type;

(iii) Worst case discharge oil type and quantity;

(iv) The name and API gravity of the densest oil being handled on the enrolled vessels;

(v) Qualified individual/spill management team;

(vi) Agent; and

(vii) Protection and indemnity (P&I) club.

(b) Plans covering multiple vessels shall include a list of the types of vessels and the typical oil types by group and volumes. In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

(7) Umbrella plans shall list the name of the entities that provide supplemental equipment.

(8) Plans shall include concise procedures to establish a process to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

**AMENDATORY SECTION** (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-240 Field document.** (1) Each plan shall contain a field document which lists time-critical information for the initial emergency phase of a spill and a substantial threat of a spill. The owner or operator of the covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan, provided that plan holders covering multiple persons shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.

Plans covering multiple persons shall include procedures to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(2) At a minimum, the field document shall contain:

(a) A list of the procedures and equipment to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures (~~and~~), a call out list that meets the requirements in WAC 173-182-260 and 173-182-262 or 173-182-264 as applicable, and a form to document notifications; and

(c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

**AMENDATORY SECTION** (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

**WAC 173-182-250 Initial response actions.** (1) Plan holders and responsible parties are required to document their

initial spill actions and the plan shall include the forms that will be used for such documentation.

(2) The plan shall describe what equipment will be used to conduct initial spill assessment, including equipment effective during darkness and low visibility conditions, such as visual methods, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery.

(3) The plan must state how safety assessment including initial air monitoring will be conducted for all types of spills, including spills to groundwater.

(4) The plan must list procedures that will be used to confirm the occurrence, and estimate the quantity and nature of the spill. An updated report is required if the initially reported estimated quantity or the ((area)) extent of the contamination changes significantly.

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

**WAC 173-182-262 Vessel notification requirements for a discharge or substantial threat of a discharge.** (1)

The owner or operator of a covered vessel must notify the state through the Washington emergency management division of a discharge or substantial threat of a discharge. Notification must be made within one hour of the discharge or substantial threat of a discharge, or as soon as is feasible without further endangering the vessel or personnel.

(2) Vessel discharge notifications are in addition and made subsequent to notifications that the owner or operator of a covered vessel must provide to the United States Coast Guard. Vessels enrolled in plans covering multiple vessels must notify the plan holder in addition to the state, unless the state has already been notified by the plan holder on behalf of the vessel owner or operator.

(3) Notification of the discharge or substantial threat of a discharge initiates activation of the plan. Upon notification, the vessel owner/operator will coordinate as appropriate with:

(a) The state of Washington and the United States Coast Guard to take any necessary actions to protect the public health, welfare, and natural resources of the state; and

(b) The plan holder for plan implementation as described in the plan.

(4) Notification procedures must be included in the plan.

(5) The substantial threat of a discharge may be determined or affected by the following conditions:

(a) Ship location and proximity to land or other navigational hazards;

(b) Weather;

(c) Tidal currents;

(d) Sea state;

(e) Traffic density;

(f) Condition of vessel; and

(g) Timing or likelihood of vessel repairs.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-264 Notification requirements for facility spills to ground or containment that threaten waters of the state.** (1) Facility plans shall contain proce-

dures for notifications for spills to ground and to permeable secondary containment that threaten to impact waters of the state.

(a) All spills are considered reportable spills except;

(i) Spills which are known to be less than forty-two gallons that do not impact surface or groundwater.

(ii) CERCLA releases.

(iii) On-facility air releases to the atmosphere only.

(iv) Releases from underground storage tanks regulated under chapter 173-360A WAC.

(v) Preexisting sources of releases identified as RCRA solid waste management units.

(vi) Spills contained within areas controlled by NPDES permitted systems that are not likely to threaten groundwater and do not exceed applicable federal reportable quantities.

(b) A spill is considered to have not impacted ground if it occurs on a paved surface such as asphalt or concrete. A spill to dirt or gravel is considered to have impacted ground and is reportable.

(2) Plan holders must also include procedures in their plan to address spills of an unknown volume. When addressing a spill of an unknown volume, plan holders shall use best professional judgment and may consider the following circumstances in determining when to make notifications:

(a) Whether the spill is ongoing; and

(b) Whether the spill is located in an area that is adjacent to waters of the state or where there is a pathway to waters of the state, and the environmental conditions, such as rain events, or known shallow groundwater make impacts to waters of the state likely.

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

**WAC 173-182-280 Spill management teams.** (1) Each plan shall contain information on the personnel (including contract personnel as applicable) who will be available to manage an oil spill response. To meet the requirement, the plan shall include:

(a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(b) For the purpose of ensuring depth of the spill management team, ~~((an organization list of one primary and one alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS organizational chart. In lieu of being placed in the plan, this list))~~ a table detailing the names of personnel to fill the following ICS roles or the name of the SMT contracted to fill the roles.

(i) Personnel may be listed a maximum of two times.

(ii) Personnel filling key roles do not need to be a resident in Washington state.

<u>ICS Position</u>	<u>Name</u>	<u>Name</u>	<u>Name</u>
<u>Responsible Party Incident Commander</u>			
<u>Public Information Officer</u>			
<u>Liaison Officer</u>			
<u>Safety Officer</u>			

<u>ICS Position</u>	<u>Name</u>	<u>Name</u>	<u>Name</u>
Operations Section Chief			
Planning Section Chief			
Logistics Section Chief			
Finance Section Chief			
Wildlife Branch Director			
Air Operations Branch Director			
Situation Unit Leader			
Resources Unit Leader			
Documentation Unit Leader			
Environmental Unit Leader			

Additional SMT rosters which detail greater position depth available to support the plan holder may be maintained at the plan holder's office and be made available to ecology upon request. If a primary response contractor, SMT, or WRSP is used to fill positions, they must have an approved application on file with the state and they must agree in writing, either through contract or other approvable means, to staff the positions. The capacity and depth of spill management teams will be evaluated in plan holder drills and spills.

(c) A job description for each spill management position ~~((; except if the plan holder follows without deviation the job descriptions contained in the NWACP)), or a reference to the incident management handbook with position description.~~ If the job descriptions are consistent with the NWACP, then the plan holder may reference the NWACP rather than repeat the information.

(d) A detailed description of the planning process which will be used to manage a spill or a reference to the incident management handbook with planning process descriptions and meeting agendas. If the process is consistent with the NWACP then the plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include ~~((as applicable))~~ ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety as applicable to the role. A combination of training and experience in drills and spills may be used to describe SMT personnel capabilities within response roles. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) The plan shall identify a primary and two alternate incident ~~((commander's))~~ commander representatives that can form unified command at the initial command post, and ~~((if located out of state, a primary and alternate incident commander))~~ that could arrive ~~((at the initial command post))~~ in state within six hours.

(4) The plan shall include a narrative description of estimated time frames for arrival of the remainder of the spill management team ~~((to the spill site, or at the incident command post as appropriate))~~ in state.

~~((4))~~ (5) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.

~~((5))~~ (6) Plans covering multiple vessels must maintain a list of the spill management team(s) for each vessel enrolled under the plan, and must describe the transition process from plan personnel to the incoming vessel owner or operator's team. The plan must include checklists and documentation to facilitate an effective transition.

Vessels enrolling under an umbrella contingency plan or a multiple vessel contingency plan must ensure that their enrollment includes contracted access to a state-approved SMT or in-house team.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-321 Covered vessel planning standards for aerial surveillance.** Covered vessels operating or transiting the lower Columbia River, Grays Harbor, Strait of Juan de Fuca, Puget Sound, or Washington coast, shall document the following aerial surveillance capability through the plan:

(1) Access to a helicopter or fixed wing, under contract or other approved means, that is appropriately located and could have arrived with a trained aerial oil spill spotter (spotter) to those planning standard areas plan holders operate or transit within six hours of spill notification. The contracted asset must have the following capability:

(a) Be capable of supporting oil spill containment and removal operations by providing oil spotting capability for at least ten hours per day during the initial seventy-two hours of an oil discharge.

(b) Have a trained spotter on board the aerial asset capable of acquiring, interpreting, recording and communicating oil location and other information to the command post or field operations at regular intervals. The spotter must be equipped with a high definition photographic or video capability and be able to collect and disseminate the following data about the environmental and operational picture including the location of the oil, environmental impacts, and spill resources on-scene:

- (i) Latitude and longitude of the location, impacts, or spill resources;
- (ii) Azimuth and altitude that the picture was taken;
- (iii) Bearing that the picture was taken;
- (iv) Estimated extent of oiling; and
- (v) Time and date.

(2) Plans must also include logistical sources of additional resources not under contract that may be utilized as additional spotting resources to maximize the effectiveness of enhanced skimming, or as resources to identify the extent of oil to inform shoreline clean-up and assessment teams and shoreline clean-up activities.

(3) In order to provide best achievable technology for aerial oil surveillance, vessel plan holders must also provide for access to a helicopter or fixed wing asset, under contract or other approved means, with the capability to provide a strategic picture of the overall spill; assist in location of slicks

when they are not visible by persons operating at, or near, the water's surface or at night; extend the hours of clean-up operations to include darkness and poor visibility; and identify oceanographic and geographic features toward which oil may migrate.

(a) The aerial asset must be appropriately located and could have arrived with trained aerial observers to those planning standard areas plan holders operate or transit within twelve hours of spill notification.

(b) The aerial asset must be equipped with a suite of equipment that could support the capabilities described in this subsection. At least two remote sensing systems must be included in the suite and one of them must be a high definition mounted infrared (IR) camera designed to support aerial operations from aerial platforms. If the IR camera is not mounted, then plan holders must demonstrate how the handheld system will be effective from an aerial platform. Plan holders must submit for approval the systems included in the suite. For the IR camera, the following capability descriptions must be included in the submission:

- (i) IR camera with sensors capable in the thermal or mid-IR range;
- (ii) A sensor which provides high resolution for airborne imaging;
- (iii) Continuous optical zoom capability appropriate for use from an aerial platform;
- (iv) Tested minimum thermal resolution and/or the tested minimum resolvable temperature difference; and
- (v) Plan holders must submit for review and approval the systems included in the suite. Plan holders may submit for review and approval alternative testing data. This alternative proposal will be subject to a thirty-day public review and comment period which includes, but is not limited to, interested local and tribal governments and other stakeholders.

(c) The trained oil spill aerial observer on board could begin gathering the following from the scene of the spill once on-site:

- (i) Graphically displaying processed multispectral data (at a minimum displaying the IR and optical windows), photographic images and other information onto electronic marine charts creating high contrast composite images;
- (ii) Ability to reference a map image to a geographic location;
- (iii) Location extent and relative thickness information for a reported oil sheen or slick;
- (iv) Transmitting processed images and other information to the unified command primary command post;
- (v) Archiving all processed data and images; and
- (vi) Integrating spill images and other information with spill management software.

(4) Plan holders must have access to personnel trained in aerial surveillance and as spotters to direct skimmers into the thickest oil to enhance on-water recovery and to support the activities described above. The names of individuals with this training, their home base and training levels must either be listed in the plan or made available to ecology upon request. At a minimum, personnel must be trained in aerial observation at the level set forth in federal regulations currently located at 33 C.F.R. 155.1050 (1)(2)(iii). A copy of this regulation is available through ecology upon request.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-324 Planning standards for ((Group 5 Oils)) spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink.** (1) Plan holders carrying, handling, storing, or transporting ((Group 5 Oils)) oils that may weather and sink when spilled to the environment must have a contract with a PRC that maintains the resources and/or capabilities necessary to respond to a spill of ((Group 5 Oils). Such equipment shall include, but is not limited to, the following:

- (a) ~~Sonar, sampling equipment or other methods to locate the oil on the bottom or suspended in the water column;~~
- (b) ~~Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;~~
- (c) ~~Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;~~
- (d) ~~Equipment necessary to assess the impact of such discharges; and~~
- (e) ~~Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.~~

(2) ~~The equipment must be capable of being on scene within twelve hours of spill notification.)~~ nonfloating oils. Examples of these types of oils include, but are not limited to, crude oil, diluted bitumen, group V oils, low American Petroleum Institute oil, decant, asphalt, and asphalt products.

(2) The plan holder or contracted primary response contractor must have the necessary personnel and equipment capable within the time frames outlined in the table below:

<u>Time (hours)</u>	<u>Capability</u>
<u>1</u>	<u>Initiate an assessment and consultation regarding the potential for the spilled oil to submerge or sink.</u>
<u>6-12</u>	<u>Resources and personnel to detect and delineate the spilled oil such as side scan or multibeam sonar, laser fluorosensors, induced polarization, divers, remotely operated vehicles, or other methods to locate the oil on the bottom or suspended in the water column could have arrived. Additionally, containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom could have arrived.</u>
<u>12-24</u>	<u>Resources and personnel necessary to assess the impact of the spilled oil on the environment could have arrived. Types of resources that may be used for this purpose include sampling equipment.</u>

Time (hours)	Capability
	<u>Additionally, dredges, submersible pumps, sorbents, agitators, or other equipment necessary to recover oil from the bottom and shoreline could have arrived.</u>

(3) The contingency plan must detail the process for identifying if the oil handled has the potential to submerge or sink and include a description of the process for detecting, delineating, and recovering nonfloating oils in the areas that may be impacted. In lieu of including nonfloating oils response details in the contingency plan, plan holders may cite the nonfloating oils response tools found in the NWACP.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-325 Planning standards for dispersants.** (1) Plan holders (~~with vessels~~) carrying, handling, storing, or transporting Group 2 (~~(or)~~), 3, or 4 persistent oil (~~as a primary cargo that transit~~) that is known to be dispersible and that may impact when spilled in any area where pre-approval or case-by-case use of dispersants is available as per the NWACP, must plan for the use of dispersants.

(2) The plan holder must identify the locations of dispersant stockpiles, and dispersant type, capable of dispersing the lesser of five percent of the worst case spill volume or twelve thousand barrels per day, using a dispersant to oil ratio of one to twenty.

(3) The plan holder must describe the methods of transporting equipment and supplies to a staging area, and appropriate aircraft or vessels to apply the dispersant and monitor its effectiveness.

(4) The plan holder must describe operational support capability, including the platforms and spotters used to deploy dispersants, monitor the operational efficacy of the dispersant application to support operational decision making, and ensure safety of response personnel.

(5) These resources must be capable of being on-scene within twelve hours of spill notification.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-330 Planning standards for in situ burning.** (1) Based on the NWACP in situ burning policy, plan holders operating in areas where in situ burning (~~has an expedited approval process must~~) may be considered as a response option shall plan for the use of in situ burning as appropriate to the oil types handled and operating environments covered under the plan.

(2) The plan holder must identify the locations of two fire booms, air monitoring equipment, personal protective equipment, igniters and aircraft or vessels, or other appropriate means to be used to deploy the igniters.

(3) The fire booms must be five hundred feet in length each and have an additional one thousand feet of conventional boom, tow bridles and work boats capable of towing the boom for on-water burning operations.

(4) The plan holder must describe the methods of transporting the equipment to a staging area, and appropriate aircraft (~~(or)~~), vessels, and personnel resources to monitor its effectiveness at the scene of an oil discharge.

(5) These resources must be capable of being on-scene within twelve hours of spill notification.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-345 Determining effectiveness of recovery systems.** Plan holders and PRCs that own equipment shall provide information for ecology to determine the effectiveness of the recovery systems and how the equipment meets the planning standards. To avoid duplication, plan holders relying upon a PRC to meet the necessary planning standards may reference the information submitted in the PRC's application, as approved by the department. Ecology will use the criteria in ASTM International F 1780-97 (reapproved (~~2010~~) 2018).

Determination of efficiency of recovery systems in varied operating environments and product types:

(1) For all skimmers, describe how the device is intended to be transported and deployed. List the boom and work boats associated with each water based skimming system. Identify the pumps and pumping capacity that will be used to transfer product to storage devices.

(2) For all oil recovery systems that rely on a vessel of opportunity or nondedicated transport asset, include a statement on how the asset would be located and secured. Include in the plan the mobilization time needed to ensure the assets are available, as well as the time needed to set up the oil recovery system, and the personnel that will be used in the operations. This may require longer mobilization time than those (~~found~~) described in this chapter.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

**WAC 173-182-348 Determining effective daily recovery capacity.** (1) Plan holders and PRCs that own recovery equipment shall request an EDRC using the following procedures and the criteria in Title 33 C.F.R. 155, Appendix B, Section 6, "Determining Effective Daily Recovery Capacity for Oil Recovery Devices."

(2) When calculating the EDRC, the formula  $R = T \times 24 \text{ hours} \times E$  will be used.

R = Effective daily recovery capacity

T = Throughput rate in barrels per hour (nameplate capacity)

E = 20 percent (efficiency factor).

(3) Equipment owners may request an alternative EDRC by providing all of the following information:

(a) A description of the recovery system which includes skimmer, boom, pump, work boats, and storage associated with the device;

(b) Description of deployment methods that will be used to enhance the recovery system to maximize oil encounter rate during spills;

(c) Documented performance during verified spill incidents; and



(d) Documentation of laboratory testing using ASTM standard methods (ASTM F 631-((80)) 15) or equivalent test approved by the U.S. Coast Guard.

(4) The following formula will be used to calculate the effective daily recovery capacity for this alternative approach:

$$R = D \times U$$

R = Effective daily recovery capacity

D = Average oil recovery throughput rate in barrels per hour

U = 10 (hours of operation). 10 hours is used for potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material.

EDRC is limited to the storage capacity of the proposed recovery system.

For each skimming system identify the oil storage associated with each recovery system. State the storage capacity integral to the oil recovery system, if applicable. Describe how recovered oil is to be transported to/from interim storage.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-349 Covered vessel plan holders technical manuals.** (1) Each covered vessel plan holder that operates or transits in the Neah Bay, Cathlamet, or San Juan Islands planning standard areas must provide a technical manual that includes all of the equipment appropriate for the operating environment that is necessary to meet the recovery and storage requirements, through the forty-eight hour time frame.

(2) The technical manuals will be used to inform the five year BAP cycle and support ecology's determination that the response systems, training levels, and staffing demonstrate best available protection.

(3) Plan holders must use a systems approach to identify the equipment, including WRRL identification or other unique identification numbers, that will be used to describe the response systems in the technical manual. For each recovery system described include the following:

(a) An operational picture or diagram of the recovery system, the EDRC for the system, and associated temporary storage;

(b) The infrastructure and support resources necessary for deployment;

(c) Associated vessels necessary to enhance the skimmer;

(d) At least three hundred feet of boom to enhance the skimmer or an alternative based on manufacturers recommendations;

(e) The mobilization time and home base for the equipment;

(f) The ownership or mechanism for accessing the equipment for example, under contract, subcontract or letter of intent to the plan holder or other approved means;

(g) If applicable, the ability of the recovery system to be used to support night operations;

(h) The minimum number of personnel necessary to deploy the equipment for a twelve hour shift and the training

level of personnel appropriate to operate the equipment and carry out recovery;

(i) If alternative speeds are given for equipment associated with a recovery system the information should be included in the equipment description; and

(j) The oil type(s) the associated skimmer is optimized for.

(4) For the storage requirement include the following:

(a) An operational picture or diagram and capacity of the storage system;

(b) The infrastructure and support resources necessary for deployment;

(c) The mobilization time and home base for the equipment;

(d) The ownership or mechanism for accessing the equipment for example, under contract, subcontract, or letter of intent to the plan holder or other approved means;

(e) The minimum number of personnel necessary to deploy the equipment for a twelve hour shift and the training level of personnel appropriate to operate the equipment;

(f) If applicable, the ability of the storage system to be used to support night operations;

(g) If alternative speeds are given for equipment associated with the storage device the information should be included in the equipment description.

(5) The technical manual is a standalone planning standard and is not intended to be used to demonstrate compliance with any other planning standards. Technical manuals are not intended to bind the use of any specific tactics during a drill or spill or to imply a guarantee of what will occur in a real spill event.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-350 Documenting compliance with the planning standards.** The plan holder shall describe how the planning standards found in this chapter are met.

(1) Each plan shall provide a spreadsheet on the resources intended to meet the planning standards as described in this chapter. This spreadsheet shall account for boom, recovery systems, storage, and personnel (~~by type, quantity, home base and provider~~).

(2) Ecology will analyze the planning standard spreadsheet provided to determine whether the plan holder has access to equipment and personnel necessary to meet the planning standards.

(3) For purposes of determining plan adequacy, plan holders will include time for notification and mobilization of equipment and personnel. The time needed for a resource to move to the spill site is the sum of the notification, mobilization, and travel times. For dedicated resources owned by the plan holder, the mobilization planning factor to be used by the plan holder, PRC and ecology is thirty minutes. For all other dedicated response equipment the mobilization planning factor is one hour. Nondedicated resources shall have a mobilization planning factor of three hours or the time specified in the letter of intent, mutual aid agreement or contract.

(4) Equipment travel speeds shall be computed using a speed of thirty-five miles per hour for land and five knots for

water. Ecology may use geographic information systems (GIS), standard nautical charts, street maps and available online mapping programs to determine the length of time it will take equipment to cover a given distance.

(5) Plan holders may request approval for alternative notification, mobilization, and travel time by providing documentation to justify the request, such as actual performance during spills, drills, planned equipment moves, or unannounced drills.

(a) The request shall include date and time of performance or test, under average or typical weather/sea state conditions and transportation information.

(b) If ecology accepts these alternative response times, then these response times will be tested in training exercises, planned drills, unannounced drills, or spills to verify alternative calculations.

(c) If ecology grants plan holder or PRC owned response equipment an alternative mobilization, transit speed, recovery or storage volume, through the plan review process, and the alternative is not demonstrated to the satisfaction of the department during a drill or spill, it may result in disapproving the alternative.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

**WAC 173-182-355 Transfer sites for covered vessels at (~~locations~~) facilities where transfers occur, and for facilities with a vessel terminal.**

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage
2	<u>A safety assessment of the spill by trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived</u>		
4	<u>At least an additional 200 feet of boom and temporary storage of at least 196 barrels with the ability to collect, contain, and separate collected oil from water could have arrived. The additional boom should be capable of encountering oil at advancing speeds of at least 2 knots in waves. This boom shall be of a type appropriate for the operating environment</u>		
6	Additional 10,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	2 times the EDRC
12	Additional 20,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	2 times the EDRC
24	Additional 20,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	3 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-375 Padilla Bay planning standard.** Those covered vessel and facility plan holders that transit or operate north of State Highway 20, east of a line drawn from Shannon Point on Fidalgo Island to Kelly's Point on Guemes Island, south of a line drawn from Clark Point on Guemes Island and William Point on (~~Samish~~) Samish Island must meet the following standards. Some of the GRPs may be deployed by land.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
1.5	A safety assessment of the spill by trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
2	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 50% must be able to work in shallow water environments. Depth of 10 feet or less	1 times the EDRC
12	Additional 20,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived on scene. At least 20% of the skimming capability must be able to work in shallow water environments. Depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

**AMENDATORY SECTION** (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

**WAC 173-182-510 Requirements for response and protection strategies.** (1) Plan holders shall have methods to track and contain spilled oil and enhance the recovery and removal operations that are described in the plan.

(2) Each plan shall include a description of how environmental protection will be achieved, including:

(a) Protection of sensitive shoreline and island habitat by excluding, diverting, deflecting, collecting, or blocking oil movement;

(b) The plan shall include a description of the sensitive areas and develop strategies to protect the resources, including information on natural resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics;

(i) Identification of sensitive resources will not be limited to surface and shoreline species at risk from floating oil spills but will also include water column and benthic species at risk from sunken, submerged, or nonfloating oil spills.

(ii) Additional nonfloating oils considerations include identification of waterway depths, water density, sediment load, sea floor or river bottom types, and response options based on those factors.

(c) Identification of public resources, including public beaches, water intakes, drinking water supplies, and marinas;

(d) Identification of shellfish resources and methods to protect those resources;

(e) Identification of significant economic resources to be protected in the geographic area covered by the plan; and

(f) Each facility with the potential to impact a "sole source" aquifer or public drinking water source must identify the types of substrate and geographical extent of sensitive sites.

(3) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If approved GRPs do not exist in the NWACP, plan holders will work with ecology to determine alternative sensitive areas to protect.

(4) Each plan shall identify potential initial command post locations.

**AMENDATORY SECTION** (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-522 ((Covered vessel)) Planning standards for shoreline cleanup.** (1) Each contingency plan shall include procedures for identifying shoreline types that could be impacted by an oil spill and procedures to determine appropriate response tactics for the potentially impacted shorelines during spills. The plan should describe contracted access to shoreline clean-up workers and shoreline clean-up equipment to ensure the following capability can plan to arrive within twenty-four hours of spill notification:

(a) Plan holders must have contracted access to one hundred trained shoreline clean-up workers. The shoreline clean-up workers must have appropriate safety and Hazwoper training and will not be counted towards other planning standards. The training should enable clean-up workers to safely perform clean-up actions under the direction of the supervisors

and the work assignment as developed by the unified command.

(b) Plan holders must have contracted access to trained shoreline clean-up supervisors. Training for supervisors must include safety, Hazwoper, and relevant ICS courses. For planning purposes a ratio of 1:10 supervisors to clean-up workers should be available under contract to the plan holder. The shoreline clean-up supervisors will not be counted towards other planning standards. Supervisors must understand the ICS process and be able to direct workers consistent with the work assignments as developed by unified command.

(c) Plan holders shall have access to adequate equipment for passive recovery for three miles of shoreline on three tide lines. The plan must identify the staging location(s) of the shoreline clean-up equipment.

(d) The plan holder must have access to a shoreline clean-up mobile storage cache that can support eighty to one hundred shoreline clean-up workers with personal protective equipment, hand tools, and other logistical support for three to five days.

(2) Plan holders must describe how data collection, communications, data transmission and data management will be conducted.

(3) The plan shall describe how the plan holder will obtain additional resources necessary to support fourteen additional days of shoreline cleanup. The description should include vendor names, contact information, resources, and approximate time frames for resources to arrive at a staging area.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-535 ((Pipeline)) Planning standards for air monitoring to protect oil spill responders and the public.** Plans will include a narrative description of applicable federal, state, and local requirements and the plan holder's resources for conducting air monitoring to protect oil spill responders and the public, including:

(1) A description of how initial site safety assessment for responders will occur;

(2) A description of how work area air monitoring will occur;

(3) A description of how community air monitoring (area wide monitoring) will occur;

(4) A description of air monitoring instruments and detection limits that will be used by responders when monitoring for public safety;

(5) A description of action levels for various oil constituents of concern based on products handled by the pipeline (benzene, H<sub>2</sub>S, etc.);

(6) A description of data management protocols and reporting time frames to the unified command;

(7) A description of communication methods to at-risk populations;

(8) A description of how evacuation zones and shelter-in-place criteria are established.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-540 Planning standards for wildlife ((rescue and rehabilitation)) response.** ~~((The plan shall identify applicable federal, state and NWACP requirements for wildlife rescue and rehabilitation, and describe the equipment, personnel, resource and strategies for compliance with the requirements. These resources shall have the capability to arrive on-scene within twenty-four hours of spill notification.))~~ Plan holders must plan to respond to and care for wildlife injured or endangered by oil spills. Wildlife response actions shall be conducted in accordance with applicable federal and state regulations and the Northwest Area Contingency Plan.

(1) The plan must include contact information for any PRC or WRSP, available under contract or other approvable means, and that maintain the required equipment, personnel, permits, materials, and supplies, for conducting wildlife response operations in accordance with the capabilities detailed below.

(2) The plan shall describe the equipment, personnel, and resources for wildlife response, including:

(a) Equipment and personnel that may be used to support an initial impact assessment and wildlife reconnaissance via air, land, or water in the spill area.

(b) Equipment and personnel for whale reconnaissance, if these animals may be present in the areas the plan holder operates or transits, including:

(i) Contact information for providers of aircraft capable of supporting aerial reconnaissance, and deterrence, beyond the immediate spill area to locate whales, which may include southern resident killer whales.

(ii) Contact information for persons or organizations that can identify whales, which may include southern resident killer whales, from aerial observation and support field reconnaissance activities.

(c) Equipment and personnel that may be used to deter the types of wildlife likely to be found within the areas where the plan holder operates or transits, including the types and staging locations of the deterrent equipment. This equipment must have the capability to arrive on-scene within twelve hours of spill notification.

(d) Based on the areas the plan holder operates or transits, equipment and personnel to conduct monitoring and deterrence operations to prevent whales, which may include southern resident killer whales, from encountering spilled oil. The plan shall include contact information for a list of vessels, which may be whale watching vessels, which have been vetted, trained, and equipped to support killer whale deterrent operations. The accuracy of the contact information will be verified in tabletop drills. The deployment capability will be tested in multiple plan holder deployment drills.

(e) Equipment and supplies for mobile field stabilization activities, such as, conducting the initial health assessment and treatment of impacted wildlife prior to transport to an oiled wildlife rehabilitation facility. The mobile field stabilization asset must be enclosed, a minimum of one hundred eighty square feet, lighted and heated, and capable of arriving on-scene within twelve hours of spill notification.

(f) Wildlife rehabilitation facilities, space, and equipment suitable to conduct wildlife rehabilitation activities. Wildlife rehabilitation facilities shall meet the WDFW rehabilitation requirements detailed in WAC 220-450-100. The plan holder must have access under contract or other approvable means to wildlife rehabilitation spaces and necessary supporting supplies and equipment as described below. The facility spaces and equipment must have the capability to be strategically placed to support the response within twenty-four hours of spill notification. The facility space must meet the following minimum requirements:

(i) A minimum of two thousand four hundred square feet of space to house and treat wildlife. This space shall have the ability to be configured to support intake, prewash stabilization, wash/rinse, drying, and isolation/intensive care activities as needed. A minimum of four wash and rinse stations will have the ability to be located within this space.

(ii) A minimum of one thousand square feet of space to support rehabilitation activities. This space shall have the ability to be configured to support animal food preparation, medical lab, dry storage, morgue and necropsy areas.

(iii) Pools with a minimum of one thousand two hundred square feet of surface area are required. Pool dimensions will be such that no point in a pool will be greater than eight feet from a side. Pools will have the ability to be filled with fresh-water to a minimum depth of three feet.

(iv) Access to laundry and cold/freezer storage capacity to support wildlife response. These spaces may be located offsite.

(v) Include a diagram of how the equipment could be configured and provide details about at least one strategic staging location for the rehabilitation facility.

(3) The plan holder shall have contracted access to wildlife response service provider personnel that are appropriately trained to staff and manage the wildlife response within an incident command structure. At a minimum, one person that could have arrived in state within the first twelve hours of spill notification to coordinate with state, federal, tribal, and other response partners to initiate wildlife impact assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation operations as needed.

(4) The plan holder shall have contracted access to wildlife response service provider personnel to conduct and manage the various field aspects of a wildlife response including impact assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation. At a minimum, two personnel that could have arrived within the first twelve hours of spill notification to support these activities. An additional seven personnel, for a total of nine that could have arrived within twenty-four hours of spill notification to support these activities.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

**WAC 173-182-610 Plan evaluation criteria.** Plan holders shall prepare a plan that demonstrates capability, to the maximum extent practicable, of promptly and properly removing oil and minimizing environmental damage from a variety of spill sizes, up to and including worst case spills. Ecology will evaluate plans based on these conditions:

(1) Only ecology approved PRC resources, plan holder owned resources and resources guaranteed through contract, written mutual aid agreements, or letters of intent (~~(or agreement)~~) shall be counted when calculating the planning standards. In the case of nondedicated storage devices, these will be derated by fifty percent of maximum storage volume (counted at a one to two ratio) and acquisition of these resources will be tested in unannounced drills.

~~(2) ((If a plan holder operates in an area where more than one planning standard designation applies, ecology will determine the more stringent of planning standards.~~

~~(3))~~ Ecology will count equipment if it is appropriate for the operating environment within the geographic area defined in the plan. Ecology will use criteria from sources such as the ASTM International documents, World Catalogue, manufacturer's recommendations, the ~~((Regional))~~ Worldwide Response Resource List (WRRL), the federal Oil Spill Removal Organization guidelines, the *Field Operations Guide* resource typing guidelines and drills and spills to make approval and verification determinations on operating environments.

~~((4))~~ (3) Ecology will count boom if it is appropriate to the operating environment and support equipment is identified. Support equipment for boom means transportation devices, cranes, anchors, boom tackle, connectors, work boats and operators.

~~((5))~~ (4) Ecology will only count dedicated response resources towards the two hour standards.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-621 Oil spill contingency plan best achievable protection five-year review cycle.** (1) Ecology will review the planning standards at five-year intervals to ensure the maintenance of best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety.

(2) Ecology will adopt a five-year review cycle to ensure that the planning standards are updated to include proven new response technologies and response processes. In addition plan holders and other interested parties will be provided an opportunity to present information and proposals regarding spill prevention credits to support an alternative worst case discharge volume for the contingency plan. The review cycle is designed to evaluate BAP by assessing contributing elements including:

- (a) Best achievable technology;
- (b) Staffing levels;
- (c) Training procedures; and
- (d) Operational methods.

(3) The review cycle will be used to evaluate a variety of spill operations, tools, and technologies including, but not limited to, the following:

- (a) Advancing systems for the removal of oil from the surface of the water;
- (b) Improving the performance of existing skimmer/boom and storage systems technology;
- (c) Improving the performance of in situ burn and dispersants technology;

(d) Broadening the environmental conditions under which oil spill cleanup can take place;

(e) Ensuring that the technology is deployable and effective in a real world spill environment; ~~((and))~~

(f) Considering tools or technology that are designed, produced, and manufactured in an energy-efficient process and products are ~~((reusable))~~ reusable, recyclable, and reduce waste; and

(g) Improving equipment, training, and techniques associated with oiled wildlife response.

(4) Ecology may use the following processes to inform and update the use of BAP in the planning standards by:

(a) Convening an advisory committee(s) to assist ecology during the five-year review cycle and promote BAP.

(b) Evaluating the recovery systems identified in the technical manual during the five-year cycle to determine best achievable technology, and inform the development of future planning standards.

(c) Sponsoring a technology conference during the five-year cycle in cooperation with persons, organizations, and groups with interests and expertise in relevant technologies; or

(d) Conducting or reviewing studies, inquiries, surveys, or analyses appropriate to the consideration of new technologies, plan evaluation methods including EDRC, or best operational practices.

(5) Ecology may prepare reports following either of the actions described in subsection (4) of this section. These reports will identify the new technologies, processes, techniques or operational practices that ecology considers to represent BAP.

(6) Ecology will provide an opportunity for a thirty-day public review and comment period on ~~((the))~~ any draft reports.

(7) Ecology will use the developed reports to update the contingency planning rule as necessary every five years.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-640 Process for public notice and opportunity for public review and comment period.** (1) The purpose of this section is to specify the procedures for notifying the public which includes interested local and tribal governments about contingency plan status and decisions in order to provide opportunities for the public to review and comment.

(2) In order to receive notification of the public review and comment period, interested public, local, and tribal governments must sign up on the ecology email list (listserv) for posting notice about plan review and comment periods. Ecology's website will also be used to post notice of public review and comment periods.

(3) Public comment periods must extend at least thirty days. Public notice, review, and comment periods are required in the following circumstances:

(a) Plan submittals for facilities or vessels that have never submitted a plan in Washington;

(b) Plan updates required by WAC 173-182-130 ~~((and 173-182-135))~~;

(c) The submittal of plans for five-year review as required by WAC 173-182-120;

(d) Requests for an alternative planning standard in accordance with WAC 173-182-620;

(e) Plan holder requests for drill requirement waivers in accordance with WAC 173-182-740;

(f) PRC applications submitted under WAC 173-182-810;

(g) SMT and WRSP applications submitted under WAC 173-182-840; and

(h) Plan updates for permanent significant changes to approved plans as required in WAC 173-182-142.

(4) Public notice, review, and comment period are not required in the following circumstances:

(a) Routine updates to names, phone numbers, formatting, or forms that do not change the approved content of the plan;

(b) Plan updates to resubmit the binding agreement based on changes to the binding agreement signer; and

(c) Annual plan reviews that result in a letter to ecology confirming that the existing plan is still accurate.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-700 Drill participation, scheduling and evaluation.** (1) Plan holders, spill management teams (SMTs), wildlife response service providers (WRSPs), and primary response contractors (PRCs) shall participate in a drill and equipment verification program for the purpose of ensuring that all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Exercise Program (NPREP), is relied on to test each component of the plan.

(2) Plan holders and PRCs shall ensure ecology is provided an opportunity to help design and evaluate all tabletop and deployment drills for which the plan holder desires drill credit. To ensure this, plan holders shall schedule drills on the NWACP area exercise calendar. Scheduling requirements are noted in the table in WAC 173-182-710.

(3) Ecology shall mail a written drill evaluation report for drills to the plan holder following each deployment and tabletop drill. Credit will be granted for drill objectives that are successfully met.

(4) Objectives that are not successfully met shall be tested again and must be successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(5) Where plan deficiencies have been identified in the written evaluation, plan holders may be required to make specific amendments to the plan or conduct additional trainings to address the deficiencies.

(6) A plan holder may request an informal review with ecology of the ecology drill evaluation within thirty days of receipt of the report.

AMENDATORY SECTION (Amending WSR 16-21-046, filed 10/12/16, effective 11/12/16)

**WAC 173-182-710 Type and frequency of drills.** The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - One in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - Done two per year	These drills shall include, GRP deployments, testing of each type of equipment to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance. <del>((Except the tank vessel multiplan holder deployment drill which must be scheduled at least 60 days in advance.))</del>
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment <u>and verification of ecology approved alternative vessel speeds.</u>	No notice.
ERTV Deployment Drill for covered vessels transiting the Strait of Juan de Fuca	1 - One in each three year cycle, this is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill. <u>Credit for this drill may be achieved from a call out of the tug to a vessel emergency.</u>	This drill may involve notifications and tug call out, communications safety, tug demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel and holding position within one hundred feet of another vessel.	Scheduled at least 30 days in advance.
Wildlife Deployment Drill	1 - One in each three year cycle. This is an additional drill <del>((unless it is incorporated into a large multiobjective deployment drill)).</del>	This drill will be a deployment of wildlife equipment and wildlife <del>((handlers))</del> <u>response service provider personnel.</u>	Scheduled at least <del>((30))</del> <u>90</u> days in advance.
<del>((Tank vessel multiplan))</del> <u>Multiple plan holder large scale equipment deployment drill</u>	1 - One in each three year cycle.	This drill may involve dedicated and nondedicated equipment, vessels of opportunity, multiple simultaneous tactics, <u>responses to potentially non-floating oils,</u> and the verification of operational readiness over multiple operational periods.	Scheduled at least <del>((60))</del> <u>90</u> days in advance.

(1) Tabletop drills: Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the incident command system (ICS) and the spill management team described in the plan. Role playing shall be required in this drill. During all required tabletop drills plan holders must provide a master list of equipment and person-

nel identified to fill both command post and field operations roles. The master resources list must include:

- (a) ~~((Western regional response))~~ Worldwide Response Resource List identification numbers for ~~((all))~~ response resources; and

(b) Personnel names, affiliation, home base and command post or field role.

(2) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a drill. However, at ecology's discretion, team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every six years.

(3) Plan holders covering multiple vessels and ecology shall together design a systematic approach to, over time, involve all spill management teams identified in WAC 173-182-230 (6)(a) in tabletop and deployment drills as a best practice to demonstrate the preparedness of enrolled vessel members. These drills will be scheduled by the plan holder or unannounced to be conducted by ecology, at the discretion of ecology. These drills may test any plan components but at a minimum will include notification to the enrolled vessel qualified individual, coordination of supplemental resources under WAC 173-182-232 and the transition from the plan holder spill management team to the enrolled vessel company spill management team.

(4) Equipment deployment drills: Plan holders shall use deployment drills to demonstrate the actions they would take in a spill, including: Notifications, safety actions, environmental assessment, and response equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of plan holder owned assets, contracted PRC assets, nondedicated assets, and vessels of opportunity.

(b) Plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a geographic response plan (GRP) strategy identified within the plan. If no GRPs exist for the operating area, plan holders will consult with ecology to determine alternative sensitive areas to protect.

~~((d) Plan holders may request credit for the prebooming of an oil transfer provided the transfer is scheduled as a deployment on the drill calendar. Such credit may only be requested once per triennial cycle.))~~

(5) Plan holders may receive credit for deployment drills conducted by PRCs if:

(a) The PRC is listed in the plan; and

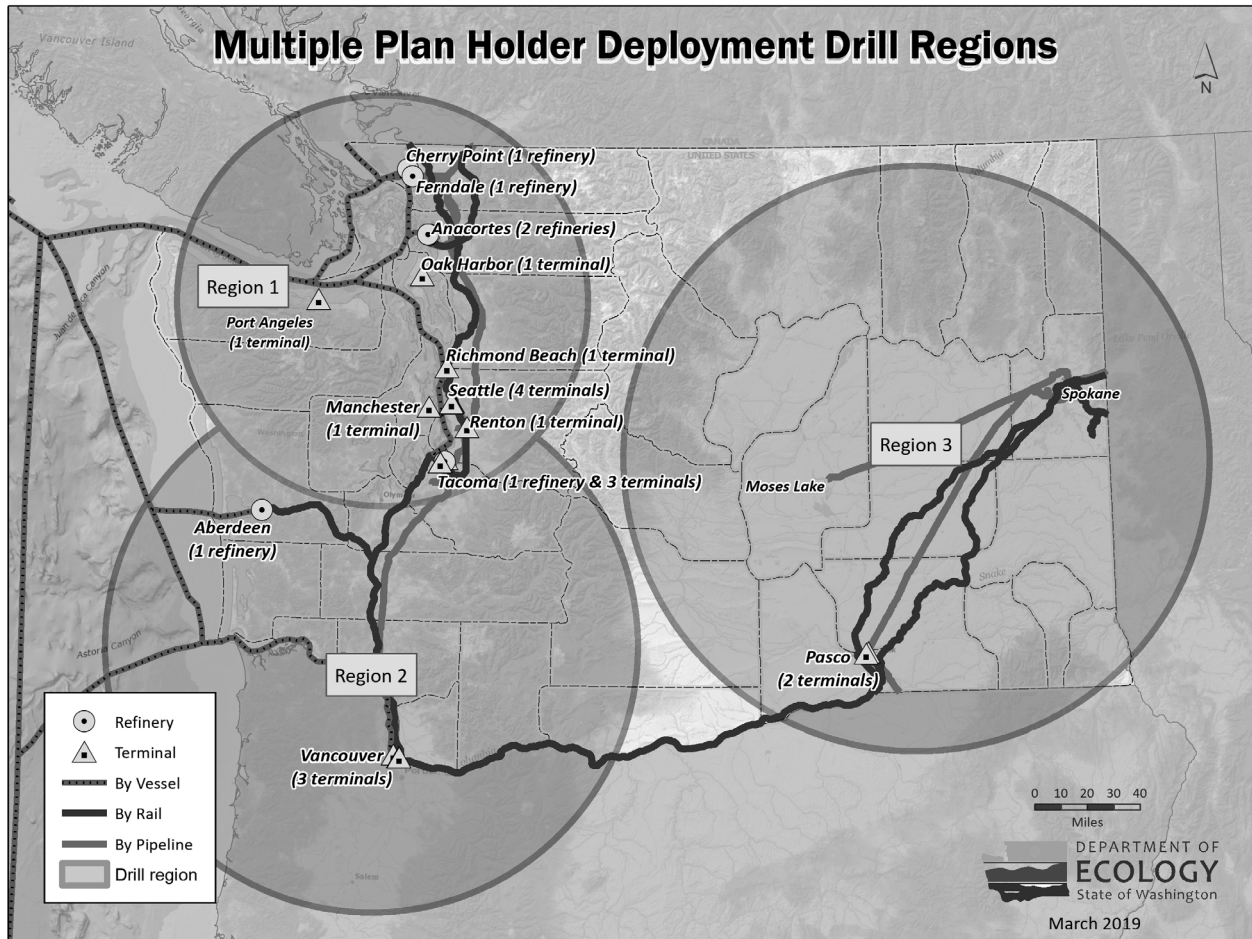
(b) The plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

(6) Additional large-scale multiple ~~((tank vessel))~~ plan holder equipment deployment drill requirement. At least once every three years all ~~((tank vessel))~~ plan holders

~~including plan holders that enroll multiple tank vessels.))~~ must participate in a multiple plan holder large scale equipment deployment exercise. This drill is a test of the functional ability for multiple contingency plans to be simultaneously activated in response to a spill. This drill may be incorporated into other drill requirements to avoid increasing the number of drills and equipment deployments otherwise required. The exercise location will be selected by ecology to ensure all plan holders have the opportunity to get credit based on the areas they operate or transit.

(a) The exercise will be called once in each of the three regions over the triennial cycle. All plan holders that operate or transit the region will receive credit.





(b) At least one plan holder (~~shall~~) may be the drill planning lead, participate in all the planning meetings, and observe the drill.

(c) This deployment may include the following objectives as applicable to the operating environment:

~~((a))~~ (i) Demonstration of dedicated and nondedicated equipment and trained contracted personnel;

~~((b))~~ (ii) Demonstration of contracted vessel of opportunity response systems and crew performing operations appropriate to the vessel capabilities;

~~((c))~~ (iii) Demonstration of multiple simultaneous tactics including:

~~((i))~~ (A) On-water recovery task forces made up of complete systems which demonstrate storage, recovery, and enhanced skimming;

~~((ii))~~ (B) Protection task forces which deploy multiple GRPs;

~~((iii))~~ (C) Vessel and personnel decontamination and disposal;

~~((iv))~~ (D) Deployment of contracted aerial assessment assets and aerial observers to direct skimming operations;

~~(and~~ ~~(v))~~ (E) Personnel and equipment identified for night operations(~~(-~~

~~(d))~~;

(F) Equipment necessary to address situations where oils, depending on their qualities, weathering, environmental factors, and methods of discharge, may submerge and sink;

(G) Equipment and personnel to conduct monitoring and deterrence operations to prevent whales, which may include southern resident killer whales, from encountering spilled oil; and

(H) Verification of the operational readiness during both the first six hours of a spill and over multiple operational periods.

(7) Additional deployment requirement for vessel plan holders with contracted access to the ERTV. Once every three years plan holders with contracted access to the ERTV must cosponsor a drill that includes deployment of the ERTV, unless ERTV drill credit has already been received under WAC 173-182-242 ~~((+)(e))~~ (2). This drill must be scheduled on the area exercise calendar. The drill shall include at a minimum:

(a) Notifications and tug call out;

(b) Safety and environmental assessment;

(c) Demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel;

(d) Demonstration of the capability to hold position within one hundred feet of another vessel; and

(e) Communications.

(8) Additional deployment requirement for all plan holders. Once every three years, plan holders must deploy ~~((regional mobile))~~ wildlife ~~((rehabilitation))~~ response equipment and personnel ~~((necessary to set up the wildlife rehabilitation system found in the plan))~~. This is an additional deployment drill ~~((unless it is incorporated into a large multi-objective deployment drill))~~.

(9) For all plan holders, ecology may initiate scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill program to survey, assess, verify, inspect or deploy response equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be initiated by ecology when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately prior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

**WAC 173-182-730 Other ways to get drill credit.** (1) Plan holders may request drill credit for a response to an actual spill, provided that ecology has an opportunity to participate and evaluate the spill response. Credit from spills shall not entirely alleviate the plan holder's responsibility to drill.

(a) Credit for a spill may be used to replace the requirement to conduct a drill once per triennial cycle.

(b) If credit for a spill is requested more than once per triennial cycle, it is at the discretion of ecology if additional drill credit will be granted. Additional credit may be granted if there were lessons learned from the spill or if key response components were successfully demonstrated.

(2) To obtain credit, a written request to ecology shall be made within sixty days of completion of the cleanup operations.

(a) The request shall include documentation supporting the components of WAC 173-182-720.

(b) Plan holders shall have up to ninety days to submit a lessons learned summary supporting the request for drill credit.

~~((2))~~ (3) Plan holders may request drill credit for out-of-state tabletop drills if:

(a) Ecology has been invited to attend the drill;

(b) Ecology has an opportunity to participate in the planning process for the drill. There shall be a meeting to discuss the scope and scale of the exercise, the drill objectives and the types of criteria for which Washington credit may be applicable;

(c) Documentation of the drill and self certification documentation shall be provided to ecology within thirty days of the drill;

(d) The plan holder has one response plan for a number of facilities or a fleet of vessels; and

(e) Plan holders seeking credit for a scheduled out-of-state drill shall notify ecology in writing ninety days in advance, to provide ecology an opportunity to participate.

**PART IV: PRIMARY RESPONSE CONTRACTOR (PRC), SPILL MANAGEMENT TEAM (SMT), AND WILDLIFE RESPONSE SERVICE PROVIDER (WRSP) STANDARDS**

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-800 Primary response contractor (PRC) application.** (1) To become a state-approved PRC, a response contractor must:

(a) Submit an application as set forth in ~~((subsection (2) of this section))~~ WAC 173-182-810;

(b) Have a process to provide twenty-four hour/day contact for spill response;

(c) Commit to begin mobilization efforts immediately upon notification but no later than one hour from notification of a spill;

(d) Maintain equipment in accordance with manufacturer specifications;

(e) Identify and train staff and supervisors expected to be deployed on oil spill response tactics or used to meet plan holder planning standards;

(f) Assist plan holders in meeting the requirements for plans and drills in Washington; and

(g) List response equipment on the ~~((western regional response))~~ Worldwide Response Resource List currently located at ~~((www.wrri.us))~~ www.wrri.world, or provide an equivalent electronic equipment list and commit to maintaining the equipment list in whatever format is provided.

(2) To apply, a contractor should complete, sign and submit the application form number ECY 070-216.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-810 Content submittal and review of primary response contractor (PRC) applications.** The PRC application must contain the following information as applicable to the capabilities of the PRC:

(1) A list of primary response contractor personnel indicating whether they are full-time, part-time, or subcontracted including their homebase or office location, and the spill management team roles or tactical roles they may fill in a response.

(a) If personnel are available to the primary response contractor via subcontract a summary of the contract terms for personnel resources should be included in the application. The contract shall be made available to ecology upon request.

(b) A list of all staff training, including training of subcontractors if applicable, and a description of the frequency of essential core training response staff receive.

(c) The training program must be specific to the tactics the PRC intends to perform. Include in the application details about the following training areas as applicable:

- (i) Safety training;
- (ii) Training on-site safety assessment;
- (iii) Assessment of environmental conditions;
- (iv) Determination that response equipment ((is) and personal protective equipment are appropriate for the incident conditions;

(v) Air monitoring equipment and documentation; and

(vi) Development of a hazard worksheet.

(d) Additional training as necessary for personnel that may be relied upon to perform these tasks:

(i) Conducting site safety briefings;

(ii) Use and deployment of limited visibility tracking devices;

(iii) Utilization and coordination of communications equipment;

(iv) Transfer of a product from skimmer to on-water and shoreside storage;

(v) Containment of a land spill from entering water by channeling, diverting, or berming;

(vi) Fast water river response strategies;

(vii) High current marine response strategies;

(viii) GRP or protection strategy familiarization and deployment;

(ix) Anchoring and setting boom;

(x) Familiarization and deployment of PRC owned oiled-wildlife rehabilitation equipment;

(xi) On water recovery including enhanced skimming;

(xii) Directing field resources;

(xiii) Incident command system training for spill management team roles.

(2) A list of all communication assets by type and location. The frequencies and geographical ranges must be included. This list must be maintained and if not included in the application made available to ecology upon request.

(3) A list of response equipment must be submitted electronically to ecology or via (~~western response resource~~) Worldwide Response Resource List, at (~~www.wrrl.us~~) www.wrrl.world, containing the following information:

(a) All equipment must be given a unique company identifier, and this identifier must be submitted on the list provided to ecology.

(b) Equipment must include the minimum number of personnel required to operate successfully for one shift.

(c) The location the equipment is stored using latitude/longitude in the WGS 1984 coordinate system. The coordinates must be in decimal degree format.

(d) The type of equipment, including manufacturer's name, manufacture date, model and specifications.

(e) For boom, list the length, manufacturer's name, model, size, and date of manufacture.

(f) For oil recovery devices state the manufacturer's name, model, EDRC or approved alternative, manufacture date, and operating environment.

(g) For temporary storage list the maximum capacity in barrels.

(h) For workboats list the vessel name and/or identifier, length, and vessel type, manufacturer, engine type(s) and horsepower.

(4) A detailed description of the vessel of opportunity program.

(5) A detailed description of other response technologies systems available such as in situ burn, bioremediants, and other chemical agents.

(6) A detailed description of any wildlife (~~rescue and rehabilitation~~) response resources. Include a list of contracts or agreements with any trained wildlife (~~rescue and rehabilitation~~) response personnel.

(7) A detailed description of equipment and personnel that would be used for shoreline cleanup. This should include a description of training resources for additional clean-up personnel.

(8) A list of agreements for access to shoreside storage. Include the owner, location, and general estimate of volume.

(9) A list of agreements for fixed wing and rotary aircraft used to support spill clean-up operations.

(10) A detailed description of remote sensing equipment and aerial surveillance resources and personnel that the primary response contractor has under contract or letter of intent that could be used to detect and track the extent and movement of oil or direct on-water recovery operations.

(11) Once an application is received, ecology will determine whether it is complete. If not, the response contractor shall be notified of deficiencies in writing and given a time period for submitting the required information.

(12) Equipment and personnel readiness will be verified once the application is approved. Ecology may inspect equipment, training records, maintenance records, drill records, and may request a test of the call-out procedures, and require operation of each type of equipment listed in the application. These inspections may be conducted at any/all equipment locations. Any resources not on-site at the time of an inspection shall be accounted for by company records.

(13) If the application is approved and the verification is satisfactory, the contractor shall receive a letter of approval describing the terms of approval, including expiration dates and EDRC of the recovery equipment. PRC approvals will be reviewed by ecology every three years. Applications shall be resubmitted forty-five calendar days in advance of the expiration date.

(14) Once the PRC application is approved, the PRC must certify in writing on a quarterly basis that the list of equipment the contractor maintains in their application or on the WRRL is accurate. Any contractor that doesn't maintain their list on the WRRL, must resubmit their electronic list on a quarterly basis.

(15) Notification by facsimile or email will be considered written notice.

(16) Failure to certify the accuracy of the equipment list on a quarterly basis may result in the loss of PRC approval.

(17) If the application is not approved, the contractor shall receive an explanation of the factors for disapproval and a list of actions to be taken to gain approval.

(18) Approval of a response contractor by ecology does not constitute an express assurance regarding the adequacy of the contractor nor constitute a defense to liability imposed under state law.

**AMENDATORY SECTION** (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-820 Significant changes to primary response contractor (PRC) applications require notification.** (1) The PRC is responsible to provide written notification to ecology and all plan holders to whom they are obligated, within twenty-four hours, of any significant change in the information reported in the approved application. The notice shall include the identification of back up resources sufficient to maintain the PRC readiness level, and the estimated date that the original equipment shall be back in full service.

(2) Changes which are considered significant include:

(a) Loss of equipment that results in being out of compliance with any planning standard of any plan holder covered by the PRC;

(b) Transfers of equipment to support spill response for out-of-region spills;

(c) If greater than ten percent of available boom, storage, recovery, dispersants, in situ burn or shoreline clean-up equipment is moved out of the home base, except for a drill or training, as depicted on the WRRL;

(d) Permanent loss of primary response contractor personnel identified to fill ICS positions for plan holders;

(e) Changes in equipment ownership if used to satisfy a plan holder planning standard; or

(f) Modification or discontinuing of any mutual aid, letter of intent, or contract agreement.

(3) Notification by ((~~facsimile or~~)) email will be considered written notice.

(4) Failure to report changes could result in the loss of PRC approval.

(5) If ecology determines that PRC approval conditions found in WAC 173-182-800 are no longer met, approval may be revoked. The PRC will receive a written notice of the loss of approval and a time period to either appeal or correct the deficiency.

(6) Ecology will immediately notify plan holders of changes in the approval status of PRCs or significant changes in PRC capability.

**NEW SECTION**

**WAC 173-182-830 Spill management team (SMT) and wildlife response service provider (WRSP) application requirements.** Requirements to become a state-approved spill management team or wildlife response service provider, including:

(1) Submission of an application as set forth in WAC 173-182-840;

(2) Have a process to provide twenty-four-hour/day contact for spill management;

(3) Commit to begin mobilization efforts immediately upon notification but no later than two hours from notification of a spill;

(4) Commit to ensuring the incident commander is able to arrive in the state within six hours after notification of a spill, if the SMT is contracted to fill the role;

(5) Assist plan holders in meeting the requirements for plans and drills in Washington;

(6) Commit to the implementation and use of the contingency plan(s) to which they are contracted during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(7) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

**NEW SECTION**

**WAC 173-182-840 Content submittal and review of spill management team (SMT) and wildlife response service provider (WRSP) applications.** The application must contain the following information as applicable to the capabilities of the SMT or WRSP:

(1) A list of personnel indicating whether they are full-time or part-time, dedicated, or nondedicated, including their home base or office location, and the roles they may fill in a response.

(a) Dedicated means either a full- or part-time employee of the organization.

(b) Nondedicated means any personnel resource available under contract, LOI, or other approvable means. Nondedicated relationships shall be verified by ecology during the application review process.

(2) An ICS Form 207 organizational diagram depicting a potential staffing plan for the roles the SMT or WRSP may fill in support of a worst case spill.

(3) A description of the twenty-four hour call-out process and estimated time frames for arrival in state. The description of the personnel response times (arrival) is based on the standby or call back status of the person, their home base, and travel time.

(4) A list of staff training by position, and a description of the frequency of training staff receive.

(a) The training program must be position specific for the roles that may be filled by the SMT or WRSP.

(b) The training program must include at a minimum, training on ICS, NWACP plan policies and response tools, use and location of GRPs, the contents of the contingency plan, and worker health and safety requirements including Washington state specific regulations, as appropriate to the role.

(c) A combination of training and experience in drills and spills may be used to describe SMT personnel capabilities within response roles.

(d) New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(5) Wildlife response service providers must also include a detailed description of the types of wildlife response activities that may be provided, such as; initial wildlife assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation. Any other capabilities and personnel resources shall also be detailed in the application including:

(a)(i) Identification of personnel that hold wildlife rehabilitation permits with oiled wildlife endorsements.

(ii) A copy of the permit shall be submitted with the application, or a statement indicating that the permit will be made available to ecology for review upon request.

(b) Identification of personnel capable of filling the wildlife branch director role or other command post support roles.

(c) Identification of wildlife operations field staff to conduct and manage the various field aspects of a wildlife response including reconnaissance, deterrence, recovery, stabilization, and rehabilitation.

(d) Specific training relevant to key wildlife response roles and capabilities the wildlife contractor may support and a detailed position specific training plan. A combination of training and experience in drills and spills may be used to describe personnel capabilities within response roles.

(6) Once an application is received, ecology will determine whether it is complete. If the application is not complete, the SMT or WRSP shall be notified of deficiencies in writing and given a time period for submitting the required information.

(7) Ecology shall inspect employee training records and conduct a test of the SMT or WRSP call-out procedures.

(8) If the verification is satisfactory and the application is approved, the SMT or WRSP shall receive a letter of approval describing the terms of approval, including expiration dates.

(9) Application approvals will be reviewed by ecology every three years. Applications shall be resubmitted forty-five calendar days in advance of the expiration date.

(10) If the application is not approved, the SMT or WRSP shall receive an explanation of the factors for disapproval and a list of actions to be taken to gain approval.

(11) Approval by ecology does not constitute an express assurance regarding the adequacy of the SMT or WRSP nor constitute a defense to liability imposed under state law.

#### NEW SECTION

**WAC 173-182-850 Significant changes in spill management team (SMT) or wildlife response service provider (WRSP) applications require notification.** (1) The SMT or WRSP is responsible to provide written notification to ecology and all plan holders to whom they are obligated, within twenty-four hours, of any significant change in the information reported in the approved application.

(2) Changes which are considered significant include:

(a) Permanent loss of personnel identified to fill ICS positions for plan holders;

(b) Modification or discontinuing of any mutual aid, letter of intent, permit, or contract agreement;

(c) Change in personnel availability due to personnel being out of their regular homeport or office location to support a spill response.

(3) Notification by email will be considered written notice.

(4) Failure to report changes could result in the loss of approval.

(5) If ecology determines that application approval conditions found in WAC 173-182-840 are no longer met, approval may be revoked. The SMT or WRSP will receive a written notice of the loss of approval and a time period to either appeal or correct the deficiency.

(6) Ecology will immediately notify plan holders of changes in the approval status of the application or significant changes in SMT or WRSP capability.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-182-135 Phase in language for pipeline plan holders.

WAC 173-182-323 Planning standards for pipelines carrying crude oil.

WAC 173-182-520 Facility planning standards for shoreline cleanup.

#### **WSR 20-01-172**

#### **PERMANENT RULES**

#### **LIQUOR AND CANNABIS BOARD**

[Filed December 18, 2019, 11:15 a.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The adopted amendments contained in WAC 315-55-105 implement relevant sections of ESSB 5298 (chapter 393, Laws of 2019) that becomes effective January 1, 2020, regarding the packaging and labeling of marijuana products.

Purpose: WAC 314-55-105 Packaging and labeling requirements, the Washington state liquor and cannabis board (board) has adopted amendments to existing rule that remove the requirement for measuring devices for marijuana-infused liquid edibles; reduced plastic package thickness for marijuana-infused edibles, and implemented the requirements of ESSB 5298. The board has also adopted technical and clarifying revisions to WAC 314-55-077 (8) and (9) related to packaging and labeling requirements.

Citation of Rules Affected by this Order: Amending WAC 314-55-077 and 314-55-105.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Other Authority: ESSB 5298 (chapter 393, Laws of 2019).

Adopted under notice filed as WSR 19-22-030 on October 30, 2019.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made from the proposed version to the adopted version: WAC 314-55-105

(1)(g), added "consistent with guidance provided in 21 U.S.C. Sec. 343(6)" to provide definitional clarity.

WAC 314-55-105 (3)(c), reinserted language that was erroneously struck during a previous edit that provides processors with the option to package capsules, lozenges, and similar products within a resealing, child resistant outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.

WAC 314-55-105 (4)(b)(iii), revised language to align with the rule petition proposal that triggered this rule project, to read, "Marijuana edibles in liquid form that include more than one serving must be packaged with a resealable closure or cap. Marijuana edibles in liquid form must include a measuring device such as a measuring cap or dropper. Hash marks on the bottle or package qualify as a measuring device." This revision clarifies that licensees have the option to provide a measuring cap or dropper, or other measuring device, but at minimum, must provide hash marks on a packaging containing more than one serving of marijuana-infused liquid edible product.

WAC 314-55-105 (2)(e)(iv), (5)(d)(iv) and (6)(d)(iv) re, label serving size: Struck language that read, "The serving or draw size contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package, and the amount of product per serving;"

WAC 314-55-105 (2)(e)(ii), (3)(e)(ii), (4)(e)(ii), (5)(d)(ii), (6)(d)(ii) and (7)(d)(ii) re, lot number: Combined language formerly appearing separately regarding lot number requirement and unique identifier generated by the board's traceability system to read, "The lot number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;"

WAC 314-55-105 (2)(f)(i), (3)(g)(i), (4)(f)(i), (5)(e)(i), (6)(e)(i), (7)(e)(i), added "consistent with guidance provided by 21 C.F.R. Sec. 101.18(a)" to provide clarity.

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 Non-governmental 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 2, Repealed 0.

Date Adopted: December 18, 2019.

Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees.** (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

**(2) Application and license fees.**

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The ((~~WSLCB~~)) board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The ((~~WSLCB~~)) board may reopen the marijuana processor application window at subsequent times when the ((~~WSLCB~~)) board deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the ((~~WSLCB~~)) board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5)(a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

**(6) Recipes, product, packaging, and labeling approval.**

(a) A marijuana processor licensee must obtain label and packaging approval from the ((~~WSLCB~~)) board for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product,

labeling, and packaging to the ~~((WSLCB))~~ board for approval. More information on the product, packaging, and label review process is available on the ~~((WSLCB's web site at www.leb.wa.gov))~~ boards website.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the ~~((WSLCB))~~ board. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the ~~((WSLCB))~~ board or its designee.

(c) If the ~~((WSLCB))~~ board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must~~(=~~

~~((a)))~~ be homogenized to ensure uniform disbursement of cannabinoids ~~((throughout the product; and~~

~~((b))~~ Until January 1, 2019, prominently display on the label "This product contains marijuana."

(9) A marijuana processor ~~((is limited in the types of))~~ may infuse food or drinks ~~((they may infuse))~~ with marijuana ~~((- Marijuana infused products that))~~, provided that:

~~((a))~~ The product or products do not require cooking or baking by the consumer ~~((are prohibited. Marijuana infused products that are especially appealing to children are prohibited. Marijuana infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.~~

~~((a)))~~;

~~((b))~~ Coatings applied to the product or products are compliant with the requirements of this chapter;

~~((c))~~ The product and package design is not similar to commercially available products marketed for consumption by persons under twenty-one years of age, as defined by WAC 314.55.105 (1)(c).

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

~~((b)))~~ (11) Other food items that may not be infused with marijuana to be sold in a retail store include:

~~((i)))~~ (a) Any food that has to be acidified to make it shelf stable;

~~((ii)))~~ (b) Food items made shelf stable by canning or retorting;

~~((iii)))~~ (c) Fruit or vegetable juices (this does not include shelf stable concentrates);

~~((iv)))~~ (d) Fruit or vegetable butters;

~~((v)))~~ (e) Pumpkin pies, custard pies, or any pies that contain egg;

~~((vi)))~~ (f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

~~((vii)))~~ (g) Dried or cured meats.

~~((e)))~~ (h) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

~~((d)))~~ (i) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

~~((e) Per))~~ (12) Consistent with WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

~~((f))~~ The ~~((WSLCB))~~ board may designate other food items that may not be infused with marijuana.

~~((H))~~ (13) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

~~((H))~~ (14) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

~~((H2))~~ (15) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inven-

tory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

AMENDATORY SECTION (Amending WSR 18-11-005, filed 5/2/18, effective 1/1/19)

**WAC 314-55-105 Marijuana product packaging and labeling ((requirements)). ~~((1) Packaging requirements:~~**

~~(a) **General packaging requirements applying to all marijuana products.** Any container or packaging containing usable marijuana, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.~~

~~(b) **Additional product specific packaging requirements.** The following product specific packaging requirements apply to each of the following product types in addition to the packaging requirements provided in (a) of this subsection:~~

~~(i) **Marijuana-infused products general requirements.**~~

~~(A) All marijuana-infused products for oral ingestion must be packaged pursuant to the following requirements:~~

~~(I) Child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or~~

~~(II) Plastic four mil or greater in thickness and be heat sealed with no easy open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure, except as provided in (b)(i)(A)(III) and (B) of this subsection.~~

~~(III) Marijuana-infused products for oral ingestion in liquid form where a single serving is contained with the package may be sealed using a metal crown cork style bottle cap. Marijuana-infused products for oral ingestion in liquid form that include more than one serving must be packaged with a resealable closure or cap.~~

~~(B) **Marijuana-infused solid edible products.**~~

~~(I) If there is more than one serving of marijuana-infused solid edible products in the package, each serving must be packaged individually in child resistant packaging as pro-~~

~~vided in (b)(i) of this subsection and placed in the outer package except as provided below.~~

~~(II) **Products such as capsules, lozenges, and similar products approved by the WSLCB on a case-by-case basis may be packaged loosely within a resealing outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.**~~

~~(C) **Marijuana-infused liquid edible products.** Packages containing more than one serving of marijuana-infused liquid edible product must:~~

~~(I) **Have a resealing cap or closure; and**~~

~~(II) **Include a measuring device such as a measuring cap or dropper with the package containing the marijuana-infused liquid edible product. Hash marks on the bottle or package do not qualify as a measuring device.**~~

~~(ii) **Marijuana concentrates.** Marijuana concentrates must be packaged:~~

~~(A) **In child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or**~~

~~(B) **Plastic four mil or greater in thickness, heat sealed with no easy open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure.**~~

~~(2) **Labeling requirements.**~~

~~(a) **Marijuana and marijuana product labels generally.** The following label requirements apply to all marijuana products:~~

~~(i) **Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.**~~

~~(ii) **Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.**~~

~~(iii) **All information, warning statements, and language required in this section must not be covered or obscured in any way.**~~

~~(iv) **Labels affixed to the container or package containing marijuana or marijuana products sold at retail must include:**~~

~~(A) **The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;**~~

~~(B) **The unique identifier number generated by the WSLCB's traceability system. This must be the same number that appears on the transport manifest;**~~

~~(C) **If more than one serving is in a package, the label must prominently display the number of servings in the package and the amount of product per serving;**~~

~~(D) **Net weight in ounces and grams or volume as applicable;**~~

~~(E) **THC concentration (delta-9 tetrahydrocannabinol) listed as total THC and activated THC-A and CBD concentration (cannabidiol) listed as total CBD and activated CBD-A;**~~

~~(v) **Labels of usable marijuana and marijuana products sold at retail in the state of Washington must not contain any statement, depiction, or illustration that:**~~

~~(A) **Is false or misleading;**~~

~~(B) **Promotes over consumption;**~~



(C) Represents the use of marijuana has curative or therapeutic effects;

(D) Depicts a child or other person under legal age consuming marijuana, or includes:

(I) Objects such as toys, characters suggesting the presence of a child, or any other depiction or illustration designed in any manner to be especially appealing to children or other persons under twenty-one years of age; or

(II) Is designed in any manner that is especially appealing to children or other persons under twenty-one years of age.

(b) ~~Standard warnings required on all labels.~~ The following warning statements must be included on labels of all marijuana and marijuana products. The warning statements required below must be of a size to be legible and readily visible to a consumer inspecting a package and must not be covered or obscured in any way:

(i) "Warning—May be habit forming";

(ii) "Unlawful outside Washington State";

(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana"; and

(iv) The marijuana universal symbol as provided in WAC 314-55-106.

(c) ~~Additional product specific labeling requirements.~~ In addition to the labeling requirements in subsection (3)(a) and (b) of this section, the following product specific labeling requirements apply to each of the following product types and must be present on labels when offered for sale at retail:

(i) ~~Usable marijuana, including marijuana mix.~~ The statement "Smoking is hazardous to your health."

(ii) ~~Marijuana concentrates, marijuana infused extract for inhalation, and infused marijuana mix.~~

(A) If solvents were used to create the concentrate or extract, a statement that discloses the type of extraction method, including any solvents or gases used to create the concentrate or extract; and

(B) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(iii) ~~Marijuana infused products~~ (except for marijuana-infused products for topical application as provided in (c)(iv) of this subsection):

(A) Serving size and the number of servings contained within the unit;

(B) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

(C) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract; and

(D) The following sentence: "CAUTION: Intoxicating effects may be delayed by 2+ hours."

(iv) ~~Marijuana infused products for topical application.~~

(A) The statement "DO NOT EAT" in bold, capital letters; and

(B) A list of all ingredients in descending order of predominance by weight or volume as applicable.

~~(d) Permitted optional information that may be included on labels.~~

~~(i)) (1) The following definitions apply to this section, unless the context clearly indicates otherwise:~~

~~(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that meets any of the following criteria:~~

~~(i) The use of comically exaggerated features;~~

~~(ii) The attribution of human characteristics to animals, plants, or other objects;~~

~~(iii) The attribution of animal, plant, or other object characteristics to humans;~~

~~(iv) The attribution of unnatural or extra-human abilities.~~

~~(b) "Child resistant packaging" means packaging that is used to reduce the risk of poisoning in persons under the age of twenty-one through the ingestion of potentially hazardous items including, but not limited to, marijuana concentrates, useable marijuana, and marijuana-infused products.~~

~~(c) "Especially appealing to persons under the age of twenty-one" means a product or label that includes, but is not limited to:~~

~~(i) The use of cartoons;~~

~~(ii) Bubble-type or other cartoon-like font;~~

~~(iii) A design, brand, or name that resembles a noncannabis consumer product that is marketed to persons under the age of twenty-one;~~

~~(iv) Symbols or celebrities that are commonly used to market products to persons under the age of twenty-one;~~

~~(v) Images of persons under the age of twenty-one; or~~

~~(vi) Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of twenty-one.~~

~~(d) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent, consistent with RCW 69.50.101(z).~~

~~(e) "Marijuana edible" means a marijuana-infused product as defined in RCW 69.50.101(ff).~~

~~(f) "Marijuana topical" or "topical" means any product containing parts of the cannabis plant that is intended for application to the body's surface including, but not limited to, lotions, ointments, salves, gels, or cream that are not intended for ingestion, inhalation, or insertion by humans or animals.~~

~~(g) "Structure and function claims" mean a description of the role of a marijuana product intended to affect normal structure and function in humans, characterized by the means by which a marijuana product acts to maintain such structure or function, or describe the general well-being from consumption of a marijuana product, consistent with the guidance provided in 21 U.S.C. Sec. 343(6).~~

~~(h) "Useable marijuana" means dried marijuana flowers consistent with RCW 69.50.101(ww). The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.~~

~~(2) **Marijuana concentrates.** The following standards apply to all packaging and labeling of marijuana concentrates:~~

~~(a) Containers or packaging containing marijuana concentrates must protect the product from contamination. Con-~~

tainers or packaging must not impart any toxic or harmful substance to the marijuana concentrate.

(b) Marijuana concentrates must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana concentrates.

(c) Marijuana concentrates must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Marijuana concentrate labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Marijuana concentrate labels must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the marijuana producer and processor;

(ii) The lot number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;

(iii) The net weight in ounces and grams or volume as applicable;

(iv) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(v) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(vi) If solvents were used to create concentrate or extract, a statement that discloses the type of extraction method, including in solvents or gases used to create the concentrate; and

(vii) A complete list of any other chemicals, compounds, additives, thickening agents, terpenes, or other substances used to produce or added to the concentrate or extract at any point during production. A copy of the complete list of chemicals, compounds, additives, thickening agents, terpenes, or other substances must be kept and maintained at the facility in which the marijuana concentrates are processed.

(f) Marijuana concentrate labels may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents that the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana; or

(v) Is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(g) The following statements must be included on all marijuana concentrate labels:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(h) Product labeling for marijuana concentrates identified as compliant marijuana product under RCW 69.50.375 (4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product that is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product that is not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

**(3) Marijuana edibles in solid form.** The following standards apply to all packaging and labeling of marijuana edibles in solid form:

(a) Containers or packaging containing marijuana edibles in solid form must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana edibles in solid form.

(b) Marijuana edibles in solid form must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana edibles in solid form.

(c) Marijuana-infused edibles in solid form, such as capsules, lozenges, and similar products approved by the board on a case-by-case basis may be packaged loosely within a resealing outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.

(d) Marijuana edibles in solid form must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(e) Labels for marijuana edibles in solid form must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(f) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;

(iii) The serving size and the number of servings contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(iv) Net weight in ounces and grams or volume as applicable;

(v) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(vii) A list of ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

(viii) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that were added to the extract.

(g) Labels for marijuana edibles in solid form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents that the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(h) The following warning statements must be included on all labels for all marijuana edibles in solid form. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Caution: Intoxicating effects may be delayed by 2+ hours."

(i) Product labeling for marijuana edibles in solid form identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(j) Where there is one statement made under (i) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(k) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(4) Marijuana edibles in liquid form. The following standards apply to all packaging and labeling of marijuana edibles in liquid form:

(a) Containers or packaging containing marijuana edibles in liquid form must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana edibles in liquid form.

(b) Marijuana edibles in liquid form must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana edibles in liquid form.

(iii) Marijuana edibles in liquid form that include more than one serving must be packaged with a resealable closure or cap. Marijuana edibles in liquid form must include a measuring device such as a measuring cup or dropper. Hash marks on the bottle or package qualify as a measuring device.

(c) Marijuana edibles in liquid form must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Labels for marijuana edibles in liquid form must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;

(iii) The serving size and the number of servings contained within the unit. If more than one serving is in a pack-

age, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(iv) Net weight in ounces and grams or volume as applicable;

(v) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(vii) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Protections Act of 2004;

(viii) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or added to the extract.

(f) Labels for marijuana edibles in liquid form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(g) The following warning statements must be included on all labels for all marijuana edibles in liquid form. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Caution: Intoxicating effects may be delayed by 2+ hours."

(h) Product labeling for marijuana edibles in liquid form identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not

been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(5) Useable marijuana. The following standards apply to all packaging and labeling of useable marijuana:

(a) Containers or packaging containing useable marijuana must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the useable marijuana.

(b) Useable marijuana must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Useable marijuana must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for useable marijuana must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensee that produced and processed the marijuana or marijuana products;

(ii) The lot number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;

(iii) Net weight in ounces and grams or volume as applicable;

(iv) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(v) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use.

(e) Labels for useable marijuana may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all useable marijuana. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(g) Product labeling for useable marijuana identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(6) **Marijuana mix.** Marijuana mix is defined in WAC 314-55-010(22) as an intermediate lot that contains multiple strains of useable marijuana and is chopped or ground so no particles are greater than 3 mm. The following standards apply to all packaging and labeling of marijuana mix:

(a) Containers or packaging containing marijuana mix must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana mix.

(b) Marijuana mix must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Marijuana mix must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for marijuana mix must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensee that produced and processed the marijuana or marijuana products;

(ii) The lot number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;

(iii) Net weight in ounces and grams or volume as applicable;

(iv) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(v) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(vi) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or added to the extract;

(vii) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(e) Labels for marijuana mix form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all marijuana mix. The following warning statements must legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(g) Product labeling for marijuana mix identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(7) **Marijuana topicals.** The following standards apply to all packaging and labeling of marijuana topicals:

(a) Containers or packaging containing a marijuana topical must protect the product from contamination. Containers

or packaging must not impart any toxic or harmful substance to the marijuana topical.

(b) Marijuana topicals must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Marijuana topicals must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for marijuana topicals must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensee that produced and processed the marijuana or marijuana products;

(ii) The lot number of the product (the unique identifier number generated by the board's traceability system). This must be the same number that appears on the transport manifest;

(iii) The label must prominently display the net weight in ounces and grams or volume as applicable, and may not exceed serving and transaction limits as described in WAC 314-55-095;

(iv) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(v) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use; and

(vi) A list of all ingredients in descending order of predominance by weight or volume as applicable.

(e) Labels for marijuana topicals may not contain any statement, depiction, or illustration that:

(i) Is false or misleading, consistent with guidance provided in 21 C.F.R. Sec. 101.18(a);

(ii) Promotes over consumption;

(iii) Represents the use of marijuana has curative or therapeutic effects;

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all marijuana topicals. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Unlawful outside Washington State;"

(ii) The marijuana universal symbol as provided in WAC 314-55-106; and

(iii) "DO NOT EAT" in bold, capital letters.

(g) Product labeling for marijuana topicals identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(8) Optional label information. Optional label information includes the following: Harvest date, "best by" date, and manufactured dates ((are optional information that may be placed on labels.

(ii) Other cannabinoids and terpenes not required to be placed on the label by this section may be included on the label if:

(A) The producer or processor has test results from a certified third-party lab to support the claim; and

(B) The lab results are made available to the consumer upon request).

((3)) (9) Accompanying materials. ((The following)) Accompanying materials must be provided with a marijuana product or made available to the consumer purchasing marijuana products ((at retail)).

A producer or processor ((may)) must provide ((this)) the following product-specific information, for as long as the product is for sale, through an internet link, web address, or QR code on the product label ((so long as the information particular to that product as required below is maintained and accessible to a consumer for as long as the product is available for sale at retail.)) as follows:

(a) A statement ((that discloses)) disclosing all pesticides applied to the marijuana plants and growing medium during production of the ((usable)) useable marijuana or the base marijuana used to create the concentrate or the extract added to infused products;

(b) A list disclosing all of the chemicals, compounds, additives, thickening agents, terpenes, or other substances added to any marijuana concentrate during or after production.

((4)) (10) Upon request materials. ((Upon the request of a retail customer, a retailer must disclose the name of the certified lab that conducted and the results of the required quality assurance tests for any marijuana or marijuana product the customer is purchasing or considering purchasing.

(5) For the purposes of this section, the following definitions apply:

(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:

(i) The use of comically exaggerated features;

~~(ii) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or~~

~~(iii) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.~~

~~(b) "Especially appealing to children" means a product, label, or advertisement that includes, but is not limited to, the following:~~

~~(i) The use of cartoons;~~

~~(ii) Bubble type or other cartoon-like or action font;~~

~~(iii) The use of bright colors similar to those used on commercially available products intended for or that target youth or children;~~

~~(iv) A design, brand, or name that resembles a noncannabis consumer product of the type that is typically marketed to minors;~~

~~(v) Symbols or celebrities that are commonly used to market products to minors;~~

~~(vi) Images of minors; or~~

~~(vii) Similarities to products or words that refer to products that are commonly associated with minors or marketed to minors.)~~ A consumer may request the name of the certified lab and quality assurance test results for any marijuana or marijuana product. A retailer must provide the information upon request.