

**WSR 16-10-020**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Children's Administration)  
 [Filed April 25, 2016, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-112.

Title of Rule and Other Identifying Information: The department is proposing new language to chapters 388-145, 388-147, and 388-148 WAC to provide further licensing instructions for child safety and well-being and additional clarification to the minimum licensing requirements. The division of licensed resources (DLR) minimum licensing requirements were amended on January 11, 2015. Following the release of these amended WAC chapters, DSHS staff, private agency staff, group care staff, and foster parents requested additional changes to be made to the minimum licensing requirements.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on July 5, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 6, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., July 5, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 21, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapters 388-145, 388-147, and 388-148 WAC. The intent of this revision to chapters 388-145, 388-147, and 388-148 WAC is to modify the minimum licensing requirements or provide additional clarification or housekeeping edits to the current language. It will also create new requirements for the safety and well-being of children. The anticipated effects will be that foster parents, DSHS staff, child placing agency staff and group care staff will better understand the WAC requirements.

Reasons Supporting Proposal: The requested revisions for chapters 388-145, 388-147, and 388-148 WAC will provide foster parents, DSHS staff, private agency and group care staff additional clarification on the minimum licensing requirements.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031.

Rule is necessary because of federal law, WAC 388-145-1540, 388-147-1545, and 388-148-1425 must be changed per Public Law 113-183 the Preventing Sex Trafficking and Strengthening Families Act.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristina Wright, OB2, Olympia, Washington, (360) 902-8349.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** The department of social and health services' children's administration (CA) is proposing amendments to chapters 388-145, 388-147, and 388-148 WAC, licensing requirement for group care facilities, child placing agencies and adoption services, and child foster homes.

DLR licensing requirements were amended on January 11, 2015. Since the release[,] foster parents, DSHS agency staff, group care facilities, and child placing agencies have requested additional changes. The intent of the proposed WAC revisions are to provide foster parents, department staff, group care facilities, and child placing agencies additional clarification on the licensing process and requirements.

The proposed amendments to this chapter include, but are not limited to:

- The definition of "child," "children," or "youth" will be revised to no longer include up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program.
- An exception to the group care and child placing agency staff qualifications is being implemented.
- New requirement for reporting incidents involving children.
- Additional clarification regarding bedroom sharing requirements.
- The National Center for Missing and Exploited Children contact number has been added for foster parents and agencies to call when there is a child missing from care. This change is due to the new federal legislation requirement; Public Law 113-183 The Preventing Sex Trafficking and Strengthening Families Act that goes into effect on September 29, 2016.
- New requirements for infant safe sleep procedures.
- Home schooling is being prohibited in licensed foster homes.
- Additional clarification on weapon storage in foster homes.
- Other language or housekeeping edits have been made.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS)—DETERMINATION OF NEED:** Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

These proposed rules impact child placing agencies and adoption services and group care facilities. These businesses fall under the child group foster homes designation by the North American Industry Classification System (NAICS) codes (#623990).

Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic

impact on small businesses. The statute outlines information that must be included in an SBEIS.

CA has analyzed the proposed rule amendments and has determined that small businesses will not be disproportionately impacted by these changes. There are no additional costs to child placing agencies or group care facilities with the implementation of the WAC revisions noted above.

**INDUSTRY ANALYSIS:** DLR, CA, is responsible for the development and regulatory oversight of all licensing requirements for child placing agencies and group residential facilities per chapter 74.15 RCW. As part of their monitoring, DLR keeps a current internal data base that identifies all affected small businesses.

Most of the child placing agencies and facilities with whom CA contracts are considered to be small businesses employing fewer than fifty staff. These proposed rules impact the licensing of child placing agencies and adoption services and group care facilities.

**INVOLVEMENT OF SMALL BUSINESSES:** DLR involved child placing agencies licensing staff, tribes, and group residential care stakeholders. An e-mail survey was sent out to the two hundred thirty-one child placing agencies or group care facilities licensed by DLR statewide. These small businesses were asked whether or not the implementation of the proposed WAC revision would cause additional costs to either the child placing agency or group care facility. All of the agencies that responded indicated that there would not be additional costs.

**COST OF COMPLIANCE:** Under RCW 19.85.020, CA has considered annual costs to small businesses that are fifty dollars or more per child served annually.

**General Costs:** DLR's analysis revealed that there are no costs imposed by the proposed amendments. An e-mail survey was sent out to the two hundred thirty-one child placing agencies or group care facilities that DLR licenses statewide. Out of two hundred thirty-one e-mails sent, twenty-three responses were received and one hundred percent reported that the implementation of the proposed WAC revision would not cause any additional cost to the group care facilities.

**Benefits for Proposed Rules:** The proposed WAC revisions for chapters 388-145, 388-147, and 388-148 WAC will provide foster parents, DSHS staff, child placing agency staff, and group care staff further clarification on the licensing process and the minimum licensing requirements. It will also create some new additional requirements for the safety and well-being of children.

**JOBS CREATED OR LOST:** We do not anticipate that jobs will be lost or created as a result of these rules.

**CONCLUSION:** DLR, CA has given careful consideration to the impact proposed rules in chapters 388-145, 388-147, and 388-148 WAC would have on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, DLR has analyzed impacts on small businesses and there is no cost to child placing agencies or group care facilities with the proposed WAC amendments.

Please contact Kristina Wright if you have questions.

A copy of the statement may be obtained by contacting Kristina Wright, 1115 Washington Street, Olympia, WA

98504-5710, phone (360) 902-8349, fax (360) 902-7903, e-mail wrighks@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kristina Wright, 1115 Washington Street, Olympia, WA 98504-5710, phone (360) 902-8349, fax (360) 902-7903, e-mail wrighks@dshs.wa.gov.

April 19, 2016  
Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1305 What definitions do I need to know to understand this chapter?** The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"CA" means children's administration.

"Capacity" means the age range, gender and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and/or cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter 388-145 WAC.

"Child", "children" or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years old;

~~((2))~~ ~~Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;~~

~~((3))~~ (2) Up to twenty-one years of age and participating in the extended foster care program;

~~((4))~~ (3) Up to twenty-one years of age with intellectual and developmental disabilities;

~~((5))~~ (4) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and

services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family and/or in need of emergency placement.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care staff" means persons who provide daily supervision and direct care to group care children and youth.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies and licensed group care facilities.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse and/or neglect per RCW 74.15.020(d). ERCs may choose to be open up to twenty-hour hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or assigned DSHS worker. This does not include children in dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or runaway youth in need of emergency sleeping arrangements.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood,

sleep, or behavior. These include antipsychotic, antidepressant and antianxiety medications.

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staffed residential home" means a licensed facility that provides twenty-four hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"Volunteer" means a person who provides direct care services without compensation, for your facility.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

**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.

**AMENDATORY SECTION** (Amending WSR 16-01-121, filed 12/18/15, effective 1/18/16)

**WAC 388-145-1335 What additional steps must I complete prior to licensing?** (1) You must submit to your licensor a detailed written program description for DLR approval. In the description you must outline:

- (a) Your mission and goals;
- (b) A description of the services you will provide to children and their families;
- (c) Your written policies covering qualifications, duties and ongoing training for developing and upgrading staff skills; and
- (d) A description of your agency's policies and procedures.
- (e) For staffed residential facilities in family homes, you must provide a written plan to the child's DSHS worker for the supervision of children in your care if you work outside of your staffed residential home.
- (2) You must have a site inspection by your DLR licensor or someone designated by DLR who can verify that your premises have:
  - (a) Adequate storage for staff and client files;
  - (b) A landline working telephone;
  - (c) Adequate space for privacy when interviewing parents and children;
  - (d) Room or area used for administrative purposes;
  - (e) Adequate space for visitation;
  - (f) Appropriate furnishings for the children in your facility; and

(g) Your license clearly posted (if inspection is for a renewal license).

(3) All facilities described in this chapter, (except for staffed residential homes for five or fewer children), are required to meet the health requirements to receive a certificate of compliance from the Washington state department of health (DOH) and the fire safety requirements from the Washington state patrol fire protection bureau (WSP/FPB).

(4) You, your employees and volunteers are required to submit a negative tuberculosis (TB) test or an X ray, unless you provide documentation of a negative TB test in the previous twelve months. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(a) We may grant an exception to the TB test requirement, in consultation with a licensed health care provider.

(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.

(5) If you are being licensed to care for children under the age of two, you, your employees and volunteers working in the facility caring for children under the age of two are required to provide documentation verifying you have current pertussis and influenza vaccinations. The department may license you to serve children under the age of two even though you, your employees or volunteers are unable to obtain an influenza vaccination for medical reasons. In this case, a licensed health care provider's statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other employees or volunteers must still be vaccinated. We recommend (but do not require) these immunizations for you, your employees and volunteers when you serve children age two and older.

(6) You must have proof of current immunizations for any children living on the premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exceptions to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA or ARNP).

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1390 Will you license or continue to license me if I violate licensing regulations?** (1) We may modify, deny, suspend or revoke your license when you, your employees or volunteers:

- (a) Do not meet the licensing regulations in this chapter; ((~~☒~~))
- (b) Have not met the background check requirements; ((~~☒~~))
- (c) Have been determined by us to have abused or neglected a child; ((~~☒~~))
- (d) Have committed, permitted, or assisted in an illegal act on the premises of a facility providing care to children;
- (e) Are unable to manage your property and financial responsibilities; ((~~☒~~))

~~((f))~~ (f) Tried to get a license by deceitful means, such as making false statements or omitting critical information on the application; ~~((e))~~

~~((g))~~ (g) Knowingly allowed employees or volunteers who made false statements or omitted critical information on their applications to work at your agency; or

~~((h))~~ (h) Cannot provide for the safety, health and well-being of the child(ren) in your care.

(2) We may suspend or revoke your license if you have children in your facility for whom you are not licensed, without approval by your DLR licenser. This includes having more children, or children of different ages or gender than the license allows.

(3) We will send you a certified letter informing you of the decision to modify, deny, suspend or revoke your license. In the letter, we will also tell you what you need to do if you disagree with the decision.

(4) The department has jurisdiction over all licenses issued by DLR and over all holders of and applicants for licenses as provided in RCW 74.15.030(5). Such jurisdiction is retained even if an applicant requests to withdraw the application, or you surrender or fail to renew your license.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1440 What are the requirements of case management staff?** (1) Case management staff will provide individualized case management and coordination of services. For emergency respite centers and resource and assessment centers, the on-site program manager may provide individualized case management and coordination of services so additional case managers are not required. The on-site program manager must meet qualifications in WAC 388-145-1430.

(2) Case management staff hired before January 10, 2015 must have five years of experience or a bachelor's degree in social services or closely related field from an accredited school.

~~((2))~~ (3) Case management staff hired after January 10, 2015 must have a master's or bachelor's degree in social services or a closely related field from an accredited school.

~~((3))~~ (4) Case management staff who has only a bachelor's degree must consult with a person with a master's degree in social services or closely related field. One hour of consultation must occur every twenty hours the employee works.

~~((4))~~ (5) Case managers must maintain:

(a) Training, experience, knowledge, and demonstrated skills in each area s/he will be supervising;

(b) Skills and understanding needed to effectively manage cases; and

(c) The ability to monitor staff development and training.

~~((5))~~ (6) You may use case management staff provided by another agency if these staff meet the educational qualifications and you have a written agreement with the agency describing the scope of services to be provided.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1445 What are the qualifications of direct care staff?** (1) Each direct care staff must:

(a) Be at least twenty-one years of age, unless they meet the requirements in subsection (2) of this section;

(b) Have a high school diploma or high school or equivalency course of study (GED/HSEC);

(c) Have one year of experience working directly with children. Two years of social services education may be substituted for the required experience;

(d) Have the skills and ability to work successfully with the special needs of children in care; and

(e) Have effective communication and problem solving skills.

(2) Direct care staff may be between eighteen and twenty-one years of age if they provide sufficient documentation demonstrating one or more of the following:

(a) They are professionals licensed by the Washington department of health;

(b) They have an associate of arts, the equivalent degree, or greater; or

(c) They are enrolled in an internship or practicum program with an accredited college or university (~~and can provide sufficient documentation~~).

(3) Direct care staff under twenty-one years of age and enrolled in an internship or practicum program must be supervised by staff at least twenty-one years of age.

(4) You must maintain sufficient direct care staff who meet the education and training requirements defined in this chapter.

(5) Case aides must meet the requirements for direct care staff.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1455 If I have health care staff, what qualifications are required?** (1) If your program requires health care staff, they must:

(a) Meet the full professional competency requirements in their respective field; and

(b) Maintain their certification or licensure as required.

(2) Applicants with current and active medical licenses or certificates (nurses, physicians and EMS personnel) may submit their licenses or certificates to satisfy the first aid and CPR requirement.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1535 What incidents involving children must I report?** (1) You must report the following incidents immediately and in no instance later than forty-eight hours to your local children's administration intake staff and the child's DSHS worker:

(a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;

(b) Any time you suspect physical or sexual abuse, neglect, or exploitation of a child as required under chapter 26.44 RCW;

(c) Sexual contact between two or more children that is not considered typical play between preschool age children;

(d) Any disclosure by a child in care of sexual or physical abuse;

(e) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;

(f) Any use of physical restraint that is alleged to have been improperly applied or excessive;

(g) Physical assault between two or more children that result in injury requiring off-site medical attention or hospitalization;

(h) Physical assault of an employee, volunteer or others by children in care that results in injury requiring off-site medical attention or hospitalization;

(i) Any medication that is given or consumed incorrectly and requires off-site medical attention; or

(j) Property damage that is a safety hazard and is not immediately corrected or may affect the health and safety of children.

(2) You must report the following incidents related to a child (~~with an assigned DSHS worker~~) in care as soon as possible or in no instance later than forty-eight hours, to the child's DSHS worker (~~(if any)~~):

(a) Suicidal/homicidal thoughts, gestures, or attempts that do not require professional medical treatment;

(b) Unexpected health problems outside the usual range of reactions caused by medications, that do not require professional medical attention;

(c) Any incident of medication incorrectly administered or consumed;

(d) Any professional treatment for emergency medical or emergency psychiatric care;

~~((d))~~ (e) Physical assault between two or more children that results in injury but did not require professional medical treatment;

~~((e))~~ (f) Physical assault of a foster parent, employee, volunteer or others by children that results in injury but did not require professional medical treatment;

~~((f))~~ (g) Drug and/or alcohol use by a child in your care;

~~((g))~~ (h) Any inappropriate sexual behavior by or toward a child; or

~~((h))~~ (i) Use of prohibited physical restraints for behavior management.

(3) You must maintain a written record of these notifications with the date, time and staff person making the report.

(4) Programs providing care to medically fragile children who have nursing care staff on duty may document the incidents described in subsection (2)(b) and (c) in this section in the facility daily logs, rather than contacting the DSHS worker or case manager, if agreed to in the child's case plan.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1540 What are my reporting responsibilities when a child is missing from care (except for**

**overnight youth shelters)?** (1) As soon as you or your staff have reason to believe a child in your care is missing as defined in WAC 388-145-1305 or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:

(a) The child's assigned DSHS worker, as appropriate;

(b) CA intake, if the DSHS worker is not available or it is after normal business hours.

(2) You are required to contact local law enforcement within six hours if the child is missing. However, if one or more of the following factors present, you must contact law enforcement immediately:

(a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained or removed by another person;

(b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age thirteen or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily will place the child at severe risk;

(e) The child is pregnant or parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal thoughts) that if not treated will place the child at severe risk;

(g) The child has an intellectual and developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

(3) After contacting local law enforcement, you must also contact the ~~((Washington state patrol's (WSP) missing children clearinghouse to report that the child is missing from care. The telephone number for the clearinghouse is 1-800-543-5678))~~ national center for missing and exploited children at 1 (800) 843-5678 and report the child missing from care.

(4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's DSHS worker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsections (2)(a) through (i) of this section are present, you and the child's DSHS worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.

(5) You must provide the following information to law enforcement and to the child's DSHS worker when making a missing child report, if available:

(a) When the child left;

(b) Last known location of the child;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have caused the child's departure;

(e) Possible places where the child may go;

(f) Special physical or mental health conditions or medications that affect the child's safety;

(g) Known companions who may be aware or involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) Recent photo of the child.

(6) You must ask law enforcement for the missing person report number and provide it to the CA DSHS worker or staff.

(7) At any time after making an initial report you learn of a missing child's whereabouts, you must report that information to the child's DSHS worker.

(8) If a child is returned to your care, it is your responsibility to cancel the run report and notify all persons you have informed of the child's run.

(9) Youth participating in the extended foster care (EFC) program are exempt from these requirements. You must follow all other reporting requirements as defined in WAC 388-145-1535.

**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.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1585 What are the requirements for water, garbage, and sewer?** (1) You must maintain adequate sewage and garbage facilities.

(2) Your facility must be connected to a public sewer system or have an on-site sewage system permitted by the local health department or the Washington state department of health.

(3) You must have access to a public water supply approved by the local health ~~((authority))~~ district or tribal ~~((authority))~~ government unless you have a private water supply tested by the local health ~~((authority))~~ district or a private water-testing laboratory approved by the Washington state department of ((Public)) health. Testing is required at the time of licensing, relicensing and at any time the department deems necessary.

(4) Running water ~~((must))~~ may not exceed one hundred twenty degrees Fahrenheit.

(5) You must provide paper cups, individual drinking cups or glasses, or drinking fountains.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1605 What are the requirements for sharing bedrooms?** (1) Shared bedrooms must provide enough floor space for the safety and comfort of children.

(2) When a teen parent and his/her infant sleep in the same room, the room must contain at least eighty square feet of usable floor space. You must allow only one parent and infant(s) to occupy a bedroom.

(3) No more than four children shall sleep in the same room, with the exception of interim facilities ~~((as outlined in~~

~~the additional program-specific requirements in this WAC))~~. This includes foster children and any other children.

~~(4) ((You must not allow a child over one year of age to share a bedroom with an adult who is not the child's parent))~~ Children over age one may share a bedroom with an adult who is not the child's parent only if necessary for close supervision due to the child's medical or developmental condition and the child's licensed health care provider recommends it in writing.

(5) An individual that is in the extended foster care program may share a bedroom with a child of the same gender. If the child is unrelated to the individual in the extended foster care program, the child must be at least ten years of age.

~~((5))~~ (6) Foster children ((must)) may not share the same bedroom with a child of another gender unless all children are under age six.

~~((6) A youth placed in the extended foster care program may not share a bedroom with a child under ten years of age who is not a sibling, without approval from the child's DSHS worker.))~~

(7) An exception may be granted to subsection (3) though (6) in this section with an administrative approval if it is supported by the licensor (and the child(ren)'s DSHS worker, as appropriate) and is in the best interest of the child.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1610 What are the requirements for beds in a facility?** (1) You must provide an appropriately sized separate bed for each child, with clean bedding and a mattress in good condition.

(2) Some children may soil the bed, and you may need to plan accordingly. You must provide waterproof mattress covers or moisture-resistant mattresses if needed. Each child's pillow must be covered with waterproof material or be washable.

(3) A mat may be used for napping but not as a substitute for a bed.

(4) You must provide an infant with a crib that ensures the safety of the infant, and complies with chapter 70.111 RCW, Consumer Product Safety Improvement Act of 2008. These regulations include:

(a) A maximum of 2 3/8" between vertical slats of the crib; and

(b) Cribs, infant beds, bassinets, and playpens must have clean, firm, snug fitting mattresses covered with waterproof material that can be easily disinfected and be made of wood, metal, or approved plastic with secure latching devices ~~((; and~~

~~((e) You must not use crib bumpers, stuffed toys and pillows when sleeping infants unless advised differently by the child's physician)).~~

(5) You must place infants on their backs for sleeping, unless advised differently by the child's ~~((physician))~~ licensed health care provider.

(6) You may not have loose blankets, pillows, crib bumpers, or stuffed toys with a sleeping infant.

(7) You may swaddle infants using one lightweight blanket upon the advice and training of a licensed health care provider. You must keep the blanket loose around the hips and

legs when swaddling in order to avoid hip dysplasia. You may swaddle infants under two months of age unless a licensed health care provider directs otherwise. You may not dress a swaddled infant in a manner that allows them to over-heat.

(8) You may not use wedges and positioners with a sleeping infant unless advised differently by the infant's licensed health care provider.

(9) You may not use weighted blankets for children under three years of age or that have mobility limitations unless advised differently by the child's licensed health care provider.

(10) If you use a weighted blanket, you must meet the following requirements:

(a) The weight of the blanket may not exceed ten percent of the child's body weight;

(b) Metal beads are choking hazards and may not be used in a weighted blanket; and

(c) You may not cover the child's head with a weighted blanket or place it above the middle of the child's chest.

(11) You ~~(must)~~ may not allow children to use loft style beds or upper bunks of beds if using them could hurt them because of children's age, development or condition. Examples: Preschool children, expectant mothers, and children with a disability.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1625 What are the requirements for the use of electronic monitors to monitor children?** (1) CA prohibits the use of video and audio monitoring of children in the interior of a group residential facility unless all of the following are met:

(a) The DLR administrator grants approval for the use of an electronic monitoring device in your facility following a request by the child's DSHS worker;

(b) The court approves implementation of the monitoring as part of the child's case plan; and

(c) You maintain a copy of the approval.

(2) The prohibition of audio or visual monitoring does not include monitoring of the following:

(a) Infants ~~(and toddlers)~~ or children through four years of age;

(b) Medically fragile or sick children;

(c) Video recording equipment to document actions of a child as directed in writing by the child's physician;

(d) Video recording for special events such as birthday parties or vacations; or

(e) The use of door or window alarms or motion detectors.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1305 What definitions do I need to know to understand this chapter?** The following words and terms are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Business hours" means hours during the day in which business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard business hours.

"CA" means children's administration.

"Care provider" means any person who is licensed or authorized to provide care for children and/or cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means a licensed child placing agency (CPA) review that a foster home being supervised by that CPA meets licensing regulations. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-147 WAC.

"Child," "children" or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years old;

~~((2) Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;))~~

~~((3))~~ (2) Up to twenty-one years of age and participating in the extended foster care program;

~~((4))~~ (3) Up to twenty-one years of age with intellectual and developmental disabilities;

~~((5))~~ (4) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency" or "(CPA)" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"FBI" means the Federal Bureau of Investigation.



"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that your agency meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age under the care and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services without compensation, for your agency.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

**AMENDATORY SECTION** (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1335 What additional steps must I complete prior to licensing?** (1) You must submit to your licensor a detailed written program description for DLR approval. In the description you must outline:

- (a) Your mission and goals;
- (b) A description of the services you will provide to children and their families;
- (c) Your written policies covering qualifications, duties and on-going training for developing and upgrading staff skills; and
- (d) A description of your agency's policies and procedures.

(2) You must have a site inspection by your DLR licensor or someone designated by DLR who can verify that your Washington state premises have:

- (a) Adequate storage for staff and client files;
- (b) A working telephone;
- (c) Adequate space for privacy when interviewing parents and children;
- (d) Room or area used for administrative purposes;
- (e) Adequate space for visitation, if needed; and
- (f) Your license clearly posted (if inspection is for a renewal license).

(3) You and your staff are required to submit a negative tuberculosis (TB) test or an X ray, unless you have had a negative TB test in the previous twelve months. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(a) We may grant an exception to the TB test, in consultation with a licensed health care provider.

(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1410 Will you license or continue to license me if I violate licensing regulations?** (1) We may modify, deny, suspend or revoke your license when you, your employees or volunteers:

(a) Do not meet the licensing regulations in this chapter; ~~((a))~~

(b) Have not been cleared for unsupervised access to children; ~~((b))~~

(c) Have been determined by us to have abused or neglected a child; ~~((c))~~

(d) Have committed, permitted, or assisted in an illegal act on the premises of a facility providing care to children;

(e) Tried to get a license by deceitful means, such as making false statements or omitting critical information on the application;

(f) Knowingly allowed employees or volunteers who made false statements or omitted critical information on their applications to work at your agency;

(g) Are unable to manage your property and financial responsibilities; ~~((g))~~

~~((h))~~ (h) Cannot provide for the safety, health and well-being of the child(ren) in your care; or

~~((i))~~ (i) Do not meet the health and safety requirements of the department of health and/or the Washington state patrol fire protection bureau (WSPFP), if required.

(2) We may suspend or revoke your license if you have children in your certified homes for whom you are not licensed, without approval of your DLR licensor. This includes having more children, or children of different ages or gender than the license allows.

(3) We will send you a certified letter telling you of the decision to modify, deny, suspend or revoke your license. In the letter, we will also tell you what you need to do if you disagree with the decision.

(4) The department has jurisdiction over all licenses issued by DLR and over all holders of and applicants for licenses as provided in RCW 74.15.030(5). Such jurisdiction is retained even if an applicant requests to withdraw the application, or you surrender or fail to renew your license.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1455 What are the requirements of case management staff?** (1) Case management staff will provide individualized case management and coordination of services.

(2) Case management staff hired before January 10, 2015 must have five years of experience or a bachelor's degree in social services or closely related field from an accredited school.

~~((3))~~ (3) Case management staff hired after January 10, 2015 must have a master's or bachelor's degree in social services or a closely related field from an accredited school.

~~((4))~~ (4) Case management staff with a bachelor's degree must consult with a person with a master's degree in social services or closely related field for one hour for every twenty hours the case management employee works.

~~((4))~~ (5) Case managers must maintain:

(a) Training, experience, knowledge, and demonstrated skills in each area he or she will be supervising;

(b) Skills and understanding needed to effectively manage cases; and

(c) The ability to monitor staff development and training.

~~((5))~~ (6) You may use case management staff provided by another agency if these staff meet the educational qualifications and you have a written agreement with the agency describing the scope of services to be provided.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1465 If I have health care staff, what are their qualifications?** (1) If your program requires health care staff, they must:

(a) Meet the full professional competency requirements in their respective field; and

(b) Maintain their certification or licensure as required by the department of health.

(2) Applicants with current and active medical licenses or certificates (nurses, physicians and EMS personnel) may submit their licenses or certificates to satisfy the first aid and CPR requirement.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1540 What incidents involving children must I report?** (1) You must report the following incidents immediately and in no instance later than forty-eight hours to your local children's administration intake staff and the child's DSHS worker:

(a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;

(b) Any time you suspect physical or sexual abuse, neglect, or exploitation of a child as required under chapter 26.44 RCW;

(c) Sexual contact between two or more children that is not considered typical play between preschool children;

(d) Any disclosure by a child in care of sexual or physical abuse;

(e) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;

(f) Any use of physical restraint that is alleged to have been improperly applied or excessive;

(g) Physical assault between two or more children that result in injury requiring off-site medical attention or hospitalization;

(h) Physical assault of a foster parent, employee, volunteer or others by children in care that results in injury requiring off-site medical attention or hospitalization;

(i) Any medication that is given or consumed incorrectly and requires off-site medical attention; or

(j) Property damage that is a safety hazard and is not immediately corrected or may affect the health and safety of children.

(2) You must report the following incidents related to a child in care as soon as possible or in no instance later than forty-eight hours, to the child's DSHS worker:

(a) Suicidal/homicidal thoughts, gestures, or attempts that do not require professional medical treatment;

(b) Unexpected health problems outside the usual range of reactions caused by medications, that do not require professional medical attention;

(c) Any incident of medication incorrectly administered or consumed;

(d) Any professional treatment for emergency medical or emergency psychiatric care.

~~(e)~~ (e) Physical assault between two or more children that results in injury but did not require professional medical treatment;

~~((e))~~ (f) Physical assault of a foster parent, employee, volunteer or others by children that results in injury but did not require professional medical treatment;

~~((f))~~ (g) Drug and/or alcohol use by a child in your care;

~~((g))~~ (h) Any inappropriate sexual behavior by or toward a foster child; or

~~((h))~~ (i) Use of prohibited physical restraints for behavior management.

(3) Programs providing care to medically fragile children who have nursing care staff on duty may document the incidents described in WAC 388-147-1540 (2)(b) and (c) in the facility daily logs, rather than contacting the child's DSHS worker or case manager, if agreed to in the child's case plan.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1545 What are my reporting responsibilities when a child is missing from care?** (1) As soon as you or your staff have reason to believe a child in your care is missing as defined in WAC 388-147-1305 or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:

(a) The child's assigned DSHS worker, as appropriate;

(b) Children's administration intake, if the DSHS worker is not available or it is after normal business hours.

(2) You are required to contact local law enforcement within six hours if the child is missing. However, if one or more of the following factors are present, you must contact law enforcement immediately:

(a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained or removed by another person;

(b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age thirteen or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily, will place the child at severe risk;

(e) The child is pregnant or parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal thoughts) that if not treated, will place the child at severe risk;

(g) The child has an intellectual and developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

(3) After contacting local law enforcement, you must also contact the ~~((Washington state patrol's (WSP) missing children clearinghouse to report that the child is missing from care. The telephone number for the clearinghouse is 1-800-543-5678))~~ national center for missing and exploited children at 1 (800) 843-5678 and report the child missing from care.

(4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's DSHS worker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsections (2)(a) through (i) of this section are present, you and the child's DSHS worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.

(5) You must provide the following information to law enforcement and to the child's DSHS worker when making a missing child report, if available:

(a) When the child left;

(b) The last known location of the child;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have caused the child's departure;

(e) Possible places where the child may go;

(f) Special physical or mental health conditions or medications that affect the child's safety;

(g) Known companions who may be aware or involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) Recent photo of the child.

(6) You must ask law enforcement for the missing person report number and provide it to the child's DSHS worker or staff.

(7) At any time after making an initial report you learn of a missing child's whereabouts, you must report that information to the child's DSHS worker.

(8) If a child is returned to your care, it is your responsibility to cancel the run report and notify all persons you have informed of the child's run.

(9) Youth participating in the extended foster care (EFC) program are exempt from these requirements. You must follow all other reporting requirements as defined in WAC 388-147-1540.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1635 Am I required to assess a child's need for immediate medical attention?** (1) ~~((After a child is admitted to your program you must ensure that a child~~

~~receives an initial health screen~~) When a child first enters out-of-home care, an initial health screen is required as soon as possible but no later than five days after entering your program. You must also make reasonable attempts to obtain the following health history:

- (a) Allergies;
  - (b) All currently prescribed medications; and
  - (c) Any special physical or mental health issues.
- (2) If the child remains in placement beyond seventy-two hours, you must contact the child's DSHS worker, parent, or legal guardian to obtain the following information:
- (a) The date of the child's last physical/dental exam;
  - (b) A history of immunizations; and
  - (c) Clinical and medical diagnoses and treatment plans.
- (3) When a child leaves your care, the health history of the child must be retained by your agency or returned to the department.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-147-1695 What must I include in an adoption home study?** (1) Your staff must complete an adoptive home study (preplacement report) with the participation of the applicant(s). Contact with the applicant must include a minimum of three in-person contacts that include:

- (a) An individual interview with each applicant parent and with each member of the applicant's household, including children;
- (b) A joint interview with the couple, if the family is a two parent household; and
- (c) An on-site evaluation of the applicant's home and property.

(2) For the study, your staff must gather information about and assess the following:

- (a) The suitability and fitness of the applicant(s) to be adoptive parent(s), including completed background checks of the applicant(s); and
- (b) Identification of child characteristics for which the applicant or applicants are best suited.

(3) As required in RCW 26.33.190(2), you must document that your agency discussed with the applicant(s) the following:

- (a) The concept of adoption as a lifelong developmental process and commitment;
- (b) Relevance of the child's relationship with siblings and the potential benefit to the child for providing for continuing relationship and contact between the child and known siblings;
- (c) Disclosure of the fact of the adoption to the child;
- (d) The child's possible questions about birth parents and relatives;
- (e) Potential for the child to have feelings of identity confusion and loss regarding separation from the birth parents; and
- (f) The relevance of a child's racial, ethnic and cultural heritage.

(4) The home study must identify the sources for the information gathered, and include the elements in subsection (1) through (3) in this section as well as the following:

(a) A background check as required in RCW 26.33.190 (3) that includes the examination of state and federal criminal history check(s) and child abuse and neglect check(s);

(b) Whether the applicant previously applied for an adoption home study from any entity, review of the completed home studies and the outcome of the application(s); and

(c) References gathered throughout the assessment process, including references from each of the applicant's adult children or documentation of your diligent efforts to contact the adult children. A minimum of ~~((four))~~ three references, with no more than one relative, are required.

(5) A supervisor must sign for approval and denial of the adoption home study.

(6) Your staff must reevaluate the applicant(s) suitability for adopting a child each time an adoptive placement is considered.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1305 What definitions do I need to know to understand this chapter?** The following definitions are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years of age and older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"CA" means children's administration.

"Capacity" means the age range, gender and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and/or cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means either:

(1) Our review of whether you meet the licensing requirements, even though you do not need to be licensed; or

(2) A licensed child placing agency (CPA) representing that a foster home being supervised by that CPA meets licensing requirements. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-148 WAC.

"Child", "children" or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years old;

~~((2) Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;))~~

~~((3))~~ (2) Up to twenty-one years of age and participating in the extended foster care program;

~~((4))~~ (3) Up to twenty-one years of age with intellectual and developmental disabilities;

~~((5))~~ (4) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency or CPA" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that you and your home meet the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

"Maternity services" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time

or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child under the care and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the home of a child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means your buildings and grounds adjacent to your residential property that are owned and/or managed by you.

"Psychotropic medication" means a type of medicine prescribed to affect or alter thought processes, mood, sleep or behavior. These include anti-psychotic, anti-depressant and anti-anxiety medications.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Washington state patrol fire protection bureau or WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1365 What are the character and personal requirements for foster parents?** (1) You must be at least twenty-one years old to apply for a license.

(2) You must demonstrate you have:

(a) The understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, cultural, and social needs of children under your care;

(b) The ability to furnish children with a nurturing, respectful, and supportive environment; and

(c) Sufficient regular income to maintain your own family, without the foster care reimbursement made for the children in your care.

(3) You may not use drugs or alcohol, whether legal or illegal, in a manner that affects your ability to provide safe care to children.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1420 What incidents involving children must I report?** (1) You must report the following immediately and in no instance later than forty-eight hours to your local children's administration intake staff and the child's DSHS worker or CPA case manager and/or child's tribal ICW case manager:

(a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;

(b) Any time you suspect or a child discloses physical or sexual abuse, neglect, or exploitation of a child as required under RCW 26.44;

(c) Sexual contact between two or more children that is not considered typical play between preschool age children;

(d) Any disclosure by a child in care of sexual or physical abuse;

(e) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;

~~((e))~~ (f) Any use of physical restraint that is alleged to have been improperly applied or excessive;

~~((f))~~ (g) Physical assault between two or more children that results in injury requiring off-site medical attention or hospitalization;

~~((g))~~ (h) Physical assault of a foster parent, employee, volunteer or others by children in care that results in injury requiring off-site medical attention or hospitalization;

~~((h))~~ (i) Any medication that is given or consumed incorrectly and requires off-site medical attention; or

~~((i-Serious))~~ (j) Property damage that is a safety hazard and is not immediately corrected or may affect the health and safety of children.

(2) You must report the following incidents related to a child in care as soon as possible or in no instance later than forty-eight hours, to the child's DSHS worker:

(a) Suicidal/homicidal thoughts, gestures, or attempts that do not require professional medical treatment;

(b) Unexpected health problems outside the usual range of reactions caused by medications, that do not require professional medical attention;

(c) Any incident of medication incorrectly administered or consumed;

(d) Any treatment by a medical professional for emergency medical or emergency psychiatric care;

~~((d))~~ (e) Physical assault between two or more children that results in injury but did not require professional medical treatment;

~~((e))~~ (f) Physical assault of a foster parent, employee, volunteer or others by children that results in injury but did not require professional medical treatment;

~~((f))~~ (g) Drug and/or alcohol use by a foster child;

~~((g))~~ (h) Any inappropriate sexual behavior by or toward a foster child; or

~~((h))~~ (i) Use of prohibited physical restraints for behavior management.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1425 What are my reporting responsibilities when a child is missing from care?** (1) As soon as you have reason to believe a child in your care is missing as defined in WAC 388-148-1305 or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:

(a) The child's assigned DSHS worker, as appropriate;

(b) CA Intake, if the DSHS worker is not available or it is after normal business hours;

(c) The case manager, if the child is placed by a child placing agency program.

(2) You are required to contact local law enforcement within six hours if the child is missing from care. You must contact law enforcement immediately in any of the following circumstances:

(a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained or removed by another person;

(b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age thirteen or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily, will place the child at severe risk;

(e) The child is pregnant, or is parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal thoughts) that if not treated, will place the child at severe risk;

(g) The child has an intellectual and developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

(3) After contacting local law enforcement, you must also contact the ~~((Washington state patrol's (WSP) missing children clearinghouse to report that the child is missing from care. The telephone number for the clearinghouse is))~~ national center for missing and exploited children at 1 (800) ~~((S))~~843-5678 and report the child missing from care.

(4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's worker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsections (2)(a) through (i) of this section are present, you and the child's worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return.

(5) You must provide the following information to law enforcement and to the child's DSHS worker when making a missing child report, if available:

- (a) When the child left;
- (b) Location the child left;
- (c) What the child was wearing;
- (d) Any known behaviors or interactions that may have caused the child's departure;
- (e) Possible places where the child may go;
- (f) Special physical or mental health conditions or medications that affect the child's safety;
- (g) Known companions who may be aware or involved in the child's absence;
- (h) Other professionals, relatives, significant adults or peers who may know where the child would go; and
- (i) Recent photo of the child.

(6) You must ask law enforcement for the missing person report number and provide it to the child's DSHS worker or staff.

(7) At any time after making an initial report you learn of a missing child's whereabouts or the child returns to your home, you must report that information to the child's DSHS worker.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1445 What are the requirements for water, garbage and sewer in my home?** (1) You must maintain adequate sewage and garbage facilities. You must discharge sewage into a public system or into a functioning septic system or a department of health approved and/or tribal authority alternative system.

(2) You must have access to a public water supply unless you have a private water supply tested by the local health ~~((authority))~~ district or a private water-testing laboratory approved by the department of ~~((public))~~ health ~~((and/))~~ or tribal ~~((authority))~~ government. Testing is required at the time of licensing, relicensing and at any time the department or child placing agency deems necessary.

(3) The temperature of running water ~~((must))~~ may not exceed one hundred twenty degrees.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1470 What are the general requirements for bedrooms?** (1) Each child shall have a bedroom, approved by the licensor, with privacy and space that is appropriate and adequate to meet the child's developmental needs. Children may share bedrooms, in compliance with WAC 388-148-1475.

(2) Each bedroom must have unrestricted direct access to outdoors as well as one direct access to common use areas such as hallways, corridors, living rooms, day rooms, or other such common use areas.

(3) You ~~((must))~~ may not use hallways, kitchens, living rooms, dining rooms, and unfinished basements as bedrooms.

(4) Children ~~((must))~~ may not be required to pass through private bedroom space in order to access common areas of the home.

(5) An adult must be on the same floor or within easy hearing distance and access to where children under six years of age are sleeping.

(6) You must provide an appropriately sized separate bed for each child with clean bedding, and a mattress in good condition.

(7) Some children may soil the bed, and you may need to plan accordingly. You must provide waterproof mattress covers or moisture-resistant mattresses if needed. Each child's pillow must be covered with waterproof material or be washable.

(8) You must assure that children have access to clean clothing that is appropriate for their age. You must provide safe storage of children's clothing and personal possessions.

~~((8))~~ (9) You must provide an infant with a crib that ensures the safety of the infant, and complies with chapter 70.111 RCW, Consumer Product Safety Improvement Act of 2008. These requirements include:

(a) A maximum of 2 3/8" between vertical slats of the crib; and

(b) Cribs, infant beds, bassinets, and playpens must have clean, firm, snug-fitting mattresses covered with waterproof material that can be easily disinfected and be made of wood, metal, or approved plastic with secure latching devices ~~((and~~

~~((and~~ (c) You must not use crib bumpers, stuffed toys and pillows with sleeping infants unless advised differently by the child's physician)).

~~((9))~~ (10) You must place infants on their backs for sleeping, unless advised differently by the child's ~~((physician))~~ licensed health care provider.

(11) You may not have loose blankets, pillows, crib bumpers, or stuffed toys with a sleeping infant.

(12) You may swaddle infants using one lightweight blanket upon the advice and training of a licensed health care provider. You must keep the blanket loose around the hips and legs when swaddling in order to avoid hip dysplasia. You may swaddle infants under two months of age unless a licensed health care provider directs otherwise. You may not dress a swaddled infant in a manner that allows them to over-heat.

(13) You may not use wedges and positioners with a sleeping infant unless advised differently by the infant's licensed health care provider.

(14) You may not use weighted blankets for children under three years of age or that have mobility limitations unless advised differently by the child's licensed health care provider.

(15) If you use a weighted blanket, you must meet the following requirements:

(a) The weight of the blanket may not exceed ten percent of the child's body weight;

(b) Metal beads are choking hazards and may not be used in a weighted blanket; and

(c) You may not cover the child's head with a weighted blanket or place it above the middle of the child's chest.

~~((10))~~ (16) You ~~((must))~~ may not allow children to use the loft style beds or upper bunks if the child is vulnerable due to age, development or condition. Examples: Preschool children, expectant mothers, and children with a disability.

~~((11) You must assure that children have access to clean clothing that is appropriate to their age. You must provide safe storage of children's clothing and personal possessions.))~~

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1475 What are the requirements for sharing bedrooms?** (1) Shared bedrooms must provide enough floor space for the safety and comfort of children.

(2) Foster teen parents may sleep in the same room with their children. When a teen parent and his/her infant sleep in the same room, the room must contain at least eighty square feet of usable floor space. You must allow only one parent and infant(s) to occupy a bedroom.

(3) No more than four children shall sleep in the same room. This includes foster children and any other children.

(4) Children over age one may share a bedroom with an adult who is not the child's parent only if ~~((the child's physician authorizes it in writing))~~ it is needed for close supervision due to the child's medical or developmental condition and the child's licensed health care provider recommends it in writing.

(5) An individual in the extended foster care program may share a bedroom with a younger child of the same gender. If the younger child is unrelated to the individual in the extended foster care program, the younger child must be at least ten years of age.

~~((5))~~ (6) Foster children may not share the same bedroom with a child of another gender unless all children are under age six.

~~((6) A youth placed in the extended foster care program may not share a bedroom with a youth younger than ten years of age.))~~

(7) An exception may be granted to 388-148-1475 (3) through (6) with an administrative approval if it is supported by the licensor and the child(ren)'s DSHS worker, and is in the best interest of the child.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1500 Under what conditions may I have guns and weapons on my property?** (1) You must notify your licensor if you or someone else in your home has a gun or weapon on the property. This includes but is not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

~~((Guns and ammunition must not be accessible to children, and must be kept in locked containers with guns and ammunition locked separately.))~~ You must always keep guns and ammunition out of reach of children. When at home, you must keep guns and ammunition in locked containers out of reach of children. You must store guns separate from the ammunition unless stored in a locked gun safe.

(3) You must ~~((unstring or unload other types of dangerous weapons, and store them))~~ keep bows and arrows and other weapons in locked containers out of reach of children.

(4) If you store guns in a container that may be easily breakable, you must secure them with a locked cable or chain placed through the trigger guards.

(5) Whenever possible, we encourage you to equip guns with a trigger guard lock.

(6) You must keep keys to the locked storage area of weapons secure from children.

(7) Children may use a gun only if the child's worker approves and the youth and supervising adult has completed an approved gun or hunter safety course.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1520 What services am I expected to provide for children in my care?** (1) You must make all reasonable efforts to ensure that children are not abused or neglected per RCW 26.44.020(1) and chapter 388-15 WAC.

(2) You must provide and arrange for care that is appropriate for the child's age and development including:

(a) Emotional support;

(b) Nurturing and affection;

(c) Structured daily routines and living experiences; and

(d) Activities that promote the development of each child. This includes cultural and educational activities in your home and the community.

(3) In caring for infants and young children you must:

(a) Hold infants, under the age of six months, for all bottle feedings;

(b) Hold infants at other times for the purposes of comfort and attention; and

(c) Allow children plenty of free time outside of a swing, crib or playpen.

(4) In caring for youth enrolled and participating in the extended foster care program you must:

(a) Provide a youth opportunity and support for achieving independence; and

(b) Allow a youth responsibility for their actions.

(5) Before making significant changes in a child's appearance, you must consult with the child's DSHS worker. These significant changes include, but are not limited to, body piercing, tattoos and major changes in hairstyle or color.

(6) You must follow all state and federal laws regarding nondiscrimination while providing services to children in your care. You must treat foster children in your care with dignity and respect regardless of race, ethnicity, culture, sexual orientation and gender identity.

(7) You must connect a child with resources that meets a child's needs regarding race, religion, culture, sexual orientation and gender identity. These include cultural, educational and spiritual activities in your home and community including tribal activities within the child's tribal community or extended tribal family. Your licensor, the child's DSHS worker or CPA case manager and/or child's tribal ICW case manager can assist you with identifying these resources.

(8) You must be sensitive to a child's religion or spiritual practices. You must provide adequate opportunity for religious or spiritual training and participation appropriate to the child's spiritual beliefs. You may not require any child to participate in practices against their beliefs.

(9) You must provide for the child's physical needs. This includes adequate hygiene, nutritional meals and snacks, and



readily available drinking water. This also includes a balanced schedule of rest, active play, and indoor and outdoor activity appropriate to the age of the child in care.

(10) You must guide the child to develop daily living skills according to the child's abilities and development. This may include assigning daily chores to children.

(11) The department will identify a suitable permanent plan for children in its care and custody. You may not interfere with this plan. You may attend appropriate shared planning meetings to participate in the decision making process and provide input on the child. You may submit information about the child's permanent plan and other issues through the caregiver's report to the court.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1525 What are the educational and vocational instruction requirements for children in care?**

(1) You must meet the following requirements for providing education and vocational instruction to the children under your care. For each child you must:

(a) Follow the educational plan approved by the child's DSHS worker;

(b) Home schooling is prohibited for all children in the care and custody of the department;

~~((b))~~ (c) Support the child in regular school attendance. If a child is absent from school you must follow the school's reporting requirements. Notify the child's DSHS worker if the child is absent from school more than three consecutive school days;

~~((c))~~ (d) Receive approval from the child's DCFWS worker prior to making any changes to a child's educational plan;

~~((d))~~ (e) Support the child's educational plan by providing each child with necessary school supplies and a suitable place to study;

~~((e))~~ (f) Develop a transportation plan with the child's DSHS worker to ensure school attendance; and

~~((f))~~ (g) Encourage older youth to pursue a post-secondary education when appropriate.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1540 What privacy must I provide for children in my care?** (1) You must assure the right to privacy of personal mail, electronic mail, and phone calls unless:

(a) We ask you to provide monitoring; or

(b) The court approves implementation of the monitoring as part of the child's case plan.

(2) CA prohibits the use of video and audio monitoring of children in the interior of foster homes unless all of the following are met:

(a) The DLR administrator grants approval for the use of an electronic monitoring device in your facility following a request by the child's DSHS worker;

(b) The court approves implementation of the monitoring as part of the child's case plan; and

(c) You maintain a copy of the approval.

(3) The prohibition of audio or visual monitoring does not include monitoring of the following:

(a) Infants ~~((and toddlers))~~ or children through four years of age;

(b) Medically fragile or sick children;

(c) Video recording equipment to document actions of a child as directed in writing by the child's physician;

(d) Video recording for special events such as birthday parties or vacations; or

(e) The use of door or window alarms or motion detectors.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1605 Who can watch my foster child when I am away from home?** (1) You may use a respite provider as defined in WAC 388-148-1600.

(2) You may also use a friend or relative as a substitute care provider for foster children without arranging for a background check. Care provided on an occasional basis, for less than seventy-two hours, will be at your own expense. This may occur when you have no reason to suspect the substitute care provider would be a risk to children, or has no founded child abuse or neglect history or criminal history that would disqualify them from caring for children. You must also:

(a) Be familiar and comfortable with the person who will be caring for the child;

(b) Meet with the substitute care provider and review the expectations regarding supervision and discipline of the foster children;

(c) Be responsible for providing the care provider any special care instructions; and

(d) Tell the substitute care provider how to contact you in case of an emergency.

(3) If the care by the substitute care provider is a regular arrangement, you must have written approval from the child's worker. The person must provide evidence of a cleared Washington state patrol background check and meet additional requirements for members of the household as defined in WAC 388-148-1320(2).

(4) Based on the special needs of a child, the DSHS worker may require the substitute care provider to have additional skills or training.

(5) Teenagers, age sixteen and seventeen, who meet all requirements stated in this section, may supervise no more than three foster children.

(6) Foster children may provide short-term babysitting for children not in foster care. Sexually aggressive and physically assaultive youth may not babysit other children.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1625 Will you license or continue to license me if I violate licensing requirements?** (1) We may modify, deny, suspend or revoke your license when:

(a) You do not meet the licensing requirements in this chapter;

(b) You or others in your home may not have unsupervised access to children;

(c) We have determined that you have abused or neglected a child;

(d) You commit, permit, or assist in an illegal act on the premises of a home or facility providing care to children;

(e) You knowingly provide false information to us;

~~((f))~~ (f) You are unable to manage your property and financial responsibilities; or

~~((g))~~ (g) You cannot provide for the safety, health and well-being of the children in your care.

(2) We will send you a certified letter telling you of the decision to modify, deny, suspend or revoke your license. In the letter, we will also tell you what you need to do if you disagree with the decision.

(3) The department has jurisdiction over all foster home licenses and over all holders of and applicants for licenses as provided in RCW 74.15.030(5). This jurisdiction is retained even if you request to withdraw the application, or you surrender or fail to renew your license.

**WSR 16-12-004**  
**PROPOSED RULES**  
**OLYMPIC REGION**  
**CLEAN AIR AGENCY**  
[Filed May 18, 2016, 3:20 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) regulations, Regulation 6, Rule 6.2.4 Summer Burn Restrictions.

Hearing Location(s): ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502, on July 13, 2016, at 10:00 a.m.

Date of Intended Adoption: July 13, 2016.

Submit Written Comments to: Robert Moody, 2940 Limited Lane N.W., Olympia, WA 98502, e-mail robert.moody@orca.org, fax (360) 491-6308, by July 8, 2016.

Assistance for Persons with Disabilities: Contact Dan Nelson by July 1, 2016, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA is proposing to change the annual ending date for the summer burn restriction season in Thurston County from October 15 to September 30 of each year. Changing the ending date will create an additional two week period for burning in the early fall and simplify the message to the public by aligning the ending date with other counties in the ORCAA jurisdiction.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Moody, 2940 Limited Lane N.W., Olympia, (360) 539-7610; Implementation and Enforcement: Fran McNair, 2940 Limited Lane N.W., Olympia, (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not sub-

ject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

May 18, 2016  
Francea L. McNair  
Executive Director

**AMENDED SECTION**

***Rule 6.2.4 Summer Burn Restrictions***

No residential or land clearing burning is allowed in Thurston County from July 15th through ~~((October 15th))~~ September 30th.

**WSR 16-12-020**  
**PROPOSED RULES**  
**EXECUTIVE ETHICS BOARD**  
[Filed May 20, 2016, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-138.

Title of Rule and Other Identifying Information: Chapter 292-130 WAC, Agency organization—Public records.

Hearing Location(s): 2425 Bristol Court S.W., 4th Floor Conference Room, Olympia, WA, on July 8, 2016, at 9:00 a.m.

Date of Intended Adoption: July 29, 2016.

Submit Written Comments to: Kate Reynolds, P.O. Box 40149, Olympia, WA 98504-0149, e-mail kater[at]g.wa.gov, fax (360) 586-3955, by July 1, 2016.

Assistance for Persons with Disabilities: Contact Ruthann Bryant by July 1, 2016, (360) 586-3265.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the rules and provide guidance and clarity to public records requestors.

Statutory Authority for Adoption: RCW 42.52.360.

Statute Being Implemented: RCW 34.05.220, chapter 42.56 RCW.

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

Name of Proponent: Executive ethics board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kate Reynolds, Olympia, (360) 586-6759.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The state employees and statewide elected officials that must comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

May 20, 2016  
Ruthann Bryant  
Administrative Officer

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-010 Purpose.** The purpose of this chapter is to provide rules implementing RCW 34.05.220 and ~~((42.17.250 through 42.17.320))~~ chapter 42.56 RCW for the executive ethics board.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-130-020 ~~((Function—Organization—Office))~~ Agency description—Contact information—Public records officer.** (1) The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

The executive ethics board consists of five members, appointed by the governor as follows: One member shall be a classified service employee; one member shall be a state officer or state employee in an exempt position; one member shall be a citizen selected from a list of three names submitted by the attorney general; one member shall be a citizen selected from a list of three names submitted by the state auditor; and, one member shall be a citizen at large selected by the governor.

~~((The board's administrative office is located at 2425 Bristol Court S.W., 1st Floor, P.O. Box 40149, Olympia, WA 98504-0149.))~~ (2) Any person wishing to request access to public records of the executive ethics board, or seeking assistance in making such a request, should contact the public records officer of the executive ethics board:

Executive Director  
Executive Ethics Board  
2425 Bristol Court S.W.  
P.O. Box 40149  
Olympia, WA 98504-0149  
360-664-0871  
360-586-3955 (fax)  
ethics@atg.wa.gov

Information and a request form is also available at the executive ethics board's web site at [www.ethics.wa.gov](http://www.ethics.wa.gov). The office hours are 8:00 a.m. to ~~((noon and 1:00 p.m. to))~~ 5:00 p.m., Monday through Friday except legal holidays and during regularly scheduled board meetings.

(3) The public records officer will oversee compliance with the act but another executive ethics board staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the executive ethics board will provide the "fullest assistance" to requestors; create and maintain for use by the public and executive ethics board officials an index to public records of the executive ethics board;

ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the executive ethics board.

AMENDATORY SECTION (Amending WSR 05-19-142, filed 9/21/05, effective 10/22/05)

**WAC 292-130-030 Operations and procedures.** The board holds regular scheduled meetings on the second Friday of each month at 9:00 a.m. unless a different time is noted on the agenda ~~((, except August and December when no meetings are held)).~~ The meetings are held at ~~((2425 Bristol Court, Conference Room 148,))~~ the administrative office location unless circumstances require relocating to another site as designated by the executive director of the board.

All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). Three members of the board constitute a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

The board issues advisory opinions; develops education and training materials; investigates, hears, and determines complaints; reviews and approves agency ethics policies; and, reviews, approves, or denies contracts between state officers and employees and state agencies.

Written communications intended for board consideration or action shall be filed with the administrative office.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-130-040 Executive director.** The executive director shall perform the following duties under the general authority and supervision of the board:

(1) Make initial determinations, pursuant to RCW 42.52.425 and WAC 292-100-045, regarding complaints received by the board;

(2) Render informal nonbinding advice, pursuant to ~~((RCW 42.52.360 (2)(b) and (c) and))~~ WAC 292-110-050;

(3) Make initial determinations, pursuant to RCW 42.52.120 and WAC 292-110-060, regarding approval of certain contracts between state agencies and state officers or employees;

(4) Act as records officer and administrative arm of the board;

(5) Coordinate the policies of the board and the activities of board staff ~~((;))~~ and supervise board staff as appropriate;

(6) Act as a liaison between the board and other public agencies; and

(7) Conduct ethics training and information outreach.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-050 ~~((Public records—))~~ Availability of public records.** ~~((Public records are available for inspection and copying except as otherwise provided by RCW 42.17.310 and chapter 292-100 WAC.))~~ (1) **Hours for inspection of records.** Public records are available for

inspection and copying Monday through Friday, 9:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., excluding legal holidays and during scheduled board meetings. Records must be inspected at the offices of the executive ethics board.

(2) **Records index.** An index of public records is available for use by members of the public, including final orders, stipulations and advisory opinions. The indices for these documents are available upon request.

(3) **Organization of records.** The executive ethics board will maintain its records in a reasonably organized manner. The executive ethics board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take executive ethics board records from executive ethics board offices without the permission of the public records officer or designee. A variety of records is available on the executive ethics board web site at [www.ethics.wa.gov](http://www.ethics.wa.gov). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the executive ethics board should make the request in writing on the executive ethics board request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any e-mail address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 292-130-110, standard black and white and color photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer and online at [www.ethics.wa.gov](http://www.ethics.wa.gov).

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

WAC 292-130-100 (~~(Response to)~~) **Processing of public records requests—General.** ~~((1) The administrative office shall respond promptly to requests for disclosure. Within five business days of receiving a public records request, the office will respond by:~~

~~(a) Providing the record;~~

~~(b) Acknowledging that the office has received the request and providing a reasonable estimate of the time the office will require to respond to the request; or~~

~~(c) Denying the public records request.~~

(2) Additional time for the office to respond to a request may be based upon the need to:

(a) Clarify the scope of the request;

(b) Locate and assemble the information requested;

(c) Notify third persons who may be named in a record;

or

(d) Determine whether any or all of the information requested is exempt and that a denial should be made as to all or part of the request.)) (1) **Providing "fullest assistance."** The executive ethics board is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **Consequences of failure to respond.** If the executive ethics board does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer or designee to determine the reason for the failure to respond.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the executive ethics board believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonex-

empt portions, and indicate to the requestor why portions of the record are being redacted.

**(6) Inspection of records.**

(a) Consistent with other demands, the executive ethics board shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the executive ethics board to copy.

(b) The requestor must claim or review the assembled records within thirty days of the executive ethics board's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the executive ethics board may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) Providing copies of records. After inspection is complete, the public records officer or designee will make the requested copies or arrange for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the executive ethics board has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate to the requestor that the executive ethics board has closed the request.

(11) Later discovered documents. If, after the executive ethics board has informed the requestor that it has provided all available records, the executive ethics board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-110 ((Copying fees.)) Costs of providing copies of public records.** ~~((No fees shall be charged for the inspection of public records. The office will charge one dollar for the first ten pages and ten cents per copy for additional pages for requests made under this chapter. The public records officer may waive the fees for copies when the expense of processing the payment exceeds the cost of providing the copies. These charges are necessary to reimburse the office for the costs of providing copies of public records and use of the copying equipment. The office may require that all charges be paid in advance of release of the copies.))~~

**(1) Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies or color copies for fifteen cents per page. Copying fees will be waived for twenty-five or fewer photocopies.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The executive ethics board will not charge sales tax when it makes copies of public records.

**(2) Costs for electronic records.** The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor.

**(3) Costs of mailing.** The executive ethics board may also charge actual costs of mailing, including the cost of the shipping container.

**(4) Payment.** Payment may be made by cash, check, or money order to the executive ethics board.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-130-130 Exemptions.** (1) ~~((The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 292-130-060 is exempt under the provisions of RCW 42.17.310.~~

~~((2) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are))~~ The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the executive ethics board for inspection and copying:

Under RCW 42.52.420 the identity of a person filing a complaint under RCW 42.52.410(1) is exempt from public disclosure as provided for in RCW 42.56.240.

(2) The executive ethics board is prohibited by statute from disclosing lists of individuals for commercial purposes.

(3) During the course of an investigation, records generated or collected as a result of the investigation may be exempt from public inspection and copying under RCW ((42.17.310 (1)(d))) 42.56.240.

(a) The investigation is not considered complete until a case is resolved either by a stipulation and settlement that is signed by all parties; or, when the board enters a final order after a public hearing((-If a public records request is made following a signed stipulation and settlement or a final order for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330)).

(b) The following records are not considered part of the investigation file and are releasable upon request:

((a)) (i) Complaints, upon receipt by the respondent;

((b)) (ii) The board staff's ((preliminary review or) investigation report;

((c)) (iii) The board's findings of reasonable cause or no reasonable cause; and

((d) Proposed) (iv) Stipulations and settlements, upon receipt by the board.

((3) In addition, pursuant to RCW 42.17.310, the board reserves the right to withhold or delete information when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be otherwise exempt from disclosure under chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(4) Any denial of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.)

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-140 Review of denials of public records request. (1) Petition for internal administrative review of denial of access. Any person who objects to ((a)) the initial denial or partial denial of ((a request for a public record)) a records request 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)) in writing (including e-mail) to the public records officer or designee for review of that decision. The petition should include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.**

(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)) **Consideration of petition for review.** The public records officer or designee will promptly provide the petition and any other relevant information to the chair of the board or the chair's designee. The chair ((shall) or the chair's designee will immediately consider the matter and either affirm or reverse such denial within two business days fol-

lowing the executive ethics board's receipt of the petition, or within such other time as mutually agreed upon by the requestor and executive ethics board, or call a special meeting of the board as soon as legally possible to review the denial.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530 if the executive ethics board denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 292-130-060 Index prior to January 1, 2001.

WAC 292-130-065 Index after January 1, 2001.

WAC 292-130-070 Public records—Officer.

WAC 292-130-080 Hours for seeking public records.

WAC 292-130-090 Requests for public records.

WAC 292-130-120 Protection of public records.

#### **WSR 16-12-044**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

[Filed May 25, 2016, 1:19 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-907-030 Pharmaceutical licensing periods—Fees and renewal cycle, proposing a separate registration category and separate application and renewal fees for Controlled Substances Act (CSA) researchers. CSA researchers are under the "Other CSA registrations" fees in the current rule.

Hearing Location(s): Department of Health, Town Center 2, 111 Israel Road, Room 158, Tumwater, WA 98501, on July 6, 2016, at 1:30 p.m.

Date of Intended Adoption: July 13, 2016.

Submit Written Comments to: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4626, by July 6, 2016.

Assistance for Persons with Disabilities: Contact Sherry Thomas by June 24, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current licensing fees do not generate sufficient revenue to cover the costs of administering the CSA researcher registration. This registration is issued to an individual, but applies to a specific lab at which other authorized individuals conduct research using

controlled substances named in the application. Much of the costs are incurred through initial and ongoing inspections of the research laboratory. The department is proposing to increase application and renewal fees to cover the average costs of the inspections. In addition, we are proposing to separate the CSA researcher registration fee from the "Other CSA registrations" category because it is much more costly to administer than the other registrations in this category. This "other" category also includes registrations for dog handlers/trainers who use dogs for drug detection, analytical laboratories, and school laboratories, for which the current \$40 fees are adequate.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the licensing program's costs. Revenue from the current CSA researcher registration fee does not support the cost of the unique inspections required to maintain the credential, meaning other pharmacy program funds supplement this activity. The proposed fees cover the average costs of conducting the inspections for this registration.

In addition to the costs to issue and renew the controlled substance researcher credential, the inspection process requires additional costs. Most CSA researchers conduct unique research, leading to great variation in the expertise needed and a lengthier inspection process than the standard inspections for facilities such as pharmacies. The CSA researcher registration requires an inspection upon application and regular inspections thereafter. Those inspections consist of:

**Initial applications:** Require up to six hours of a pharmacy investigator's time, at a rate of \$110 per hour, which consists of technical assistance to help the researcher develop:

- Compliant record systems;
- Security and handling; and
- Storage and disposal of drugs used in the research project.

**Ongoing inspections:** Require up to four hours of an investigator's time, at \$110 per hour, which consists of:

- Auditing of records regarding procurement, storage, use and disposal of drugs;
- Inspection of security and environmental measures implemented for storage of drugs;
- A review of written policies and procedures implemented by the researcher regarding procurement, compliant record systems, security and handling, storage and disposal of drugs used in the research project. This includes review of which personnel are authorized to access drugs; and
- Technical assistance to give guidance on how to correct any deficiencies found during the inspection.

It can also involve a review of updated written policy and procedures that have been implemented post-inspection as a result of deficiencies noted during the inspection.

Given their current annual growth rate of 12.2 percent, regulation of CSA researchers will place an ever greater burden on the pharmacy program. The number of CSA research-

ers is growing, as an increasing number of privately owned biotech and pharmaceutical firms are opening in Washington.

Statutory Authority for Adoption: RCW 69.50.302, 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sherry Thomas, 111 Israel Road, Tumwater, WA 98501, (360) 236-4612; and Enforcement: Doreen Beebe, 111 Israel Road, Tumwater, WA 98501, (360) 236-4834.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

May 25, 2016

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

**WAC 246-907-030 Pharmaceutical licensing periods and fees—Fees and renewal cycle.** (1) Pharmacist, pharmacy technician, and pharmacy intern licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Pharmacy location, controlled substance registration (pharmacy), Controlled Substances Act researcher registration, pharmacy technician utilization, and shopkeepers differential hours licenses will expire on June 1 of each year.

(3) All other licenses, including health care entity licenses, registrations, permits, or certifications will expire on October 1 of each year.

(4) The following nonrefundable fees will be charged for pharmacy location:

Title of fee	Fee
Original pharmacy fee	\$370.00
Original pharmacy technician utilization fee	65.00
Renewal pharmacy fee	405.00
Renewal pharmacy technician utilization fee	75.00
Penalty pharmacy fee	205.00

(5) The following nonrefundable fees will be charged for vendor:

Original fee	75.00
Renewal fee	75.00
Penalty fee	50.00

(6) The following nonrefundable fees will be charged for pharmacist:

Original license fee	145.00
Renewal fee, active and inactive license	190.00
Renewal fee, retired license	25.00
Penalty fee	100.00
Expired license reissuance (active and inactive)	90.00
Reciprocity fee	335.00
Certification of license status to other states	30.00
Retired license	25.00
Temporary permit	65.00

(7) The following nonrefundable fees will be charged for shopkeeper:

Original fee	40.00
Renewal fee	40.00
Penalty fee	40.00
Shopkeeper - <u>With differential hours:</u>	
Original fee	35.00
Renewal fee	35.00
Penalty fee	35.00

(8) The following nonrefundable fees will be charged for drug manufacturer:

Original fee	590.00
Renewal fee	590.00
Penalty fee	295.00

(9) The following nonrefundable fees will be charged for drug wholesaler - Full line:

Original fee	590.00
Renewal fee	590.00
Penalty fee	295.00

(10) The following nonrefundable fees will be charged for drug wholesaler - OTC only:

Original fee	330.00
Renewal fee	330.00
Penalty fee	165.00

(11) The following nonrefundable fees will be charged for drug wholesaler - Export:

Original fee	590.00
Renewal fee	590.00
Penalty	295.00

(12) The following nonrefundable fees will be charged for drug wholesaler - Export nonprofit humanitarian organization.

Original fee	25.00
Renewal fee	25.00
Penalty	25.00

(13) The following nonrefundable fees will be charged for pharmacy technician:

Original fee	60.00
Renewal fee	50.00
Penalty fee	50.00
Expired license reissuance	50.00

(14) The following nonrefundable fees will be charged for pharmacy intern:

Original registration fee	30.00
Renewal registration fee	30.00

(15) The following nonrefundable fees will be charged for Controlled Substances Act (CSA):

Registrations	
Dispensing registration fee (i.e., pharmacies and health care entities)	80.00
Dispensing renewal fee (i.e., pharmacies and health care entities)	65.00
Distributors registration fee (i.e., wholesalers)	115.00
Distributors renewal fee (i.e., wholesalers)	115.00
Manufacturers registration fee	115.00
Manufacturers renewal fee	115.00
Sodium pentobarbital for animal euthanization registration fee	40.00
Sodium pentobarbital for animal euthanization renewal fee	40.00
<u>Researchers registration fee</u>	<u>400.00</u>
<u>Researchers renewal fee</u>	<u>400.00</u>
Other CSA registrations	40.00



(16) The following nonrefundable fees will be charged for legend drug sample - Distributor:

Registration fees	
Original fee	365.00
Renewal fee	265.00
Penalty fee	135.00

(17) The following nonrefundable fees will be charged for poison manufacturer/seller - License fees:

Original fee	40.00
Renewal fee	40.00

(18) The following nonrefundable fees will be charged for facility inspection fee:

200.00

(19) The following nonrefundable fees will be charged for precursor control permit:

Original fee	65.00
Renewal fee	65.00

(20) The following nonrefundable fees will be charged for license reissue:

Reissue fee	30.00
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(21) The following nonrefundable fees will be charged for health care entity:

Original fee	365.00
Renewal	265.00
Penalty	135.00

**WSR 16-12-048**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

(Dental Quality Assurance Commission)

[Filed May 25, 2016, 3:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-13-134.

Title of Rule and Other Identifying Information: WAC 246-817-160 Graduates of nonaccredited dental schools, the dental quality assurance commission (commission) is proposing amendments to education requirements for graduates of nonaccredited dental schools to clarify clinical education and the examination eligibility process.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98501, on July 15, 2016, at 8:05 a.m.

Date of Intended Adoption: July 15, 2016.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://>

[fortress.wa.gov/doh/policyreview](https://fortress.wa.gov/doh/policyreview), fax (360) 236-2901, by July 8, 2016.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by July 8, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule clarifies clinical education and examination eligibility process for graduates of nonaccredited dental schools. The proposed rule requires that predoctoral or postdoctoral education include[s] clinical training and be accredited by the commission on dental accreditation for education completed after July 1, 2018.

Reasons Supporting Proposal: The current rule does not specifically identify a clinical education requirement or an alternative for examination eligibility. The proposed amendment is needed to ensure clinical education is obtained and to specifically identify when examination eligibility can be met.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Statute Being Implemented: RCW 18.32.040 and 18.32.222.

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

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail [jennifer.santiago@doh.wa.gov](mailto:jennifer.santiago@doh.wa.gov).

May 25, 2016

Charles Hall, D.D.S., Chair

Dental Quality

Assurance Commission

AMENDATORY SECTION (Amending WSR 14-20-064, filed 9/26/14, effective 10/27/14)

**WAC 246-817-160 Graduates of nonaccredited schools.** (1) An applicant for Washington state dental licensure, who is a graduate of a dental school or college not accredited by the (~~(American Dental Association)~~) Commission on Dental Accreditation shall provide to the Dental Quality Assurance Commission (commission):

(a) Materials listed in WAC 246-817-110 (1) (~~(and)~~), (3), (5) through (8), and (10) through (13);

(b) Official school transcript or diploma with dental degree listed transcribed to English if necessary; (~~(and)~~)

(c) Evidence of successful completion of at least two additional predoctoral or postdoctoral academic years of dental education.

(i) Additional predoctoral or postdoctoral dental education completed prior to July 1, 2018, must be obtained at a

dental school (~~(approved under WAC 246-817-110(2))~~) in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation.

(ii) Additional predoctoral or postdoctoral dental education completed after July 1, 2018, must be obtained in a dental program in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation and include clinical training; and

(d) An applicant for Washington state dental licensure must provide proof of successful completion of an approved:

(i) Practical/clinical examination; or

(ii) Qualifying postgraduate residency program, approved by or administered under the direction of the commission authorized in RCW 18.32.040.

(2) Upon completion of the requirements in subsection (1)(a) through (c) of this section, an applicant may be eligible to take the practical examination as (~~required~~) approved in WAC 246-817-120 (2) through (4).

(a) The commission may issue examination approval up to six months before an applicant has completed the two additional predoctoral or postdoctoral academic years of dental education.

(b) An applicant must provide a letter from the school where the two additional predoctoral or postdoctoral academic years is being obtained indicating expected date of education completion.

**WSR 16-12-058**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed May 26, 2016, 9:19 a.m.]

Supplemental Notice to WSR 16-05-079.

Preproposal statement of inquiry was filed as WSR 15-20-081.

Title of Rule and Other Identifying Information: Chapter 246-70 WAC, Marijuana product compliance, the department is proposing a new chapter of rules regarding marijuana products beneficial for medical use including product categories, quality assurance testing (pesticides, mycotoxins, heavy metals, terpenes), product labeling, safe handling, and employee training standards. This is a supplemental filing to proposed rules filed on February 16, 2016, to accommodate clarifications for marijuana product testing and labeling.

Hearing Location(s): CenterPoint Conference Center, Mount Rainier Room, 20809 72nd Avenue South, Kent, WA 98032, on July 11, 2016, at 1:00 p.m.

Date of Intended Adoption: August 1, 2016.

Submit Written Comments to: Susan Reynolds, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by July 11, 2016.

Assistance for Persons with Disabilities: Contact Susan Reynolds by July 5, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to proposed rule language necessitates this supplemental filing. Proposed WAC 246-70-090 was added to include the literal department logos required on medical marijuana products.

Proposed WAC 246-70-040 was amended to correct internal references and clarify that products not meeting the testing qualifications for high levels of cannabinoids ("High CBD") may be considered for "general use" compliant products. Proposed WAC 246-70-050 was amended to clarify: (1) The liquor and cannabis board (LCB) may consider authorizing a retest of a failed test at the request of the marijuana producer or processor, (2) certified third-party labs may screen for additional pesticides, and (3) pesticides not allowed in marijuana products may not exceed the action levels established by the LCB. Proposed WAC 246-70-060 was amended to correct internal references and specify the department logo must be either dark blue or black in color.

Reasons Supporting Proposal: Rule making by the department is mandated by statute (chapter 70, Laws of 2015) to establish standards for products that are beneficial for medical use. Such rules will be key to the process to produce, process, and make available an adequate supply of regulated marijuana products.

Statutory Authority for Adoption: RCW 69.50.375.

Statute Being Implemented: RCW 69.50.375 and 82.08.9998.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Kristi Weeks, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4066; Implementation and Enforcement: Chris Baumgartner, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4819.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

**SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

The Washington state department of health (department) is proposing a new chapter in rule that would create standards for marijuana products that any consumer can rely upon to be reasonably safe and meet quality assurance measures.

The proposed rule is one piece of the overall implementation of medical marijuana and is required by 2SSB 5052 (chapter 70, Laws of 2015, regular session) and 2E2SHB 2136 (chapter 4, laws of 2015 2nd sp. sess.). The purpose of the product compliance standards is to establish requirements for products that may be beneficial for medical use by qualifying patients, quality assurance testing (pesticides, mycotoxins, heavy metals), product labeling, and safe handling standards.

On April 24, 2015, Governor Inslee signed 2SSB 5052, the Cannabis Patient Protection Act. This act creates licensing and regulation of all marijuana producers, processors and retail stores under the oversight of the renamed Washington state liquor and cannabis board (WSLCB). It also directs the department of health to complete tasks that include:

- Contracting with a third party to create and administer a medical marijuana authorization data base
- Adopting rules relating to the operation of the data base
- Adopting rules regarding products sold to patients and their designated providers
- Consulting with the WSLCB about requirements for a retail store to get a medical marijuana endorsement
- Creating a medical marijuana consultant certification program
- Developing and approving continuing education for health care practitioners who authorize the medical use of marijuana
- Making recommendations to the legislature about establishing medical marijuana specialty clinics

On June 30, 2015, Governor Inslee signed 2E2SHB 2136 which included a requirement for the department to establish in rule a tetrahydrocannabinol (THC) and cannabidiol (CBD) ratios for products that can be sold sales tax free to any adult.

The proposed rules collectively create compliance standards for marijuana products available to qualifying patients, designated providers, and other consumers.

The requirements that a small business must follow to comply with the proposed rule are found in WAC 246-70-040 Marijuana products compliant with this chapter, 246-70-050 Quality assurance testing, 246-70-060 Compliant prod-

uct labeling, 246-70-070 Compliant product safe handling, and 246-70-080 Employee training.

In order to comply with the proposed rules, small business such as licensed marijuana producers and processors will use the services of one or more certified third-party testing labs to provide required compliant product testing in accordance with WAC 246-70-050, in addition to the tests already required under LCB rule (WAC 314-55-102).

Background: The department requested stakeholders to provide feedback on the potential cost to implement the proposed changes through four public stakeholder meetings, written feedback and survey response. Through this stakeholder input, the department determined that the collective cost of the rule changes is nominal. More detailed cost estimates are included in the sections below.

**SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

There are no NAICS codes for medical marijuana growing, processing or retail businesses. There is no current data on payroll for marijuana growing, processing, retail or testing businesses. The businesses that are required to comply with the proposed rule are:

NAICS Code	Business Description	# of Businesses in WA	Estimated Average Annual Receipts (Aggregate)	Minor Cost Threshold = .3% of Avg. Annual Receipts (Per Business)
None	Licensed marijuana retail stores*	352 retail licenses, 282 with medical endorsements	SFY 15: \$167,419,066 SFY 16: \$458,971,156	SFY 15: \$7,922 SFY 16: \$21,718
None	Licensed marijuana producers and processors	138 producer only licenses, 699 producer/processor licenses, and 102 processor only licenses	SFY 15: \$73,378,206 SFY 16: \$226,884,713	SFY 15: \$2,344 SFY 16: \$14,664
None for marijuana; Testing labs - 541380	Medical marijuana testing laboratories	14 testing marijuana	\$757,732**	\$1,632

\*The WSLCB is currently accepting applications for new retail stores. This number could eventually be as high as five hundred fifty-six.

\*\*Based on the average cost per test times the number of tests conducted during 2015 converted to revenue from medical marijuana.

**SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

Table: Rule sections that will not result in cost:

#	WAC Section	Section Title
1	WAC 246-70-010	Findings
2	WAC 246-70-020	Applicability of WSLCB rules
3	WAC 246-70-030	Definitions
4	WAC 246-70-090	Marijuana product compliant logos

The department analyzed the cost of compliance to the proposed rules: WAC 246-70-040 Marijuana products compliant with this chapter and 246-70-060 Compliant product labeling.

**Description of the Proposed Rule:** Marijuana products meeting the testing requirements of this chapter must fall into the classification of "General Use," "High THC," or "High CBD." High THC compliant products must contain between 10 and 50 milligrams of THC per serving or application. High CBD compliance products must have a CBD to THC ratio of 25 to 1 for extracts, and 5 to 1 for edible or topical products. High THC compliant products may only be sold at retail stores with a medical endorsement and may only be purchased by a patient or designated provider entered in the authorization data base.

The proposed rule also requires marijuana products compliant with this chapter to have the department's logo on the product's label. The exact labels required are displayed in WAC 246-70-090. Department logos must be dark blue or black in color. Other symbols commonly used in the medical or pharmaceutical professions are prohibited.

**Cost of Compliance:** The logo is provided free to processors, so the labeling cost is minimal. Processors may choose to add the logo as part of their existing product packaging incurring a one-time cost, or have logo stickers pre-printed by an outside vendor for an estimated cost of \$44.80 per five pound lot of marijuana, assuming each lot is placed into one gram packages for retail sale. The total cost of labeling is indeterminate because it is unknown how much product may be produced by each business and how the raw marijuana will be further processed and packaged.

**WAC 246-70-050 Quality assurance testing.**

**Description of the Proposed Rule:** The proposed rule establishes the requirements for testing performed by a third-party testing lab certified by the WSLCB. Licensed marijuana producers and processors, and third-party labs must follow the sampling protocols in WSLCB rules (chapter 314-55 WAC). The following tests are in addition to the tests required under WAC 314-55-102:

- Pesticide screening and heavy metal screening is required at time of harvest for all marijuana flowers, trim, leaves, or other plant matter (one test is required per harvest).
- Additional pesticide screening is required for each batch of finished concentrates and extracts.
- Additional pesticide and heavy metal screening is required for all imported cannabinoids, such as CBD oil, prior to addition to a marijuana product.
- Mycotoxin screening is required whenever microbial testing for any marijuana product is required by the WSLCB.

With consultation from the Washington state department of agriculture, the department of health will create and maintain a list of pesticides that are not allowed and require screening. Certified third-party labs may screen for additional pesticides. Testing for heavy metals include arsenic, cadmium, lead, and mercury. Harvests or batches with failed pesticide screening must be destroyed according to WSLCB [WSLCB] rule. Results for pesticides that are not allowed must not exceed the "action levels" set by the WSLCB [WSLCB] in their rule. The WSLCB may authorize retests of failed harvests or batches on a case-by-case basis if a producer or processor makes the request according to LCB rules.

**Cost of Compliance:** Laboratories: Results of a survey of certified testing labs showed the range of costs the following average one-time equipment costs:

- Pesticide screening: \$325,000
- Heavy metal screening: \$255,000
- Mycotoxin screening: \$12,000
- Additional fume hood: \$160,000

Equipment costs for certified third-party testing labs vary according to the type of tests performed, and the brand and age of equipment purchased by the lab. There are some current third-party certified testing labs that have equipment in place to perform the required product testing; new testing labs would incur one-time equipment costs at startup. The costs of additional testing equipment would be based on the useful life of the equipment (e.g., the annual costs of heavy metal screening with a ten year useful life is \$25,500).

Marijuana producers and processors: Survey results of certified laboratories show a range of costs to producers and processors to test their products:

- Pesticide screening: \$100 - \$350
- Heavy metal screening: \$85 - \$350
- Mycotoxin testing: \$25 - \$350

Costs to test their products would vary based on the type of testing performed, the volume of product tested, and any retesting permitted by the WSLCB. The total compliance test costs are estimated to be \$757,732.50. The number of WSLCB-required tests performed from December 1, 2014, to November 30, 2015, was 43,300. A total of fourteen certified labs performed the tests (Note: There are currently only twelve labs operating).

The market for laboratory testing is highly competitive. It is likely the labs will price their testing as low as possible in order to attract business from the limited number of producers and processors. An established marijuana laboratory in Nevada charges \$100 for each pesticide or heavy metal screening.

**WAC 246-70-070 Compliant product safe handling.**

**Description of the Proposed Rule:** The proposed rule establishes the requirements for marijuana processors that create or handle marijuana-infused products to ensure products are constructed, kept, and maintained in a clean and sanitary condition. These requirements are in accordance with rules as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

The proposed rule also requires those marijuana processors that do not create or handle marijuana-infused product; and all marijuana producers to adopt and enforce policies and procedures to ensure that operations involving the growing, receiving, inspecting, transporting, segregating, preparing, production, packaging, and storing of marijuana or marijuana products are conducted in accordance with adequate sanitation principles.

**Cost of Compliance:** The proposed rule sets requirements for all marijuana processing facilities to ensure the facility operations are conducted in accordance with adequate sanitation and safe-handling principles, based on policies and procedures created and enforced by the processor business. The cost to the businesses would be administrative work to

develop and enforce policies and procedures for safe handling of marijuana products. Many of these requirements may already be in place based on requirements from other regulatory entities such as the department of labor and industries.

**WAC 246-70-080 Employee training.**

**Description of the Proposed Rule:** The proposed rule establishes requirements for marijuana producers, processors and retailers that create, handle, or sell compliant marijuana products to adopt and enforce policies and procedures to ensure employees and volunteers receive training about the requirements of this chapter. The proposed rule also establishes the activities that any retail outlet owner, employee, or volunteer is not allowed to do when assisting qualifying patients and designated providers at the retail outlet.

**Cost of Compliance:** The proposed rule states the requirements for employee training by marijuana producers, processors and retailers on this chapter. On the job training for employees will vary based on the duties they perform and the material presented. The average time to become trained in the requirements of this chapter is estimated to be two hours total. Based on survey results of retail stores showing the employee average wage to be \$22.00 an hour, the result would be a one-time training cost of \$44.00 per employee. This estimated cost is low and should not affect sales or revenue.

The proposed rule is not anticipated to cause any business to lose sales or revenue. Compliance will help authorized retail outlets to identify for customers which marijuana products meet the growing, processing, testing and THC/CBD content specifications in the proposed rules. A retailer with a medical marijuana endorsement who carries products that comply with the proposed rules may be more likely to increase its sales to medical marijuana patients. A producer or processor that complies with the proposed rules may be more likely to increase its sales of compliant products. A testing lab that complies with the proposed rules may be more likely to increase its services (sales) to processors seeking to sell products that comply with the proposed rules.

**SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

The proposed rule is anticipated to impose more than minor costs to businesses that must comply.

Licensed marijuana producers and processors would incur testing costs based on the type of testing performed, the volume of product tested, and any retesting required. Five certified testing labs were surveyed to determine the estimated average cost per test by type. The results are shown in the table below:

Heavy Metals	Mycotoxin	Pesticides
Range - \$85 to \$350	Range - \$25 to \$350	Range - \$100 to \$350

Certified labs tested approximately 14,433 five-pound lots of marijuana from December 1, 2014, to November 30, 2015. Under these rules, screening for pesticides and heavy metals will be performed based on harvests rather than five-pound lots. There is no available historical data on the number of harvests. Based on the data for five-pound lots the

result is approximately 3,608 lots of marijuana will be subjected to the tests in these rules.

Producer and processor sales for the same time period totaled \$17,719,649.00. Based on an estimated cost of \$210.00 for all three tests, total compliance test costs for the industry are estimated to be \$757,732.50.

Current certified testing labs that have already purchased equipment and are performing testing of marijuana products would incur costs for maintenance of existing equipment, and the purchase of replacement or upgrades to equipment. Testing labs not currently performing these tests and new certified testing labs would incur equipment purchase costs based on the type of testing equipment purchased. The annual costs of testing equipment can be calculated as one-tenth of these one-time costs using standard ten year life of machine. Additional costs would be for extra equipment necessary for optional testing. Five certified testing labs were surveyed to determine the average cost of various types of marijuana product testing equipment. The results are shown in the table below:

Heavy Metals	Mycotoxin	Pesticides
Range - \$160,000 to \$350,000	Range - \$12,000 to \$16,000	Range - \$150,000 to \$500,000
Average - \$253,000	Average - \$14,000	Average - \$325,000

**SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.**

The proposed rules are not anticipated to have a disproportionate impact on small versus large marijuana producers, processors and certified testing labs. Certified marijuana testing laboratories are small businesses so there are no large businesses to determine any possible impact. The impact on producers and processors is indeterminate at this time, but it is assumed that the costs previously identified will be passed on in final product sales, resulting in a market driven but minimal cost impact.

**SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs can not be reduced provide a clear explanation of why.**

We worked with stakeholders during the development of these proposed rules to discuss alternative testing standards and their costs. Feedback was also received at several public hearings held in March 2016 for this rule's original proposal. The proposed rules provide appropriate product testing needed to protect public health and safety, while allowing producers and processors the ability to bring their products to market with the minimum risk of disease or damage (e.g. mold, insects).

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

The department conducted four stakeholder meetings, collecting input verbally and in writing on the proposed rule. Stakeholders included marijuana producers, processors,

licensed retail store owners, employees, customers and other interested parties.

**SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

Producers and processors do not have to grow and create these products nor do retail stores have to carry these products if they do not wish to be medically endorsed. Therefore the department does not anticipate any lost jobs due to the rules.

The rule does create opportunities to expand the market and business of all three license groups as well as certified labs. This could result in increased business and lead to the hiring of additional staff.

Here you can compare compliance costs with revenues for the three groups if you have revenue data available. For example we can compare the additional costs of producers (unit costs) with the sale value of the same amount that producers sell to their clients (those who buy from them).

A copy of the statement may be obtained by contacting Susan Reynolds, Washington State Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2820, fax (360) 236-2901, e-mail [medicalmarijuana@doh.wa.gov](mailto:medicalmarijuana@doh.wa.gov).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Susan Reynolds, Washington State Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2820, fax (360) 236-2901, e-mail [medicalmarijuana@doh.wa.gov](mailto:medicalmarijuana@doh.wa.gov).

May 25, 2016

John Wiesman, DrPH, MPH  
Secretary

**Chapter 246-70 WAC**

**MARIJUANA PRODUCT COMPLIANCE**

NEW SECTION

**WAC 246-70-010 Findings.** Anecdotal and limited scientific evidence indicates that the use of marijuana may be beneficial to alleviate the symptoms of certain physical and mental conditions. However, due to the current federal classification of marijuana as a schedule 1 controlled substance, scientific research has not been performed that would allow for standardized indications of particular strains, which can vary radically in cannabinoid composition; standard, reproducible formula or dosage; or accepted standards for drug purity, potency and quality for the various conditions for which the medical use of marijuana may be authorized. At this time, the decision of what marijuana products may be beneficial is best made by patients in consultation with their health care practitioners. For this reason, the department will not limit the types of products available to qualifying patients. Instead, the department intends to create standards for products that any consumer can rely upon to be reasonably safe and meet quality assurance measures.

NEW SECTION

**WAC 246-70-020 Applicability of WSLCB rules.** The requirements in this chapter are in addition to all WSLCB requirements in chapter 314-55 WAC. They are intended to build upon all other requirements for licensed marijuana producers, processors and retailers, and certified third-party labs.

NEW SECTION

**WAC 246-70-030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Allowed pesticide" means a pesticide registered by the Washington state department of agriculture under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "CBD concentration" means the percent of cannabidiol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

(4) "Certified third-party testing lab" means a laboratory certified by the WSLCB or its vendor under WAC 314-55-102.

(5) "Data base" means the medical marijuana authorization data base created pursuant to RCW 69.51A.230.

(6) "Department" means the Washington state department of health.

(7) "Designated provider" has the same meaning as RCW 69.51A.010(4).

(8) "Harvest" means the marijuana plant material derived from plants of the same strain that were brought into cultivation at the same time, grown in the same manner and physical space, and gathered at the same time.

(9) "Imported cannabinoid" means any cannabinoid derived of the plant *Cannabis* with a THC concentration 0.3 percent or less that is not produced by a licensed marijuana producer.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plant(s) of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plant(s). A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(12) "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.

(13) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (11) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either usable marijuana or marijuana concentrates.

(14) "Marijuana processor" means a person licensed by the WSLCB under RCW 69.50.325 to process marijuana into marijuana concentrates, usable marijuana and marijuana-infused products, package and label marijuana concentrates, usable marijuana and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, usable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(15) "Marijuana producer" means a person licensed by the WSLCB under RCW 69.50.325 to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(16) "Marijuana product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products as defined in this section.

(17) "Medical use of marijuana" has the same meaning as RCW 69.51A.010(16).

(18) "Plant" means a marijuana plant.

(19) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of marijuana.

(20) "Qualifying patient" or "patient" has the same meaning as RCW 69.51A.010(19).

(21) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

(22) "Recognition card" means a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana data base.

(23) "Retail outlet" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of usable marijuana and marijuana-infused products.

(24) "Retail outlet with a medical marijuana endorsement" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of marijuana products to the public and, under RCW 69.50.375, to qualifying patients and designated providers for medical use.

(25) "Secretary" means the secretary of the department of health or the secretary's designee.

(26) "THC concentration" means the percent of Delta 9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of Delta 9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

nabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(27) "Tincture" means a solution containing marijuana extract. A single unit of tincture cannot exceed two fluid ounces.

(28) "Topical product" means a product intended for use only as an application to human body surfaces, does not cross the blood-brain barrier, and is not meant to be ingested by humans or animals.

(29) "Unit" means an individually packaged marijuana product containing up to ten servings or applications.

(30) "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(31) "WSLCB" means the Washington state liquor and cannabis board.

## NEW SECTION

**WAC 246-70-040 Marijuana products compliant with this chapter.** To be classified as a compliant marijuana product, the product must meet all requirements of this chapter. Compliant marijuana products must fall into one of the following classifications:

(1) General use.

(a) "General use compliant product" means any marijuana product approved by the WSLCB and meeting the requirements of this chapter including edible marijuana-infused products and marijuana products with CBD/THC ratios that do not qualify as "high CBD compliant products" under subsection (3) of this section.

(b) General use marijuana-infused compliant products may be packaged in servings or applications containing up to ten milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed one hundred total milligrams of active THC.

(c) General use compliant products must be labeled "Chapter 246-70 WAC, Compliant - General Use" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(d) General use compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(e) General use compliant products may be sold at retail outlets and retail outlets with a medical marijuana endorsement.

(2) High THC.

(a) "High THC compliant product" means a marijuana product containing more than ten but no more than fifty milligrams of THC per serving or application and meeting the requirements of this chapter.

(b) The following is an exclusive list of marijuana products that may qualify for classification as a high THC compliant product:

(i) Capsules;

(ii) Tinctures;

(iii) Transdermal patches; and

(iv) Suppositories.

(c) No other marijuana products can be classified as a high THC compliant product or contain more than ten milligrams of active THC per serving or application.

(d) High THC compliant products may be packaged in servings or applications containing up to fifty milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed five hundred total milligrams of active THC.

(e) High THC compliant products must be labeled "Chapter 246-70 WAC Compliant - High THC" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(f) High THC compliant products may be purchased only by qualifying patients age eighteen and older and designated providers who are entered into the data base and hold a valid recognition card.

(g) High THC compliant products may be sold only at retail outlets with a medical marijuana endorsement.

(3) High CBD.

(a) "High CBD compliant product" means any marijuana product, except usable marijuana or other plant material intended for smoking, approved by the WSLCB, including edibles, meeting the requirements of this chapter and containing the following ratios:

(i) Marijuana extracts containing not more than two percent THC concentration and at least twenty-five times more CBD concentration by weight.

(ii) Marijuana-infused edible products containing not more than two milligrams of active THC and at least five times more CBD per serving by weight for solids or volume for liquids.

(iii) Marijuana-infused topical products containing at least five times more CBD concentration than THC concentration.

(b) High CBD compliant products must be labeled "Chapter 246-70 WAC Compliant - High CBD" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(c) High CBD compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(d) High CBD compliant products may be sold at retail outlets and retail outlets with a medical marijuana endorsement.

NEW SECTION

**WAC 246-70-050 Quality assurance testing.** (1) Testing. In addition to the tests required under WAC 314-55-102, the following tests shall be performed at the intervals indicated by a third-party testing lab certified by the WSLCB:

(a) Pesticide screening and heavy metal screening are required at the time of harvest for all marijuana flowers, trim, leaves, or other plant matter.

(i) Minimum sample size is three grams for every three pounds of harvested product.

(ii) Harvest amounts will be rounded up to the next three-pound interval. For example, a harvest of less than three pounds requires at least three grams for testing; a har-

vest of three or more pounds but less than six pounds requires at least six grams for testing.

(b) Mycotoxin screening is required whenever microbial testing for any marijuana product is required by the WSLCB.

(c) In addition to the pesticide screening required in subsection (1)(a) of this section, additional pesticide screening is required for:

(i) Each batch of finished concentrates and extracts; and

(ii) Any imported cannabinoid intended for use in a marijuana product.

The minimum sample size for each batch of finished concentrates and extracts is two grams. The sample size for imported cannabinoids is one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(d) In addition to the heavy metal screening required in (a) of this subsection, additional heavy metal screening is required for any imported cannabinoid intended for use in a marijuana product. The sample size for imported cannabinoids is one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(e) Licensed marijuana producers, licensed marijuana processors, and certified third-party labs must follow the sampling protocols in chapter 314-55 WAC.

(f) At the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or processor.

(2) Pesticide screening.

(a) Only allowed pesticides shall be used in the production, processing, and handling of marijuana. Pesticide use must be consistent with the manufacturer's label requirements.

(b) Certified third-party labs must screen for any pesticides that are not allowed and are designated as having the potential for misuse on a list created, maintained, and periodically updated by the department in consultation with the Washington state department of agriculture and the WSLCB. Certified third-party labs must also screen for pyrethrins and piperonyl butoxide (PBO) in samples of finished concentrates and extracts. Certified third-party labs may also screen for additional pesticides.

(c) For purposes of the pesticide screening:

(i) A sample of any marijuana product shall be deemed to have failed if a pesticide that is not allowed is detected above the action level for that pesticide as determined by the WSLCB under chapter 314-55 WAC.

(ii) A sample of finished concentrate or extract shall be deemed to have failed if more than 1.0 ppm of allowed pyrethrins or 2.0 ppm of piperonyl butoxide (PBO) is detected.

(d) A harvest or batch deemed to have failed pesticide screening must be destroyed according to chapter 314-55 WAC. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed pesticide screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed pesticide screening must not be added to any marijuana product.



(e) Pesticides containing allowed pyrethrins or piperonyl butoxide (PBO) may not be applied less than seven days prior to harvest.

(f) All individuals applying pesticides shall adhere to the agricultural use requirements on the label. Pesticide applications that do not follow the pesticide product label may pose risks to public health and safety and are a violation of chapter 15.58 RCW.

(3) Heavy metal screening.

(a) For the purposes of heavy metal screening, a sample shall be deemed to have passed if it meets the following standards:

Metal	Limit, µg/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(b) A harvest deemed to have failed heavy metal screening must be destroyed according to chapter 314-55 WAC. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed heavy metal screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed heavy metal screening must not be added to any marijuana product.

(4) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	<20 µG/kg of substance
Ochratoxin A	<20 µG/kg of substance

(5) Terpenes.

(a) Terpene analysis is not required. If terpene content is listed on product packaging or label, a terpene analysis from a certified third-party lab must be available for review by the consumer upon request.

(b) The addition of any terpene to useable marijuana is prohibited. Only the following terpenes may be added to a marijuana product other than useable marijuana.

- (i) Terpenes naturally occurring in marijuana; or
- (ii) Terpenes permitted or generally recognized as safe by, and used in accordance with, 21 C.F.R., Chapter I, subchapter B.

**NEW SECTION**

**WAC 246-70-060 Compliant product labeling.** (1)

Products meeting the requirements of this chapter must be readily identifiable to the consumer by placement on the product's label of the appropriate logo found in WAC 246-70-090. A logo must be used in compliance with this chapter and any guidance for use developed by the department. A logo may not be used on any object or merchandise other than

a compliant marijuana product. A logo used in accordance with this chapter must be printed in either black or dark blue.

(2) Labels for compliant products must not:

(a) Use any word(s), symbol, or image commonly used in or by medical or pharmaceutical professions including, but not limited to: Depiction of a caduceus, staff of Asclepius, bowl of Hygieia, or mortar and pestle; or use of the word "prescription" or letters "RX";

(b) State or imply any specific medical or therapeutic benefit; or

(c) Mimic a brand of over-the-counter or legend drug.

(3) The label must prominently display the following statement: "This product is not approved by the FDA to treat, cure, or prevent any disease."

(4) Only marijuana products complying with this chapter may use a logo found in WAC 246-70-090. Marijuana products that use a logo but do not meet the requirements in this chapter will be reported to the WSLCB.

**NEW SECTION**

**WAC 246-70-070 Compliant product safe handling.**

(1) Marijuana processors shall ensure all processing facilities that create or handle marijuana-infused products are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(2) Marijuana processors that do not create or handle marijuana-infused products and all marijuana producers shall adopt and enforce policies and procedures to ensure that operations involving the growing, receiving, inspecting, transporting, segregating, preparing, production, packaging, and storing of marijuana or marijuana products are conducted in accordance with adequate sanitation principles including:

(a) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with marijuana, marijuana plants, or marijuana products shall be excluded from any operations that may be expected to result in microbial contamination until the condition is corrected.

(b) Hand-washing facilities must be available and furnished with running water. Hand-washing facilities shall be located in the permitted premises and where good sanitary practices require employees to wash or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.

(c) All persons working in direct contact with marijuana, marijuana plants, or marijuana products must conform to hygienic practices while on duty including, but not limited to:

- (i) Maintaining personal cleanliness;
- (ii) Washing hands thoroughly in hand-washing areas before starting work and at any other time when the hands may have become soiled or contaminated;
- (iii) Refraining from having direct contact with marijuana, marijuana plants, or marijuana products if the person has or may have an illness, open lesion, including boils, sores

or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.

(d) Litter and waste are properly removed and the operating systems for waste disposal are maintained in a manner so that they do not constitute a source of contamination in areas where marijuana, marijuana plants, or marijuana products may be exposed.

(e) Floors, walls and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.

(f) There is adequate lighting in all areas where marijuana, marijuana plants, or marijuana products are stored and where equipment or utensils are cleaned.

(g) There is adequate screening or other protection against the entry of pests. Rubbish must be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests.

(h) Any buildings, fixtures, and other facilities are maintained in a sanitary condition.

(i) Toxic cleaning compounds, sanitizing agents, and solvents used in the production of marijuana concentrates must be identified, held and stored in a manner that protects against contamination of marijuana, marijuana plants, and marijuana products, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation, or ordinance.

(j) All contact surfaces, including utensils and equipment used for the preparation of marijuana, marijuana plants, or marijuana products must be cleaned and sanitized regularly to protect against contamination. Equipment and utensils must be designed and be of such material and workmanship as to be adequately cleanable, and must be properly maintained. Sanitizing agents must be used in accordance with labeled instructions.

(k) The water supply must be sufficient for the operations and capable of providing a safe, potable, and adequate supply of water to meet the facility's needs. Each facility must provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair.

#### NEW SECTION

**WAC 246-70-080 Employee training.** (1) Marijuana producers, processors and retailers that create, handle, or sell compliant marijuana products shall adopt and enforce policies and procedures to ensure employees and volunteers receive training about the requirements of this chapter.

(2) Marijuana retailers holding a medical marijuana endorsement shall also adopt and enforce policies and procedures to ensure employees and volunteers receive training about:

(a) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization data base;

(b) Identification of valid recognition cards;

(c) Adherence to confidentiality requirements; and

(d) Science-based information about cannabinoids, strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, usable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

(3) Nothing in subsection (2) of this section allows any owner, employee, or volunteer to:

(a) Perform the duties of a medical marijuana consultant or represent themselves as a medical marijuana consultant unless the person holds a valid certificate issued by the secretary under chapter 246-72 WAC;

(b) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or

(c) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana or marijuana products.

#### NEW SECTION

**WAC 246-70-090 Marijuana product compliant logos.**





**WSR 16-12-067**  
**WITHDRAWL OF PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed May 27, 2016, 11:32 a.m.]

Please withdraw proposed rule CR-102 WSR 16-10-017 filed on April 22, 2016. The proposal as filed was removed from public hearing by the board.

David Brenna  
 Senior Policy Analyst

**WSR 16-12-084**  
**PROPOSED RULES**  
**RECREATION AND CONSERVATION**  
**OFFICE**

(Recreation and Conservation Funding Board)

[Filed May 31, 2016, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-110.

Title of Rule and Other Identifying Information: Amendments to chapter 286-04 WAC, General and chapter 286-13 WAC, General grant assistance.

Hearing Location(s): Washington Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, on July 13, 2016, at 4:00 p.m.

Date of Intended Adoption: July 13, 2016.

Submit Written Comments to: Leslie Connelly, 1111 Washington Avenue South, P.O. Box 40917, Olympia, WA 98504-0917, e-mail [leslie.connelly@rco.wa.gov](mailto:leslie.connelly@rco.wa.gov), fax (360) 902-3026, by July 8, 2016.

Assistance for Persons with Disabilities: Contact Cindy Gower by July 12, 2016, TTY (360) 902-1996 or (360) 902-3013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to modify grant program requirements for the recreation and conservation funding board. The modifications include changes to the application requirements, evaluation process, grant program deadlines, decision making, and eligible grant costs. The anticipated effects will:

(1) Allow the director to apply chapter 286-13 WAC to grant programs administered by the recreation and conservation office;

(2) Include an option for a technical review of applications before final evaluation;

(3) Clarify the evaluation process and who makes final decisions;

(4) Allow the director to determine application deadlines;

(5) Modify the deadline for an applicant's plan;

(6) Add deadlines for reimbursement of grant funds and final project deliverables; and

(7) Clarify eligible grant costs.

Reasons Supporting Proposal: The reasons supporting this proposal include expanding authorities for the recreation and conservation funding board and the director to make decisions, formalizing portions of the grant evaluation process and certain deadlines, and enacting existing grant procedures and eligible costs into rules.

Statutory Authority for Adoption: RCW 34.05.220, 42.56.040, 46.09.530, 79A.15.060, 79A.15.070, 79A.15.120, 79A.15.130, 79A.25.210.

Statute Being Implemented: Chapters 79A.15 and 79A.25 RCW, RCW 46.09.530.

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

Name of Proponent: Recreation and conservation office, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Connelly, 1111 Washington Street S.E., Olympia, WA

98504, (360) 902-3080; Implementation and Enforcement: Kaleen Cottingham, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-3000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule making does not meet the definition of a "minor cost" in RCW 19.85.020(2) nor would it affect "small businesses" as defined in RCW 19.85.020(3).

A cost-benefit analysis is not required under RCW 34.05.328. The recreation and conservation office is not listed as an agency required to complete a cost-benefit analysis under RCW 34.05.328 (5)(a)(i).

May 31, 2016  
Leslie Connelly  
Rules Coordinator  
Natural Resources  
Policy Specialist

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 286-04-065 Project evaluations.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-010** ~~((What is the purpose of this))~~ Scope of chapter ~~((2))~~. (1) This chapter contains general rules ~~((affecting))~~ for grant program eligibility, applications, and projects funded with money from or through the board.

(2) Further rules are in chapter 286-26 WAC (Nonhighway and off-road vehicle activities program), chapter 286-27 WAC (Washington wildlife and recreation program), chapter 286-30 WAC (Firearms and archery range recreation program), chapter 286-35 WAC (Initiative 215 boating facilities program), chapter 286-40 WAC (Land and water conservation fund program) and chapter 286-42 WAC (Aquatic lands enhancement account program).

(3) The director may apply the rules in this chapter to programs administered by the office that are not subject to the board's approval.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-020** Application ~~((s))~~ requirements and the evaluation process. ~~((1))~~ ~~All grant requests must be completed and submitted in the format prescribed by the director.~~

~~((2))~~ If the director determines that the applicant is eligible to apply for federal funds administered by the board, the applicant must execute the forms necessary for that purpose. (1) The board shall adopt a competitive evaluation process to guide it in allocating funds to grant applicants. The board may also adopt a technical review process to assist applicants in preparing for evaluation of their applications.

(2) The board's technical review and evaluation process for applications shall:

(a) Be developed, to a reasonable extent, through the participation of a grant program advisory committee and interested parties;

(b) Consider applicant, local, regional, and statewide needs, a project's technical merits, and other evaluation criteria;

(c) Be adopted by the board in open public meetings;

(d) Be made available in published form to interested parties;

(e) Be designed for use by an advisory committee selected for this purpose; and

(f) Be in accord with chapters 46.09, 79A.15, 79A.25, 79A.35 RCW, and RCW 79.105.150 and all other applicable statutes and federal laws and rules.

(2) The office shall administer the technical review and evaluation process adopted by the board. The office shall inform all applicants of the application requirements and the technical review and evaluation process.

(3) All applications completed in the format prescribed and submitted to the office that meet the application requirements and deadlines in this chapter will be referred to an advisory committee for evaluation.

(4) The results of the evaluation of applications from an advisory committee shall be referred to the director. The director shall use the results of the evaluation process to make funding recommendations to the board.

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

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-040** ~~((What are the))~~ Grant program deadlines ~~((and how can the deadlines be waived?))~~. (1) ~~((Compliance with the following deadlines is required to be eligible for grant funding and to receive grant funding.~~

~~((a)))~~ Applications must be submitted at least four calendar months before the meeting of the board at which the applicant's project is first considered. Applications must be completed in final form and on file with the office ~~((at least one calendar month before the meeting of the board at which the applicant's project is first considered))~~ by the deadline established by the director. Excepted are applications for programs where the director specifically establishes another deadline to accomplish new or revised statutory direction, board direction, or to meet a federal grant application deadline.

~~((b)))~~ (2) Plans required for participation in board grant programs must be complete and on file with the office at least three calendar months before the meeting of the board at which the applicant's project is first considered. On the director's acceptance of the plan, the applicant shall be granted eligibility to submit applications for a period of up to six years from the last day of the month when the applicant adopted the plan.

~~((c)))~~ (3) To develop the director's funding recommendations, written assurance must be provided whenever matching resources are to be considered as a part of an application. This assurance must be provided by the applicant to

the office at least one calendar month before the meeting of the board at which the project is to be considered for funding.

~~((4))~~ (4) To prepare a project agreement, ~~((certain))~~ other documents or materials in addition to the application may be required by the office. These documents or materials must be provided by the applicant to the office at least two calendar months after the date the board or director approves funding for the project or earlier to meet a federal grant program requirement. After this period, the board or director may rescind the offer of grant funds and reallocate the grant funds to another project(s).

~~((5))~~ (5) An applicant has three calendar months from the date the office sends the project agreement to sign and return the agreement to the office. After this period, the board or director may reject any agreement not signed and returned and reallocate the grant funds to another project(s).

~~((6))~~ (6) Sponsors must submit a request for reimbursement at least once each year as described in the agreement.

~~((7))~~ (7) Sponsors must submit final project deliverables at the completion of the project as described in the agreement.

(8) Compliance with the deadlines is required unless ~~((a waiver is granted))~~ an extension is approved by the board or director. ~~((Such waivers))~~ Requests to extend a deadline must be submitted to the office before the deadline. Extensions are considered based on several factors which may vary with the type of ~~((waiver))~~ extension requested, including any one or more of the following:

- (a) Current status and progress made to meet the deadline;
- (b) The reason the established deadline could not be met;
- (c) When the deadline will be met;
- (d) Impact on the board's evaluation process;
- (e) Equity to other applicants; and
- (f) Such other information as may be relevant.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-050 ((Funding)) Final decision.** (1) The board ~~((will review))~~ shall consider recommendations from the director for grant projects at regularly scheduled public meetings.

(2) The board retains the authority and responsibility to accept or deviate from ~~((these))~~ the director's recommendations and make the final decision concerning the funding of an application or a change to a funded project.

(3) Unless otherwise precluded by law, the board's decision is the final decision.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-085 Retroactive, preagreement, and increased costs.** (1) Before execution of an agreement, the office shall not approve the disbursement of funds for project costs.

(2) The office will only reimburse costs that occur within the period of performance in the project agreement except for costs in subsections (3) and (4) of this section.

~~((2))~~ (3) The director may grant a waiver of retroactivity for acquiring real property whenever an applicant asserts,

in writing, the justification for the critical need to purchase the property in advance of the project agreement along with any documentation required by the director. When evidence warrants, the director may grant the applicant permission to proceed by issuing a written waiver. This waiver of retroactivity will not be construed as approval of the proposed project. If the project is subsequently approved, however, the costs incurred will be eligible for grant funding. If the project is to remain eligible for funding from federal funds, the director shall not authorize a waiver of retroactivity to the applicant until the federal agency administering the federal funds has issued its own waiver of retroactivity as provided under its rules and regulations. A waiver may be issued for more than one grant program.

~~((3))~~ (4) The only retroactive acquisition, development, and restoration costs eligible for grant funding are preagreement costs as defined by the board.

~~((4))~~ (5) Cost increases for approved projects may be granted by the board or director if financial resources are available and within the appropriation authorized by the legislature.

(a) Each cost increase request will be considered on its merits and the board's grant program policies.

(b) The director may approve a cost increase ~~((request so long as the cost increase amount does not exceed ten percent of the project's approved initial grant funding amount))~~ with authority delegated by the board.

(c) The director's approval of an acquisition project cost increase is limited to a parcel-by-parcel appraised and reviewed value.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-100 Nonconformance and repayment.**

Any project cost deemed by the board or director to conflict with applicable statutes, rules and/or related manuals, or the agreement, must be repaid, upon written request by the director, to the appropriate state account per the terms of the project agreement. Such repayment requests may be made in consideration of an applicable report from the state auditor's office.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 286-13-030 Application review.

WAC 286-13-080 What rules govern expenses incurred before execution of a project agreement?

**WSR 16-12-085**

**PROPOSED RULES**

**DEPARTMENT OF COMMERCE**

[Filed May 31, 2016, 12:19 p.m.]

Supplemental Notice to WSR 15-12-119.

Preproposal statement of inquiry was filed as WSR 14-16-112.

Title of Rule and Other Identifying Information: Determination of practicable goals for use of biofuels, electricity, natural gas and propane by local government subdivisions of the state that own and operate vessels, vehicles and construction equipment.

Hearing Location(s): Washington State Department of Commerce, Building 5, First Floor Room 110, 1011 Plum Street S.E., Olympia, WA 98501, on Thursday, July 14, 2016, at 10 a.m. to noon.

Date of Intended Adoption: July 28, 2016.

Submit Written Comments to: Peter Moulton, Washington State Department of Commerce, P.O. Box 42525, Olympia, WA 98504, e-mail peter.moulton@commerce.wa.gov, fax (360) 586-0049, by 5 p.m. PDT, July 15, 2016.

Assistance for Persons with Disabilities: Contact Carolee Sharp by July 6, 2015 [2016], TTY (360) 586-0772 or (360) 725-3118.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To establish standards for practicability (e.g. regional availability of fuels, vehicle costs, cost of program implementation, cost differentials in different parts of the state, differences between types of vehicles, vessels or equipment) for local government planning and compliance with RCW 43.19.648(2). Anticipated effects are clarification and guidance regarding procurement decisions for alternative fuels and vehicles, and annual reporting on compliance efforts to legislature and governor's office.

Reasons Supporting Proposal: Required under RCW 43.325.080.

Statutory Authority for Adoption: RCW 43.325.080.

Statute Being Implemented: RCW 43.325.080 and 43.19.648.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The Washington state department of commerce has held numerous meetings with affected local governments to develop this rule as required by statute. Participants have included an advisory committee of representatives of local government subdivisions, representatives from organizations representing local governments, and utilities. This rule will assist local governments and their fleet managers, and guide reporting regarding compliance.

Name of Proponent: Washington state department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Jaime Rossman, Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501, (360) 725-2717; Implementation and Enforcement: Peter Moulton, Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501, (360) 725-3116.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. This rule only addresses local governments and will have no effect on small businesses. This rule was not prepared by the office of the superintendent of public instruction and is therefore not

affected by the fiscal impact statement requirement under section 1, chapter 210, Laws of 2012.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not require commerce to provide a cost-benefit analysis. Not applicable.

May 31, 2016  
Jaime Rossman  
Rules Coordinator

## Chapter 194-29 WAC

### PRACTICABLE USE OF ELECTRICITY AND BIOFUELS TO FUEL LOCAL GOVERNMENT VEHICLES, VESSELS, AND CONSTRUCTION EQUIPMENT

#### NEW SECTION

**WAC 194-29-010 Authority and purpose.** These rules are adopted pursuant to the authority granted in RCW 43.325.080, which requires the department to adopt rules to define practicability and clarify how local governments will be evaluated in determining whether they have met the goals set forth in RCW 43.19.648(2). These goals require all local governments, to the extent practicable, to satisfy one hundred percent of their fuel usage for operating publicly owned vehicles, vessels, and construction equipment from electricity or biofuel, effective June 1, 2018.

#### NEW SECTION

**WAC 194-29-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Biofuel" means a liquid or gaseous fuel derived from organic matter intended for use as a transportation fuel, including, but not limited to, biodiesel, ethanol, and renewable natural gas.

(2) "Department" means the department of commerce.

(3) "Electric vehicle" means a vehicle with motive energy supplied solely by an electric motor.

(4) "Hybrid electric vehicle" means a vehicle with motive energy supplied by both an internal combustion engine and an electric motor powered primarily by externally supplied sources of energy. Vehicles that utilize externally supplied energy for electric power take-off functionality are also considered hybrid electric vehicles.

(5) "Lifecycle cost" means the total cost of ownership over the life of an asset, including, but not limited to, purchase or lease cost, financing costs, taxes, incentives, operation, maintenance, depreciation, resale or surplus value, engine conversion, and the incremental cost of associated refueling infrastructure.

(6) "Local government" means any unit of local government including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(7) "Practicable" or "practicability" means the extent to which alternative fuels and vehicle technologies can be used to displace gasoline and diesel fuel in vehicles, as determined by multiple dynamic factors including cost and availability of

fuels and vehicles, changes in fueling infrastructure, operations, maintenance, technical feasibility, implementation costs, and other factors.

(8) "Procure" means to purchase or lease.

(9) "Renewable natural gas" means biogas derived from landfills, wastewater treatment facilities, anaerobic digesters, and other sources of organic decomposition, which has been purified to meet requirements for use as a transportation fuel.

(10) "Revenue fleet" means all vehicles used to provide transportation services where a local government is directly or indirectly compensated for the services provided to passengers.

(11) "Vehicle" means a motorized vehicle, vessel, or construction equipment. It does not mean an aircraft, railed vehicle, or stationary electrical generating equipment.

#### NEW SECTION

**WAC 194-29-030 Applicability.** All local governments are required to transition all vehicles to electricity or biofuels to the extent practicable. The provisions of this chapter apply statewide. Pursuant to RCW 43.19.648(2):

(1) Revenue fleets with a majority of active vehicles, not including transit vans, using compressed natural gas on June 1, 2018 are exempt from these rules. Transit vans and non-revenue fleet vehicles remain subject to these rules.

(2) These rules do not require engine retrofits that would void warranties, or replacement of vehicles before the end of their useful lives.

(3) If a local government believes it is not practicable to use electricity or biofuels to fuel police, fire, or other emergency response vehicles, including utility vehicles frequently used for emergency response, it is encouraged to consider alternate fuels and vehicle technologies, such as natural gas or propane, to displace gasoline and diesel fuel use. Local governments that opt to exempt emergency response vehicles from these rules must notify the department as part of their annual reporting under WAC 194-29-080.

#### NEW SECTION

**WAC 194-29-040 Assessment data and reporting.** For purposes of assessing compliance with these rules, each local government using 200,000 or more gallons of gasoline and/or diesel to fuel vehicles on an annual basis is required to report as described in WAC 194-29-080. The department will collect data from a variety of sources to ensure local governments meeting this threshold are fulfilling the reporting requirement. To determine which transit agencies meet the reporting threshold, the department will use the most recent data from the National Transit Database, as published by the Washington State Department of Transportation.

Any local government with fuel use that initially meets the reporting threshold but subsequently drops below the threshold is encouraged to continue filing reports.

Given the findings of the underlying legislation and associated policies guiding public sector use of alternative fuels and vehicles, the department intends to continue to monitor local government compliance beyond June 1, 2018.

#### NEW SECTION

**WAC 194-29-050 Compliance threshold.** Pursuant to RCW 43.19.648(2), all local governments must comply with these rules.

#### NEW SECTION

**WAC 194-29-060 Technical coordination.** The department, in cooperation with external stakeholders with appropriate knowledge and expertise, will convene meetings at least quarterly of the agencies listed in WAC 194-28-050 and the local governments required to report under this rule to discuss trends in alternative fuel and vehicle development, including current and near-term market availability, performance metrics, innovative procurement opportunities, and fleet management tools. The meetings will take place in person, by phone, via the Internet, or any combination thereof, through the year 2020, and thereafter as may be warranted.

#### NEW SECTION

**WAC 194-29-070 Compliance evaluation.** RCW 43.325.080 requires the department to specify how local government efforts to meet the goals set forth in RCW 43.19.648(2) will be evaluated. While local governments are responsible for determining the most effective means of displacing their gasoline and diesel consumption through vehicle electrification and biofuel use, procurement decisions should be guided primarily through a comparison of alternatives on a lifecycle cost basis. The department will provide an analytical tool to assist local governments in their assessment of lifecycle costs. Local governments may use alternate means of determining lifecycle costs so long as all the variables included in the department's analytical tool are taken into consideration.

Local governments must consider the following criteria in determining whether they have, to the extent practicable, satisfied one hundred percent of fuel usage for operating vehicles, vessels, and construction equipment from electricity or biofuel, effective June 1, 2018:

(1) Vehicles.

(a) It is considered practicable to procure an electric or hybrid electric vehicle when the following criteria are met: a vehicle is available that meets operational needs, charging requirements can be met during routine use or through fleet management strategies, and the lifecycle cost is equal to or less than the lifecycle cost of the vehicle the local government would otherwise procure.

(b) If the criteria in (a) cannot be met, it is considered practicable to procure or convert a vehicle to be fueled in whole or in part by natural gas or propane when the lifecycle cost is equal to or less than the lifecycle cost of the vehicle the local government would otherwise procure.

(c) It is considered practicable for local governments to procure natural gas-fueled vehicles regardless of lifecycle cost so long as the vehicles are fueled by renewable natural gas or blends of renewable and conventional natural gas that contain at least twenty percent renewable natural gas.

(d) When making procurement decisions involving vehicles with diesel engines, it is considered practicable for local

governments to select vehicles with engine warranties that provide for the highest level of biodiesel use.

(2) Biofuels.

(a) Biodiesel. Unless otherwise limited by law, it is considered practicable for local governments to:

(i) Use a minimum five percent biodiesel-blended fuel (B5) in all applications when the fuel is available at retail or for delivery to on-site storage tanks at a price no more than one percent higher than #2 ultra-low sulfur diesel.

(ii) Use fuel blends up to twenty percent biodiesel (B20) in all applications unless otherwise restricted by warranty or air quality regulation when the fuel is available for delivery to on-site storage tanks at a price no more than one percent higher than #2 ultra-low sulfur diesel, including the cost of any additives necessary to ensure reliable storage and performance.

(b) Ethanol. It is considered practicable for local governments with vehicles capable of using high-blend ethanol fuel (E85) to make good faith efforts to identify sources and purchase E85 when the price is at least twenty percent less than regular gasoline.

(c) Renewable Natural Gas. It is considered practicable for local governments with natural gas-fueled vehicles to purchase renewable natural gas, or blends of renewable and conventional natural gas, when the fuel is available at a price equal to or less than conventional natural gas.

(3) Local governments are encouraged to install electric vehicle charging infrastructure in all fleet parking and maintenance facilities, and to incorporate charging into all new facility construction and substantial remodeling projects.

**NEW SECTION**

**WAC 194-29-080 Demonstration of progress.** By July 1 of each year, each local government required to report under WAC 194-29-040 must submit to the department an annual report on a form provided by the department documenting how it is complying with the goal of satisfying one hundred percent of fuel usage for operating vehicles, vessels, and construction equipment from electricity or biofuel by June 1, 2018, based on the criteria in WAC 194-29-070, including any reasons for noncompliance and plans for future compliance.

**WSR 16-12-089  
PROPOSED RULES  
HEALTH CARE AUTHORITY**

(Washington Apple Health)  
[Filed May 31, 2016, 1:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-050.

Title of Rule and Other Identifying Information: WAC 182-538-130 Exemptions and ending enrollment in managed care, 182-538-150 Apple health foster care program, and 182-501-0200 Third-party resources.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room

106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on July 5, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 6, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on July 5, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by July 1, 2016, e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Revised these sections to reflect that HCA is now delegating third-party activities to managed care organizations.
- Revised citation in WAC 182-538-150 (3)(b) to reflect that adoption support and foster care alumni can opt out of the apple health foster care program for any reason.
- Made housekeeping changes.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Evelyn Cantrell, P.O. Box 42716 [45504], Olympia, WA 98504-5504, (360) 725-9970.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

May 31, 2016  
Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-15-053, filed 7/9/15, effective 8/9/15)

**WAC 182-501-0200 Third-party resources.** (1) The Medicaid agency requires a provider to seek timely reimbursement from a third party when a client has available third-party resources, except as described under subsections (2) and (3) of this section.

(2) The agency pays for medical services and seeks reimbursement from a liable third party when the claim is for any of the following:

- (a) Prenatal care;



(b) Labor, delivery, and postpartum care (except inpatient hospital costs) for a pregnant woman; or

(c) Preventive pediatric services as covered under the early and periodic screening, diagnosis and treatment program.

(3) The agency pays for medical services and seeks reimbursement from any liable third party when both of the following apply:

(a) The provider submits to the agency documentation of billing the third party and the provider has not received payment after thirty days from the date of services; and

(b) The claim is for a covered service provided to a client on whose behalf the office of support enforcement is enforcing an absent parent to pay support. For the purpose of this section, "is enforcing" means the absent parent either:

(i) Is not complying with an existing court order; or

(ii) Received payment directly from the third party and did not pay for the medical services.

(4) The provider may not bill the agency or the client for a covered service when a third party pays a provider the same amount as or more than the agency rate.

(5) When the provider receives payment from a third party after receiving reimbursement from the agency, the provider must refund to the agency the amount of the:

(a) Third-party payment when the payment is less than the agency's maximum allowable rate; or

(b) ~~(The)~~ Agency payment when the third-party payment is equal to or more than the agency's maximum allowable rate.

(6) The agency does not pay for medical services if third-party benefits are available to pay for the client's medical services when the provider bills the agency, except under subsections (2) and (3) of this section.

(7) The client is liable for charges for covered medical services that would be paid by the third-party payment when the client either:

(a) Receives direct third-party reimbursement for the services; or

(b) Fails to execute legal signatures on insurance forms, billing documents, or other forms necessary to receive insurance payments for services rendered. See WAC 182-503-0540 for assignment of rights.

(8) The agency considers an adoptive family to be a third-party resource for the medical expenses of the birth mother and child only when there is a written contract between the adopting family and either the birth mother, the attorney, the provider, or the adoption service. The contract must specify that the adopting family will pay for the medical care associated with the pregnancy.

(9) A provider cannot refuse to furnish covered services to a client because of a third-party's potential liability for the services.

(10) For third-party liability on personal injury litigation claims, the agency or managed care organization (MCO) is responsible for providing medical services under WAC 182-501-0100.

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

**WAC 182-538-130 Exemptions and ending enrollment in managed care.** (1) The agency approves a request to exempt(s) a client from enrollment or to end enrollment from mandatory managed care when any of the following apply:

(a) The client ~~((has or the enrollee becomes))~~ or enrollee is eligible for medicare(, TRICARE, or any other third-party health care coverage comparable to the agency's managed care coverage);

(b) The client or enrollee is not eligible for managed care enrollment, for Washington apple health programs, or both; or

(c) A request for exemption or to end enrollment is received and approved by the agency as described in this section.

(i) If a client requests exemption within the notice period stated in WAC 182-538-060, the client is not enrolled until the agency approves or denies the request.

(ii) If an enrollee request to end enrollment is received after the enrollment effective date, the enrollee remains enrolled pending the agency's decision, unless continued enrollment creates loss of access to providers ~~((of))~~ for medically necessary care.

(2)(a) The following people may request ~~((that))~~ the agency ~~((exempt))~~ to approve an exemption or end enrollment in managed care ~~((as described in this section))~~:

(i) A client or enrollee;

(ii) A client or enrollee's authorized representative under WAC 182-503-0130; or

(iii) A client or enrollee's representative as defined in RCW 7.70.065.

(b) The agency grants a request to exempt or to end enrollment in managed care when the client or enrollee:

(i) Is American Indian or Alaska native;

(ii) Lives in an area or is enrolled in a Washington apple health program in which participation in managed care is voluntary; or

(iii) Requires care that meets the criteria in subsection (3) of this section for case-by-case clinical exemptions or ~~((ending of))~~ to end enrollment.

(3) Case-by-case clinical criteria to authorize an exemption ~~((for ending of))~~ or to end enrollment.

(a) The agency may approve a request for exemption or to end enrollment when the following criteria ~~((must be))~~ are met:

(i) The care must be medically necessary;

(ii) That medically necessary care is covered under the agency's managed care contracts;

(iii) The client is receiving the medically necessary care from an established provider or providers who ~~((is))~~ are not available through any contracted MCO; and

(iv) It is medically necessary to continue that care from the established provider or providers.

(b) When the agency approves a request for exemption or ~~((ending))~~ to end enrollment, the agency will notify the client or enrollee of its decision by telephone or in writing. If the agency approves the request for a limited time, the client or

enrollee is notified of the time limitation and the process for renewing the exemption (~~(or the ending of enrollment)~~).

(c) When the agency denies a request for exemption or (~~ending~~) to end enrollment, the agency will notify the client or enrollee of its decision by telephone or in writing and confirms a telephone notification in writing. When a client or enrollee is limited-English proficient, the written notice must be available in the client's or enrollee's primary language under 42 C.F.R. 438.10. The written notice must contain all the following information:

- (i) The agency's decision;
- (ii) The reason for the decision;
- (iii) The specific rule or regulation supporting the decision; and
- (iv) The right to request an agency administrative hearing.

(4)~~((a))~~ If a client or enrollee does not agree with the agency's decision regarding a request for exemption or to end enrollment, the client or enrollee may file a request for an agency administrative hearing based on RCW 74.09.741, the rules in this chapter, and the agency hearing rules in chapter 182-526 WAC.

~~((b) A client seeking to remain unenrolled who appeals an agency denial retains that status pending the appeal if the appeal is filed within the time frames required in WAC 182-504-0130.)~~

(5) The agency will grant a request from an MCO to ~~(remove)~~ end enrollment of an enrollee ~~(from enrollment)~~ on a case-by-case basis when the request is submitted to the agency in writing and includes sufficient documentation for the agency to determine that the criteria ~~(for ending)~~ to end enrollment in this subsection is met.

(a) All of the following criteria must be met to end enrollment:

(i) The enrollee puts the safety or property of the contractor or the contractor's staff, providers, patients, or visitors at risk and the enrollee's conduct presents the threat of imminent harm to others, except for enrollees described in (c) of this subsection;

(ii) A clinically appropriate evaluation was conducted to determine whether there was a treatable problem contributing to the enrollee's behavior and there was not a treatable problem or the enrollee refused to participate;

(iii) The enrollee's health care needs have been coordinated as contractually required and the safety concerns cannot be addressed; and

(iv) The enrollee has received written notice from the MCO of its intent to request ~~(the enrollee's termination of)~~ to end enrollment of the enrollee, unless the requirement for notification has been waived by the agency because the enrollee's conduct presents the threat of imminent harm to others. The MCO's notice to the enrollee includes the enrollee's right to use the MCO's grievance process to review the request to end ~~(the enrollee's)~~ enrollment.

(b) The agency will not approve a request to end enrollment when the request is solely due to any of the following:

- (i) An adverse change in the enrollee's health status;
- (ii) The cost of meeting the enrollee's health care needs or because of the enrollee's utilization of services;
- (iii) The enrollee's diminished mental capacity; or

(iv) Uncooperative or disruptive behavior resulting from the enrollee's special needs or behavioral health condition, except when continued enrollment in the MCO or PCCM seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees.

(c) When the agency receives a request from an MCO to ~~(remove an enrollee from)~~ end enrollment ~~(in managed care)~~ of an enrollee, the agency reviews each request on a case-by-case basis. The agency will respond to the MCO in writing with the decision. If the agency grants the request to end enrollment:

(i) The MCO will notify the enrollee in writing of the decision. The notice must include:

(A) The enrollee's right to use the MCO's grievance system as described in WAC 182-538-110; and

(B) The enrollee's right to use the agency's hearing process (see WAC 182-526-0200 for the hearing process for enrollees).

(ii) The agency will send a written notice to the enrollee at least ten calendar days in advance of the effective date that enrollment will end. The notice to the enrollee includes the information in subsection (3)(c) of this section.

(d) The MCO will continue to provide services to the enrollee until the date the individual is no longer enrolled.

(6) The agency may exempt the client for the period of time the circumstances or conditions described in this section are expected to exist. The agency may periodically review those circumstances or conditions to determine if they continue to exist. Any authorized exemption ~~(or ending of enrollment)~~ will continue only until the client can be enrolled in managed care.

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

**WAC 182-538-150 Apple health foster care program.**

(1) Unless otherwise stated in this section, all of the provisions of chapter 182-538 WAC apply to apple health foster care (AHFC).

(2) The following sections of chapter 182-538 WAC do not apply to AHFC:

- (a) WAC 182-538-068;
- (b) WAC 182-538-071;
- (c) WAC 182-538-096; and
- (d) WAC 182-538-111.

(3)~~(a)~~ Enrollment in AHFC is voluntary for eligible individuals. The agency will enroll eligible individuals in the single MCO that serves children and youth in foster care and adoption support, and young adult alumni of the foster care system.

~~((a) The agency will not enroll a client in AHFC or will end an enrollee's enrollment in AHFC when the client has, or becomes eligible for, TRICARE or any other third-party health care coverage that would:~~

~~(i) Require the agency to either exempt the client from enrollment in managed care; or~~

~~(ii) End the enrollee's enrollment in managed care.)~~

(b) An AHFC enrollee may request ~~(exemption from enrollment or termination of)~~ to end enrollment in AHFC without cause if the client is in the adoption support or young

adult alumni programs (~~under~~) WAC 182-538-130 does not apply to these requests.

(4) In addition to the scope of medical care services in WAC 182-538-095, AHFC coordinates health care services for enrollees with the department of social and health services community mental health system and other health care systems as needed.

(5) The agency sends written information about covered services when the individual becomes eligible to enroll in AHFC and at any time there is a change in covered services. In addition, the agency requires MCOs to provide new enrollees with written information about:

- (a) Covered services;
- (b) The right to grievances and appeals through the MCO; and
- (c) Hearings through the agency.

**WSR 16-12-090**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed May 31, 2016, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-032.

Title of Rule and Other Identifying Information: WAC 182-538C-110 Grievance system for behavioral health administrative services organizations (BH-ASOs).

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_esp.pdf](http://www.hca.wa.gov/documents/directions_to_esp.pdf) or directions can be obtained by calling (360) 725-1000), on July 5, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 6, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on July 5, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by July 1, 2016, e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this section to include standard resolution of appeals for noncrisis services provided by BH-ASO and to more fully describe the timing for both expedited and standard resolution notices.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Becky McAninch-Dake, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1642.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

May 31, 2016  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

**WAC 182-538C-110 Grievance system for behavioral health administrative services organizations (BH-ASOs).** (1) This section applies to the behavioral health administrative service organization (BH-ASO) grievance system for (~~individuals~~) people within fully integrated managed care (FIMC) regional service areas.

(a) The BH-ASO must have a grievance system to allow (~~an individual~~) a person to file a grievance and (~~seek~~) request a review of a BH-ASO action as defined in this chapter.

(b) The agency's hearing rules in chapter 182-526 WAC apply to administrative hearings requested by (~~an individual~~) a person to review the resolution of an appeal of a BH-ASO action.

(c) If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

(d) The BH-ASO must maintain records of grievances and appeals.

(e) The BH-ASO is not obligated to continue services pending the results of an appeal or subsequent administrative hearing.

(2) The BH-ASO grievance system. The BH-ASO grievance system includes:

(a) A process for addressing (~~the~~) complaints about any matter that is not an action, which is called a grievance;

(b) An appeals process to address (~~an individual's~~) a person's request for a review of a BH-ASO action as defined in this chapter; and

(c) Access to the agency's administrative hearing process for (~~an individual to seek~~) a person to request a review of a BH-ASO's resolution of an appeal.

(3) The BH-ASO grievance process.

(a) (~~An individual or an individual's~~) A person or a person's authorized representative may file a (~~complaint~~) grievance with a BH-ASO. A provider may not file a (~~complaint~~) grievance on behalf of (~~an individual~~) a person without the written consent of the person or the person's authorized representative.

(b) There is no right to an agency administrative hearing ~~((in regards to the disposition of a complaint))~~ regarding the BH-ASO's decision on a grievance, since a grievance is not an action.

(c) The BH-ASO must notify ~~((individuals))~~ a person of the ~~((disposition of))~~ decision regarding the person's grievance(s) within five business days of ~~((determination))~~ the decision.

(4) The BH-ASO appeals process.

(a) ~~((An individual, the individual's))~~ Parties to the appeal include:

(i) The person and the person's authorized or legal representative; or

(ii) The authorized representative of the deceased person's estate.

(b) A person, the person's authorized representative, or the provider acting with the ~~((individual's))~~ person's written consent may appeal a BH-ASO action.

~~((b))~~ (c) A BH-ASO must treat oral inquiries about appealing an action as an appeal in order to establish the earliest possible filing date for the appeal. ~~((The))~~

(d) The BH-ASO must confirm any oral appeal ~~((must be confirmed))~~ in writing ~~((by the BH-ASO.~~

~~((e)))~~ to the person or provider acting on behalf of the person.

(e) The person or provider acting on behalf of the person must file an appeal, either orally or in writing, within ninety calendar days of the date on the BH-ASO's notice of action.

(f) The BH-ASO must acknowledge receipt of each appeal to both the ~~((individual))~~ person and the provider requesting the service within three calendar days of receipt. The appeal acknowledgment letter sent by the BH-ASO serves as written confirmation of an appeal filed orally by ~~((an individual))~~ a person.

~~((d))~~ An appeal of a BH-ASO action must be filed within ninety calendar days of the date of the notice of action.

~~((e))~~ The BH-ASO will not be obligated to continue services pending the results of an appeal or subsequent administrative hearing.

~~((f))~~ (g) If the person requests an expedited appeal for a crisis-related service, the BH-ASO must make a decision on whether to grant the person's request for expedited appeal and provide written notice as expeditiously as the person's health condition requires, within three calendar days after the BH-ASO receives the appeal. The BH-ASO must make reasonable efforts to provide oral notice.

(h) The BH-ASO appeals process:

(i) Provides the ~~((individual))~~ person a reasonable opportunity to present evidence and allegations of fact or law ~~((; both in person and))~~ in writing ~~((;))~~.

(ii) Provides the ~~((individual's))~~ person and the ~~((individual's))~~ person's authorized representative opportunity before and during the appeals process to examine the ~~((individual's))~~ person's case file, including medical records and any other documents and records considered during the appeals process ~~((; and~~

~~((iii))~~ Includes as parties to the appeal:

(A) The individual;

(B) The individual's legal representative; or

~~((C))~~ The authorized representative of the deceased individual's estate.

~~((g))~~.

(ii) If the person requests an expedited appeal, the BH-ASO must inform the person that it may result in the person having limited time to review records and prepare for the appeal.

(i) The BH-ASO ensures the ~~((individuals))~~ staff making decisions on appeals:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are health care professionals with appropriate clinical expertise in treating the ~~((individual's))~~ person's condition or disease if deciding any of the following:

(A) An appeal of an action; or

(B) ((A grievance or)) An appeal that involves any clinical issues.

~~((h))~~ (j) Time frames for standard resolution of appeals.

~~((i))~~ (i) ((A BH-ASO resolves each appeal and provides notice as expeditiously as the individual's health condition requires and no longer than three calendar days after the BH-ASO receives the appeal.

(ii) The BH-ASO may extend the time frame by fourteen additional calendar days if:

(A) The individual requests the extension; or

(B) The BH-ASO determines additional information is needed and the delay is in the interests of the individual.

~~((i))~~ For appeals involving termination, suspension, or reduction of previously authorized noncrisis services, the BH-ASO must make a decision within fourteen calendar days after receipt of the appeal.

(ii) If the BH-ASO cannot resolve an appeal within fourteen calendar days, the BH-ASO must notify the person that an extension is necessary to complete the appeal.

(k) Time frames for expedited appeals for crisis-related services or behavioral health prescription drug authorization decisions.

(i) The BH-ASO must resolve the expedited appeal and provide notice of the decision no later than three calendar days after the BH-ASO receives the appeal.

(ii) The BH-ASO may extend the time frame by fourteen additional calendar days if:

(A) The person requests the extension; or

(B) The BH-ASO determines additional information is needed and the delay is in the interests of the person.

(ii) If the BH-ASO denies a request for expedited resolution of a noncrisis related service appeal, it must:

(A) Process the appeal based on the time frame for standard resolution;

(B) Make reasonable efforts to give the person prompt oral notice of the denial; and

(C) Follow-up within two calendar days of the oral notice with a written notice of denial.

(l) Extension of a standard resolution or expedited appeal not requested by the person.

(i) The BH-ASO must notify the person in writing of the reason for the delay, if not requested by that person.

(ii) The extension cannot delay the decision beyond twenty-eight calendar days of the request for appeal, without the informed written consent of the person.

(iii) The appeal determination must not exceed forty-five calendar days from the day the BH-ASO receives the appeal.

(m) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the ~~((individual))~~ person and the provider requesting the services;

(ii) Include the results of the resolution process and the date it was completed; and

(iii) Include notice of the right to request an agency administrative hearing and how to do so as provided in the agency hearing rules in chapter 182-526 WAC, if the appeal is not resolved wholly in favor of the ~~((individual))~~ person.

(5) Agency administrative hearings.

(a) Only ~~((an individual or an individual's))~~ a person or a person's authorized representative may request an agency administrative hearing. A provider may not request a hearing on behalf of ~~((an individual))~~ a person.

(b) If ~~((an individual))~~ a person does not agree with the BH-ASO's resolution of an appeal, the ~~((individual))~~ person may file a request for an agency administrative hearing based on this section and the agency hearing rules in chapter 182-526 WAC.

(c) The BH-ASO is an independent party and responsible for its own representation in any agency administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(d) ~~((An individual))~~ A person must exhaust the appeals process within the BH-ASO's grievance system before requesting an administrative hearing with the agency.

(6) Effect of reversed resolutions of appeals. If the BH-ASO's decision not to provide services is reversed on appeal by the BH-ASO ~~((on appeal))~~ or through a final order from the agency administrative hearing process, the BH-ASO must authorize or provide the disputed services promptly and as expeditiously as the ~~((individual's))~~ person's health condition requires.

(7) Grievance system termination. When available resources are exhausted, any appeals or administrative hearing process related to a request for authorization of a noncrisis service will be terminated, since noncrisis services cannot be authorized without funding, regardless of medical necessity.

ton Street S.E., Olympia, WA 98501, on July 7, 2016, at 10:30 a.m.

Date of Intended Adoption: July 11, 2016.

Submit Written Comments to: Sue Anderson, Director, Educator Effectiveness Office, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail sue.anderson@k12.wa.us, fax (360) 725-6227, by July 7, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by June 30, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Fix inconsistencies in titles and terminology, clarifying sections of WAC that pertain to teachers and those that pertain to principals and assistant principals.
- Remove a redundant section.
- Clarify the definition of "observation" to include observing teacher duties that may take place outside the regular classroom.
- Revising the scoring process for the focused evaluation for teachers and principals/assistant principals, so that educators who achieve a proficient or distinguished rating on the summative comprehensive evaluation choose a challenging criterion for the focused evaluation process and pursue professional growth in that area, without fear of probation.

Statutory Authority for Adoption: RCW 28A.405.100.

Statute Being Implemented: RCW 28A.405.100.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Sue Anderson, OSPI, P.O. Box 47200, Olympia, WA 98502, (360) 725-6116; and Enforcement: Gil Mendoza, OSPI, P.O. Box 47200, Olympia, WA 98502, (360) 725-6343.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 30.05.328 [34.05.-328] per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule under subsection (5)(c)(iii).

May 31, 2016

Randy Dorn

State Superintendent  
of Public Instruction

**WSR 16-12-092**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed May 31, 2016, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-126.

Title of Rule and Other Identifying Information: Chapter 392-191A WAC, Professional growth and evaluation of school personnel.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Policy Conference Room, 600 Washing-

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-030 Definitions.** The following definitions apply to the terms used in this chapter:

"Certificated classroom teacher" and "teacher" mean a certificated employee who provides academically focused instruction to students and holds one or more of the certificates pursuant to WAC 181-79A-140 (1) through (3) and (6)(a) through (e) and (g).

"Certificated principal," "principal" and "assistant principal" mean a person who is employed to supervise the oper-

ation and management of a school as provided by RCW 28A.400.100 and holds certificates pursuant to WAC 181-79A-140 (4)(a) or (6)(h).

"Certificated support personnel" and "certificate support person" mean a certificated employee who provides services to students and holds one or more of the educational staff associate certificates pursuant to WAC 181-79A-140(5).

"Evaluation" shall mean the ongoing process of identifying, gathering and using information to improve professional performance, assess total job effectiveness, and make personnel decisions.

"Evaluation criteria" means minimum evaluation criteria for classroom teachers specified in WAC 392-191-006 and 392-191A-060, the minimum evaluation criteria for principals specified in WAC 392-191-014 and 392-191A-150, and the minimum evaluation criteria for certificated support personnel specified in WAC 392-191-020 and 392-191A-210.

"Evidence" means observed practice, products or results of a certificated classroom (~~(teacher)~~ teacher's or certificated principal's work that demonstrates knowledge and skills of the educator with respect to the four-level rating system.

"Four-level rating system" means the continuum of performance that indicates the extent to which the criteria have been met or exceeded.

"Instructional framework" means one of the approved instructional frameworks adopted by the superintendent of public instruction to support the four-level rating system pursuant to RCW 28A.405.100.

"Leadership framework" means one of the approved leadership frameworks adopted by the superintendent of public instruction to support the four-level rating system pursuant to RCW 28A.405.100.

"Observe" or "observation" means the gathering of evidence made through classroom or worksite visits, or other visits, work samples, or conversations that allow for the gathering of evidence of the performance of assigned duties for the purpose of examining evidence over time against the instructional or leadership framework rubrics pursuant to this section.

"Rubrics" or "rubric row" means the descriptions of practice used to capture evidence and data and classify teaching or leadership performance and student growth using the evaluation criteria and the four-level rating system.

"Scoring band" means the adopted range of scores used to determine the final summative score for a certificated classroom teacher or principal.

"Student growth" means the change in student achievement between two points in time.

"Student growth data" means relevant multiple measures that can include classroom-based, school-based, school district-based, and state-based tools.

"Summative performance ratings" means the four performance levels applied using the four-level rating system: Level 1 - Unsatisfactory; Level 2 - Basic; Level 3 - Proficient; Level 4 - Distinguished.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-070 Minimum procedural standards—Frequency of comprehensive evaluation for certificated classroom teachers.** (1) School districts must observe all classroom teachers for the purposes of a comprehensive evaluation at least twice each school year in the performance of their assigned duties. School districts must observe all employees who are subject to a comprehensive evaluation for a period of no less than sixty minutes during each school year.

(2) School districts must observe new employees at least once for a total observation time of thirty minutes during the first ninety calendar days of the new employee's employment period.

(3) School districts must observe employees in the third year of provisional status at least three times in the performance of the employee. The total observation time for the school year must not be less than ninety minutes for such employees.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-080 Minimum procedural standards—Conduct of the comprehensive evaluation for certificated classroom teachers.** The conduct of the evaluation of classroom teachers must include, at a minimum, the following:

(1) All eight teaching criteria must contribute to the overall summative evaluation and must be completed at least once every four years.

(2) The evaluation must include an assessment of the criteria using the instructional framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(3) The principal or his/her designee at the school to which the certificated employee is assigned must make observations and written comments pursuant to RCW 28A.405.100.

(4) The opportunity for the employee to attach written comments to his/her evaluation report.

(5) Criterion scores, including instructional and student growth rubrics, must be determined by an analysis of evidence.

(6) An overall summative score shall be derived by a calculation of all criterion scores and determining the final four-level rating based on the superintendent of public instruction's determined summative evaluation scoring band.

(7) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated classroom teacher's student growth impact rating.

(8) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.

(9) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.

(10) Evaluators must analyze the student growth score in light of the overall summative score and determine outcomes.

**AMENDATORY SECTION** (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-090 Minimum procedural standards—Outcomes of the student growth rating for certificated classroom teachers.** The following outcomes of the student growth impact rating analysis will apply:

(1) Certificated classroom teachers with preliminary rating of distinguished with low student growth rating will receive an overall proficient rating.

(2) Certificated classroom teachers with low student growth rating will engage, with their evaluator, in a student growth inquiry pursuant to WAC ((392-191-010)) 392-191A-100.

(3) Certificated classroom teachers with a preliminary rating of distinguished with average or high student growth rating will receive an overall distinguished rating and will be formally recognized and/or rewarded.

(4) The evaluations of certificated classroom teachers with a preliminary rating of unsatisfactory and high student growth rating will be reviewed by the evaluator's supervisor.

**AMENDATORY SECTION** (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-100 Minimum procedural standards—Conduct of a student growth inquiry for certificated classroom teachers.** Within two months of receiving the low student growth score or at the beginning of the following school year, one or more of the following must be initiated by the evaluator:

- Examine student growth data in conjunction with other evidence including observation, artifacts and other student and teacher information based on appropriate classroom, school, school district and state-based tools and practices;

- Examine extenuating circumstances which may include one or more of the following: Goal setting process; content and expectations; student attendance; extent to which standards, curriculum and assessment are aligned;

- Schedule monthly conferences focused on improving student growth to include one or more of the following topics: Student growth goal revisions, refinement, and progress; best practices related to instruction areas in need of attention; best practices related to student growth data collection and interpretation;

- Create and implement a professional development plan to address student growth areas.

**AMENDATORY SECTION** (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-110 Minimum procedural standards—Frequency of observation for focused evaluation for certificated classroom teachers.** ~~((If the evaluation of the certificated classroom teacher includes an assessment of a criterion that requires observation the following shall apply:))~~ School districts must ~~((observe))~~ ensure that all classroom teachers are observed for the purposes of focused evaluation

at least twice each school year in the performance of their assigned duties. As appropriate, the evaluation of the certificated classroom teacher may include the observation of duties that occur outside the classroom setting. School districts must ~~((observe))~~ ensure that all ~~((employees))~~ certificated classroom teachers who are subject to a focused evaluation are observed for a period of no less than sixty minutes during each school year.

**AMENDATORY SECTION** (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-120 Minimum procedural standards—Conduct of the focused evaluation for certificated classroom teachers.** The conduct of the evaluation of classroom teachers must include, at a minimum, the following:

(1) One of the eight criterion for certificated classroom teachers must be assessed in every year that a comprehensive evaluation is not required.

(2) The selected criterion must be approved by the teacher's evaluator and may have been identified in a previous comprehensive summative evaluation as benefiting from additional attention or as an area of expertise to be further developed.

(3) The evaluation must include an assessment of the criterion using the instructional framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(4) The focused evaluation will include the student growth rubrics of the selected criterion. If criterion 3, 6 or 8 are selected, evaluators will use those student growth rubrics. If criterion 1, 2, 4, 5, or 7 is selected, evaluators will use criterion 3 or 6 student growth rubrics.

(5) A summative score is determined ~~((through the scoring of the instructional and student growth rubrics for the criterion selected))~~ using the most recent comprehensive summative evaluation score. This score becomes the focused summative evaluation score for any of the subsequent years following the comprehensive summative evaluation in which the certificated classroom teacher is placed on a focused evaluation. Should a teacher provide evidence of exemplary practice on the chosen focused criterion, a level 4 (Distinguished) score may be awarded by the evaluator.

(6) Should an evaluator determine that a teacher on a focused evaluation should be moved to a comprehensive evaluation for that school year, the teacher must be informed of this decision in writing at any time on or before December 15th.

**AMENDATORY SECTION** (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-130 Minimum procedural standards—Procedures to be used in making evaluations for certificated classroom teachers.** The following procedures must be used in making evaluations:

(1) Following each observation, or series of observations, the principal or his/her designee must:

(a) Promptly document the results of the observation in writing; and

(b) Provide the employee with a copy of the written observation report within three days after such report is prepared.

(2) Each classroom teacher will have the opportunity for a minimum of two confidential conferences during each school year with his/her principal or principal's designee either:

- (a) Following receipt of the written evaluation results; or
- (b) At a time mutually satisfactory to the participants.

(3) The purpose of each such conference will be to provide additional evidence by either the evaluator or certificated classroom teacher to aid in the assessment of the certificated classroom teacher's professional performance against the instructional framework rubrics.

(4) If other evaluators are used, additional procedures may be adopted pursuant to local policy.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-160 Minimum procedural standards—Conduct of the comprehensive evaluation for certificated principals and assistant principals.** The conduct of the evaluation of principals and assistant principals must include, at a minimum, the following:

(1) All eight principal criteria must contribute to the overall summative evaluation.

(2) The evaluation (~~(cycle)~~) must include an assessment of the criteria using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(3) Criterion scores, including leadership and student growth rubrics, must be determined by an analysis of evidence.

(4) An overall summative score shall be derived by a calculation of all summative scores and determining the final four level rating based on the superintendent of public instruction's determined summative evaluation scoring band.

(5) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated principal or assistant principal's student growth impact rating.

(6) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.

(7) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-170 Minimum procedural standards—Outcomes of the (~~comprehensive evaluation~~) student growth rating for certificated principals and assistant principals.** The following outcomes of the student growth impact rating analysis will apply:

(1) Certificated principals and assistant principals with preliminary rating of distinguished with low student growth rating will receive an overall proficient rating.

(2) Certificated principals and assistant principals with low student growth rating will engage, with their evaluator, in a student growth inquiry (~~(focusing on the specific areas of weak student impact)~~) pursuant to WAC 392-191A-180.

(3) Certificated principals and assistant principals with preliminary rating of distinguished with average or high student growth rating will receive an overall distinguished rating and will be formally recognized and/or rewarded.

(4) The evaluations of certificated principals and assistant principals with preliminary rating of unsatisfactory and high student growth rating will be reviewed by the evaluator's supervisor.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-180 Minimum procedural standards—Conduct of a student growth inquiry for certificated principals and assistant principals.** Within two months of receiving the low student growth score or at the beginning of the following school year, one or more of the following must be initiated by the evaluator:

- Examine student growth data in conjunction with other evidence including observation, artifacts and other student and teacher information based on appropriate classroom, school, school district and state-based tools and practices;

- Examine extenuating circumstances which may include one or more of the following: Goal setting process; content and expectations; attendance; extent to which standards, curriculum and assessment are aligned;

- Schedule monthly conferences focused on improving student growth to include one or more of the following topics: Student growth goal revisions, refinement, and progress; best practices related to instruction areas in need of attention; best practices related to student growth data collection and interpretation;

- Create and implement a professional development plan to address student growth areas.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

**WAC 392-191A-190 Minimum procedural standards—Conduct of the focused evaluation for certificated principals and assistant principals.** The conduct of the evaluation of principals or assistant principals must include, at a minimum, the following:

(1) One of the eight criterion for certificated principals or assistant principals must be assessed in every year that a comprehensive evaluation is not required.

(2) The selected criterion must be approved by the principal's evaluator and may have been identified in a previous comprehensive summative evaluation as benefiting from additional attention or as an area of expertise to be further developed.

(3) The evaluation must include an assessment of the criterion using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.



(4) The focused evaluation will include the student growth rubrics selected by the principal or assistant principal and approved by the principal's evaluator. If criterion 3, 5, or 8 is selected, evaluators will use those student growth rubrics. If criterion 1, 2, 4, 6, or 7 is selected, evaluators will use criterion 3, 5, or 8 student growth rubrics.

(5) A summative score is determined ~~((through the scoring of the leadership and student growth rubrics for the criterion selected))~~ using the most recent comprehensive summative evaluation score. This score becomes the focused summative evaluation score for any of the subsequent years following the comprehensive summative evaluation in which the certificated principal or assistant principal is placed on a focused evaluation. Should a principal or assistant principal provide evidence of exemplary practice on the chosen focused criterion, a level 4 (Distinguished) score may be awarded by the evaluator.

(6) Should an evaluator determine that a principal or assistant principal on a focused evaluation should be moved to a comprehensive evaluation for that school year, the principal or assistant principal must be informed of this decision in writing at any time on or before December 15th.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-191A-200 Summative performance ratings—  
Descriptors.

#### **WSR 16-12-094**

#### **WITHDRAWL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed May 31, 2016, 2:05 p.m.]

WAC 388-450-0015, 388-470-0045, and 388-470-0055, proposed by the department of social and health services in WSR 15-23-072, appearing in issue 15-23 of the Washington State Register, which was distributed on December 2, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### **WSR 16-12-098**

#### **PROPOSED RULES DEPARTMENT OF ECOLOGY**

[Order 15-10—Filed May 31, 2016, 3:26 p.m.]

Supplemental notice to WSR 16-02-101.

Preproposal statement of inquiry was filed as WSR 15-19-115.

Title of Rule and Other Identifying Information: Ecology proposes a new rule (chapter 173-442 WAC, Clean air rule) and amendments to one existing rule (chapter 173-441 WAC, Reporting of emissions of greenhouse gases). Ecology initially filed a proposal in 2016, but withdrew the proposal to allow additional time for updating and refining the rule language in response to stakeholder input. This subsequent proposal addresses input from stakeholders. If you submitted a comment on the previous proposal, you will need to submit a new comment if you want ecology to include it in the record for this subsequent proposal. If your comment on the previous proposal has been addressed in the subsequent proposal, you do not need to resubmit your previous comment but are welcome to do so.

Hearing Location(s): Ecology is holding four public hearings on this rule proposal, one in western Washington, one in eastern Washington, and two webinars.

#### ***In-Person Hearings***

The event will begin with a short presentation followed by a question and answer (Q&A) session. The hearing will start after the Q&A session and that is when ecology will accept oral comments. Staff will accept written comments at any time during the event. In-person hearings will conclude if no one has signed up to testify within thirty minutes of opening the hearing.

#### ***Eastern Washington - Evening***

Date: Tuesday, July 12, 2016

Time: 6:00 p.m.

Location: The Davenport Grand Hotel  
333 West Spokane Falls Boulevard  
Spokane, WA 99201

#### ***Western Washington - Evening***

Date: Thursday, July 14, 2016

Time: 6:00 p.m.

Location: The Red Lion Hotel  
2300 Evergreen Park Drive S.W.  
Olympia, WA 98502

#### ***Webinar Hearings***

A webinar is an online forum accessible from any computer or smart phone with an internet connection. For more information about the webinar, and instructions on how to register and participate through the webinar, visit <http://www.ecy.wa.gov/programs/air/rules/webinars.htm>.

#### ***Evening Webinar***

Date: Thursday, July 7, 2016

Time: 6:00 p.m.

#### ***Daytime Webinar***

Date: Friday, July 15, 2016

Time: 10:00 a.m.

Ecology is offering the presentation, Q&A session, and public hearing, where we will accept oral comments, at this webinar. The webinar hearing will conclude if no one has signed up to testify within thirty minutes of opening the hearing.

For more information about the public hearings, visit our web site <http://www.ecy.wa.gov/programs/air/rules/wac173442/1510inv.html>.

Date of Intended Adoption: September 15, 2016 (on or after).

Submit Written Comments to: Sam Wilson, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail [AQComments@ecy.wa.gov](mailto:AQComments@ecy.wa.gov), fax (360) 407-7534, online submitted through the online comment tool <http://www.ecy.wa.gov/climatechange/engagement.htm>, by July 22, 2016.

Assistance for Persons with Disabilities: For special accommodations or documents in alternate format, call (360) 407-6800, 711 (relay service), or 877-833-6341 (TTY).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes a new rule (chapter 173-442 WAC, Clean air rule) and amendments to one existing rule (chapter 173-441 WAC, Reporting of emissions of greenhouse gases). Chapter 173-442 WAC will establish emission standards for greenhouse gas (GHG) emissions from certain stationary sources located in Washington state, petroleum product producers or importers, and natural gas distributors in Washington state. Parties covered under this program will reduce their GHG emissions over time. A wide variety of options to reduce emissions will be available.

Ecology will amend chapter 173-441 WAC as necessary to change the emissions covered by the reporting program, modify reporting requirements, and update administrative procedures to align with the new rule (chapter 173-442 WAC, Clean air rule). Ecology is no longer proposing to revise chapter 173-400 WAC as part of this rule making.

Reasons Supporting Proposal: The purpose of this rule making is to establish GHG emission standards for certain large emitters and reduce GHG emissions to protect human health and the environment. Over the past century, GHG emissions from human activity have risen to unprecedented levels, increasing the average global temperature and the ocean's acidity. Washington has experienced long-term climate change impacts consistent with those expected from climate change. Our state faces serious economic and environmental disruption from the effects of these long-term changes including:

- An increase in pollution-related illness and death due to poor air quality;
- Declining water supply for drinking, agriculture, wildlife, and recreation;
- An increase in tree die-off and forest mortality because of increasing wildfires, insect outbreaks, and tree diseases;
- The loss of coastal lands due to sea level rise;
- An increase in ocean temperature and acidity;
- An increase in disease and mortality in freshwater fish (salmon, steelhead, and trout), because of warmer water temperatures in the summer and more fluctuation of water levels (river flooding and an increase of water flow in winter while summer flows decrease); and
- Elevated heat stress to field crops and tree fruit due to an increase in temperatures and a decline in irrigation water.

Compliance actions to reduce GHG emissions, such as producing cleaner energy and increasing energy efficiency, potentially have the dual benefit of reducing other types of air pollution.

In 2008, Washington's legislature required the specific statewide GHG reductions (RCW 70.235.020) below.

- By 2020, reduce overall emissions of GHGs in the state to 1990 levels.
- By 2035, reduce overall emissions of GHGs in the state to twenty-five percent below 1990 levels.
- By 2050, reduce overall emissions of GHGs in the state to fifty percent below 1990 levels or seventy percent below the state's expected emissions that year.

Consistent with the legislature's intent to reduce GHG emissions, ecology is using its existing authority under the Washington Clean Air Act to adopt a rule that limits emissions of GHGs.

Statutory Authority for Adoption: Chapters 70.94 and 70.235 RCW.

Statute Being Implemented: Chapters 70.94 and 70.235 RCW.

Rule is necessary because of state court decision, [King County Superior Court No. 14-2-25295-1].

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Under RCW 70.94.331, ecology may adopt rules establishing emission standards for types of emissions or types of sources of emissions, or a combination of these.

Chapter 173-442 WAC is intended to establish emission standards for GHG emissions from certain stationary sources located in Washington state, petroleum product producers or importers, and natural gas distributors in Washington state.

Ecology has made a preliminary determination that it is in the public interest and will best protect the public welfare of the state if chapter 173-442 WAC is implemented and enforced statewide solely by ecology because:

- The covered parties regulated by the rule are located throughout the state; and
- As the agency that crafted the rule, ecology is in the best position to ensure that the rule is implemented and enforced as intended; and
- As a single agency, ecology can ensure that the rule is consistently implemented and enforced statewide.

Sole jurisdiction establishes a single regulating entity for business owners to interact with and provides greater confidence that regulatory determinations are made on an objective, impartial, and consistent basis.

Ecology is accepting comments on this issue during the formal public comment period, which ends on July 22, 2016.

Name of Proponent: Department of ecology, air quality program, governmental.

Name of Agency Personnel Responsible for Drafting: Neil Caudill, Olympia, Washington, (360) 407-6811 and Bill Drumheller, Olympia, Washington, (360) 407-7657; Implementation and Enforcement: Air Quality Program, Olympia, Washington, (360) 407-6000.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

## Small Business Economic Impact Statement

**Executive Summary:** Based on research and analysis required by the Regulatory Fairness Act (RFA), RCW 19.85.070, ecology has determined that the proposed rule, the clean air rule (chapter 173-442 WAC) and corresponding amendments to the reporting of emissions of GHGs rule (chapter 173-441 WAC) are not likely to have a disproportionate impact on small businesses.

RFA directs ecology to determine if there is likely to be disproportionate impact, and if legal and feasible, to reduce this disproportionate impact.

The proposed rule creates a program that limits and reduces GHG emissions from certain large emission contributors, referred to as covered parties, and allowing various compliance options to meet those limitations. It also includes reporting and verification of compliance.

The proposed rule establishes GHG emissions standards for:

- Stationary sources.
- Petroleum product producers and/or importers.
- Natural gas distributors operating in Washington state.

At the highest ownership or control level, the proposed rule is not likely to impact small businesses, defined by RFA as having fifty or fewer employees. This means that we are unable to make the comparison of per-employee compliance costs at small versus large businesses required by RFA. It also means that the proposed rule inherently is not likely to impose disproportionate costs on small businesses.

The range of employment at the highest level of ownership available for fuel importers likely covered by the proposed rule is between fifty-one - two hundred (only range available for parent entity) and eight hundred forty-five thousand (importer also covered as a stationary source and producer).

Depending on the compliance methods chosen, the proposed rule could result in between a loss of five hundred forty-four ongoing positions for twenty years (if covered parties reduce emissions using allowances from outside of the state), and a gain of nearly four thousand ongoing positions (if covered parties reduce emissions on site in the state).

### Chapter 1: Background and Introduction:

**1.1 Introduction:** Based on research and analysis required by RFA, RCW 19.85.070, ecology has determined that the proposed rule, the clean air rule (chapter 173-442 WAC) and corresponding amendments to the reporting of emissions of GHGs rule (chapter 173-441 WAC) are not likely to have a disproportionate impact on small businesses.

RFA directs ecology to determine if there is likely to be disproportionate impact, and if legal and feasible, to reduce this disproportionate impact.

The small business economic impact statement (SBEIS) is intended to be read with the associate[d] cost-benefit and least-burdensome alternative analyses (Ecology Publication No. 16-02-008), which contains more in-depth discussion of the proposed rule and compliance costs.

**1.2 Summary of the proposed rule:** The proposed rule creates a program that limits and reduces GHG emissions from certain large emission contributors, referred to as cov-

ered parties, and allowing various compliance options to meet those limitations. It also includes reporting and verification of compliance.

The proposed rule establishes GHG emissions standards for:

- Stationary sources.
- Petroleum product producers and/or importers.
- Natural gas distributors operating in Washington state.

If they meet GHG emissions thresholds that begin at one hundred thousand metric tons (MT) per year of carbon dioxide equivalent emissions in 2017, these parties have a compliance obligation to limit and reduce GHG emissions over time, through 2035. They must afterward maintain the reduction achieved in 2035. The threshold for coverage under the proposed rule drops five thousand MT every three years through 2035, increasing the number of covered parties over time.

Covered parties with compliance obligations under the proposed rule must report compliance after every three-year compliance period, and have compliance verified by a third party. They have various options for compliance, including:

- Reducing their own GHG emissions.
- Acquiring emissions reduction units from another covered party that has reduced GHG emissions in excess of what is required of them.
- Acquiring or generating emissions reduction units from approved GHG reduction projects in Washington state.
- Generating emission reduction units from approved GHG reduction programs in Washington, such as acquiring renewable energy credits (REC).
- Acquiring emissions reduction units from nonregulated parties that voluntarily participate.
- Purchasing allowances from established multisector carbon markets as approved by ecology.

**1.3 Reasons for the proposed rule:** The reason for this proposed rule is to reduce GHG emissions to protect human health and the environment. GHG emissions as a result of human activities have increased to unprecedented levels, warming the climate.<sup>1</sup> Washington has experienced long-term climate change impacts consistent with those expected from climate change.<sup>2</sup> Washington faces serious economic and environmental disruption from the effects of these long-term changes.

<sup>1</sup> IPCC, 2013: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 1535 pp.

<sup>2</sup> Snover, A.K., G.S. Mauger, L.C. Whitely Binder, M. Krosby, and I. Tohver. 2013. Climate Change Impacts and Adaptation in Washington State: Technical Summaries for Decision Makers. State of Knowledge Report prepared for the Washington State Department of Ecology. Climate Impacts Group, University of Washington, Seattle.

For instance:

- An increase in pollution-related illness and death due to poor air quality.

- Declining water supply for drinking, agriculture, wild-life, and recreation.
- An increase in tree die-off and forest mortality because of increasing wildfires, insect outbreaks, and tree diseases.
- The loss of coastal lands because of sea level rise.
- An increase in ocean temperature and ocean acidification.
- An increase in disease and mortality in freshwater fish (salmon, steelhead, and trout), because of warmer water temperatures in the summer and more fluctuation of water levels (river flooding and an increase of water flow in winter while summer flows decrease).
- Heat stress to field crops and tree fruit will be more prevalent because of an increase in temperatures and a decline in irrigation water.

Compliance actions to reduce GHG emissions, such as producing cleaner energy and increasing energy efficiency, have the dual benefit of reducing other types of air pollution.

In 2008, Washington's legislature required the specific statewide GHG emission reductions (RCW 70.235.020) below:

- By 2020, reduce overall emissions of GHGs in the state to 1990 levels.
- By 2035, reduce overall emissions of GHGs in the state to twenty-five percent below 1990 levels.
- By 2050, reduce overall emissions of GHGs in the state to fifty percent below 1990 levels or seventy percent below the state's expected emissions that year.

Consistent with the legislature's intent to reduce GHG emissions, ecology is using its existing authority under the state Clean Air Act (chapter 70.94 RCW) to adopt a rule that limits GHG emissions.

## **Chapter 2: Analysis of Compliance Costs for Washington Businesses:**

**2.1 Introduction:** Ecology analyzed the impacts of the proposed rule relative to business as usual (BAU), within the context of all existing requirements (federal and state laws and rules). This context for comparison is called BAU, and reflects the most likely regulatory circumstances that parties would face if the proposed rule were not adopted. It is discussed in Section 2.2, below.

**2.2 BAU:** BAU for our analyses generally consists of existing rules and laws, and their specific requirements. For economic analyses, BAU also includes the implementation of those regulations, including any guidelines and policies that result in behavior changes and real impacts. This is what allows us to make a consistent comparison between conditions that exist with or without the proposed new rule (chapter 173-442 WAC) and proposed amendments to the existing GHG reporting rule (chapter 173-441 WAC).

For this proposed rule making, BAU includes:

- No existing GHG cap and reduction program at the state level.
- The existing GHG reporting rule (chapter 173-441 WAC), which covers a subset of the parties covered by

the proposed rule, and requires annual reporting and payment of fees.

- The federal and Washington state clean air acts.
- Existing federal and state regulations, including those covering GHG reporting at the federal level, as well as those establishing energy policy.
- Existing federal and state permitting requirements and processes.

While they might otherwise have been considered part of BAU, the proposed rule explicitly exempts compliance with Washington's emissions performance standard (chapter 80.80 RCW) requirements from being considered part of BAU. The state's carbon dioxide mitigation standard and commute trip reduction programs are also excluded.

The proposed rule also considers future compliance with state implementation of the federal clean power plan (CPP) as compliance with proposed rule requirements. However, since the state has not yet completed rule making determining the specific requirements of the CPP, and since the CPP is currently being held in a stay by the supreme court, we exclude its requirements from the BAU in this analysis. This means that impacts estimated in this analysis are likely over-estimated for power producers that will be required to comply with the CPP.

### **2.3 Proposed rule requirements:**

**2.3.1 Clean air rule coverage:** The proposed rule establishes standards for limiting and reducing GHG emissions for:

- Certain stationary sources.
- Petroleum product producers or importers.
- Natural gas distributors in Washington state.

### **2.3.2 Thresholds for compliance obligation under the proposed rule:**

**2.3.2.1 Existing emitters:** If their covered GHG emissions are at least one hundred thousand MT per year, in carbon dioxide-equivalent units (CO<sub>2</sub>e), parties with covered GHG emissions must comply with the proposed rule starting in 2017. Emissions used for threshold comparisons are determined using a baseline emissions calculation based on past emissions during 2012 - 2016, or other relevant emissions data.

**2.3.2.2 New emitters:** The parties with covered GHG emissions must comply with the proposed rule starting in their first year of operation, if they exceed the following thresholds:

- 100,000 MT per year in years 2017 through 2019.
- 95,000 MT per year in years 2020 through 2022.
- 90,000 MT per year in years 2023 through 2025.
- 85,000 MT per year in years 2026 through 2028.
- 80,000 MT per year in years 2029 through 2031.
- 75,000 MT per year in years 2032 through 2034.
- 70,000 MT per year in 2035 and thereafter.

**2.3.3 Clean air rule requirements:** The proposed rule establishes the following requirements not required elsewhere in existing laws or rules:

- GHG emissions standards and reductions over time.

- Compliance reporting.
- Verification of compliance.
- Development of an emissions reduction registry and reserve.

**2.3.4 Clean air rule compliance:** Covered parties with compliance obligations, may comply with the proposed rule by reducing emissions in any of the following ways:

- **Own emissions reductions:** Reduction of a covered party's own emissions below the emissions level set in the covered party's reduction pathway.
- **Others' emissions reductions:** Other parties' reductions of emissions below their emissions reduction pathways. Reductions can also come from those voluntarily participating in the program.
- **Emissions reduction projects:** Emissions reductions using projects, activities, or programs recognized by ecology as capable of generating emissions reduction units under the proposed rule.
  - o **Emission reductions from projects** can come from ownership of a project or from GHG credits available in markets for environmental commodities.
  - o **Emission reductions from programs** can come from several state-run programs, including acquiring RECs, i.e., existing energy credits generated by power producers using renewable energy production.
- **External emissions markets:** A covered party may use allowances when ecology determines the allowances are issued by an established multisector GHG emission reduction program, the covered party is allowed to purchase allowances within that program, and the allowances are derived from methodologies congruent with chapter 173-441 WAC.

### 2.3.5 Corresponding amendments to other rules:

Ecology is also proposing amendments to chapter 173-441 WAC (Reporting of emissions of greenhouse gases). These amendments correspond to and facilitate requirements and compliance set by the proposed rule. They include, but are not limited to, reallocation of fees:

- The existing GHG emissions reporting rule (chapter 173-441 WAC) requires seventy-five percent of the reporting program's budget be paid for through facility reporter fees and twenty-five percent to be paid for through transportation fuel supplier reporter fees.
- The proposed rule reallocates fees based on full payment by covered facilities, and sets a zero fee for transportation fuel suppliers. It also removes the obligation for voluntary reporters to pay the fee.

**2.4 Likely compliance costs of the proposed rule:** In the associated preliminary cost-benefit analysis, we estimated the likely costs associated with the proposed rule, as compared to BAU. Likely twenty year present value (if quantified) costs included:

- Average twenty year present value cost of permanent reductions is between approximately \$1.3 billion and \$2.8 billion.

- Average twenty year present value cost of reductions going toward the reserve is between approximately \$30 million and \$62 million.
- Twenty year present value reporting costs of approximately \$384,000.
- Twenty year present value verification costs of between approximately \$33 million and \$34 million.
- Twenty year present value costs of increased reporting fees of between approximately \$2 million and \$3 million.

*Quantified external present-value costs, taking average emission reduction costs across multiple scenarios, total between \$1.4 billion and \$2.8 billion over twenty years.*

**2.5 Potential lost sales or revenue:** Depending on the methods used by covered parties to reduce GHG emissions, the proposed rule may result in reduced sales for some covered parties, or other areas of the state economy. Energy efficiency projects, for example, would reduce GHG emissions by reducing energy consumption. This would reduce sales (quantities) for energy producers, but could also result in changes to energy prices (e.g., passing on regulatory costs to customers). Similarly, transportation-related methods would reduce GHG emissions by reducing fuel consumption. This would also reduce sales (quantities) for fuel suppliers, but could also result in changes to fuel prices. Reductions in fuels from one source could also be counterbalanced by increases in fuels from another source, to meet market demand.

As a result of possible shifts such as these in demand and production, ecology also expects prices to change. Depending on the relative elasticities (responsiveness of the quantity of a good supplied or demanded, relative to changes in price) of covered parties' supply and demand, overall revenues may increase or decrease as a result of these changes in demand and production. See Appendix A of the preliminary cost-benefit and least burdensome alternative analyses for more information.

Ecology could not confidently identify the mix of on-site (internal), project-based, or market acquisition-based GHG emissions reduction methods that covered parties would choose under the proposed rule, and so could not quantify the degree to which sales quantities would be impacted.

## Chapter 3: Quantification of Cost Ratios:

**3.1 Introduction:** For this analysis, ecology must estimate and compare the compliance costs per employee at small versus large covered parties (the largest ten percent). In this chapter, we describe the affected covered parties' employment. Employment numbers are taken at the highest ownership level, to better reflect ability to incorporate compliance costs in business-wide decision making.

At the highest ownership or control level, the proposed rule is not likely to impact small businesses, defined by RFA as having fifty or fewer employees. This means that we are unable to make the comparison of per-employee compliance costs at small versus large businesses required by RFA. It also means that the proposed rule inherently is not likely to impose disproportionate costs on small businesses.

This information is, however, based on our best knowledge of likely covered parties at the time of this publication. While we are relatively certain of the facilities and fuel suppliers affected by the rule making, there is more uncertainty

about the likely fuel importers that would be covered. Section 3.2 discusses this in greater depth.

**3.2 Affected businesses:** Ecology determined which businesses would likely be required to comply with the proposed rule and associated rule changes. For the proposed rule, these covered parties include stationary sources, petroleum fuel producers and importers, and natural gas distributors, and for associated rule changes to the reporting fee distribution, they also include transportation fuel suppliers.

Parties are generally affected as follows:

- Covered parties incur costs under the proposed rule and associated fee changes.
- Transportation fuel suppliers are affected by associated changes to fees, and for these parties, fees are likely to decrease. These parties do not incur costs under the rule making.

Covered parties likely to incur costs under the proposed rule are in a variety of industries (see Chapter 6 for NAICS codes), including but not limited to some energy producers, fuel importers and commodity traders, fuel producers, chemical and metals manufacturers, pulp and paper manufacturers, food producers, natural gas distributors, and waste facilities.

The range of employment at the highest level of ownership available for parties covered by the proposed rule, excluding importers, is between one hundred sixty (parent company employment information unavailable) and 845,000.<sup>3</sup>

<sup>3</sup> Covered party web sites, third-party data bases such as D&B and Manta, annual reports, WA Employment Security Department records.

The range of employment at the highest level of ownership available for fuel importers likely covered by the proposed rule is between fifty-one - two hundred (only range available for parent entity) and eight hundred forty-five thousand (importer also covered as a stationary source and producer).<sup>4</sup>

<sup>4</sup> Ibid.

**3.3 Cost-to-employee ratios:** The proposed rule and associated proposed rule amendments do not impose costs on small businesses. The proposed rule, therefore, does not impose disproportionate costs on small businesses, and RFA does not require ecology to include elements in the proposed rule that reduce disproportionate impact.

**Chapter 4: Actions Taken to Reduce the Impact of the Rule on Small Businesses:** Ecology determined the proposed rule is not likely to impose disproportionate costs on small businesses, because it does not create costs for identifiable small businesses (see Chapter 3). RFA, therefore, does not require ecology to mitigate this disproportionate impact to the degree that it is both legal and feasible.

**Chapter 5: Involvement of Small Businesses and Local Government in the Development of the Proposed Rule:** Ecology involved small businesses or their representatives in the development of the proposed rule, as well as local governments. Ecology held five webinars during the development of the proposed rule. Their attendees/participants included multiple representatives of local governments and small businesses (directly or as part of associations), as well

as legislators representing the local and business interests of their constituencies. Below is a list of attendees of these webinars, as well as participants in smaller meetings held with ecology or the Washington state governor's office.

Parties represented or representing at ecology webinars and forums:

- Access Institute of Research
- AEQUUS Corp.
- AGC of WA
- Agrium US Inc.
- Alcantar & Kahl
- Alcoa
- Ameresco
- American Carbon Registry
- American Fuel & Petrochemical Manufacturers
- American Lung Association
- Arbaugh & Associates, Inc.
- Ardargh Glass Inc.
- Argus Media
- Ash Grove Cement
- Assoc. WA Business
- ATI
- Avista Corp.
- Barr Engineering Co.
- Benton Clean Air Agency
- Benton PUD
- BHAS
- BlueGreen Alliance
- BNSF Railway
- Boeing
- Boise Cascade Wood Products, LLC
- Boise Paper
- Bonneville Power Administration
- BP
- Bridgewater Group Inc.
- Canadian Consulate General
- Capitol Strategies
- Carney Badley Spellman, PS
- Cascade Government Affairs
- Cascade Natural Gas Corporation, a Div. of MDU Resources Group
- Cascadia Law Group PLLC
- CH2M
- Chelan County PUD
- Chevron Corporation
- City of Everett
- City of Spokane
- City of Walla Walla
- Clark Public Utilities
- Clean Energy
- Climate Action Reserve
- Climate Change for Families
- Climate Solutions
- Coalition for Renewable Natural Gas, Inc.
- Communico
- Community Transit
- ConAgra Foods
- Concrete NorWest
- Cowlitz County Public Works
- Cowlitz PUD

- Coyne, Jesernig, LLC
- Cyan Strategies
- Dave Bradley
- Davis Wright Tremaine LLP
- Davison Van Cleve PC
- Del Monte Foods Inc.
- Department of Commerce
- Department of Corrections
- Department of Ecology
- Diane L. Dick
- DNR
- EES Consulting
- Emerald Kalama Chemical, LLC
- Energy Northwest
- Energy Strategies LLC
- Environmental Energy
- Environmental Entrepreneurs
- Enwave Seattle
- ERA Environmental Management Solutions
- ERM
- Evergreen Carbon
- ExxonMobil
- Fairchild AFB
- Federal Government (Air Force)
- Flint Hills Resources, LP
- Fluor Corporation
- Forterra
- Friends of Toppenish Creek
- Frito Lay
- Georgia-Pacific
- GHG Management Institute
- Go Green Tri-Cities
- Gordon Thomas Honeywell Governmental Affairs
- Government of British Columbia
- Grant County Economic Development Council
- Grant County PUD
- Grant County Solid Waste
- Graymont
- Grays Harbor Energy
- Grays Harbor PUD
- Hammerschlag & Co. LLC
- Hampton Affiliates
- HDR Engineering
- House of Representatives
- House Republican Caucus
- ICIS
- Intalco Aluminum Corporation
- Interfor
- Invenergy LLC
- James Lester Adcock
- Janicki Bioenergy
- JR Simplot Company
- Julia Robinson
- Kaiser Aluminum
- King County
- King County Solid Waste
- Kinross
- KUOW News Radio
- Lamb Weston
- LCSC
- League of Women Voters
- Linde
- Linear Technology
- Local2020
- LWVWA
- MFSA
- Naval Base Kitsap Bangor
- NAVFAC Northwest
- NCASI
- NextEra Energy
- Nippon Paper Industries
- Noble Americas Gas & Power
- Northwest Clean Air Agency
- Northwest Food Processors Assn.
- Northwest Gas Association
- Northwest Pulp & Paper Assn.
- NRDC
- Nucor Steel Seattle, Inc.
- NW Energy Coalition
- NW Natural
- NW Power and Conservation Council/WA Dept. of Commerce, Energy Office
- NW Seaport Alliance
- NWFPA
- OFM
- ONRC - SEFS U of W
- ORCAA
- Oregon DEQ
- Pacific Power
- PacifiCorp
- Parametrix
- Perkins Coie
- Phillips 66
- PIRA Energy Group
- Plug In America
- Ponderay Newsprint Co.
- Port of Seattle
- PPRC
- PT AirWatchers
- Puget Sound Clean Air Agency
- Puget Sound Energy
- Puget Sound Regional Council
- Rainier Veneer, Inc.
- Ramboll Environ
- ravel
- RE Sources for Sustainable Communities
- REC Silicon
- REG
- Renewable Northwest
- Rep. Derek Kilmer
- Republic Services
- RNG Coalition
- Ross Strategic
- Rowley Properties, Inc.
- s2 sustainability consultants
- Saltchuk
- Schwabe, Williamson & Wyatt
- Schweitzer engineering laboratories
- SCS Engineers
- Seattle Aquarium

- Seattle City Light
- Seattle Public Utilities
- SEH America, Inc.
- SEI-US
- SGL Automotive Carbon Fibers
- Shell
- Shuttle Express
- Sierra Club
- Sightline
- Snohomish County
- Snohomish County Public Works
- Snohomish PUD
- Sonoco
- Sound Transit
- Southshore Environmental, Inc.
- Southwest Clean Air Agency
- Spectrum Glass
- Spokane Audubon Society
- Spokane Regional Clean Air Agency
- Spring Environmental, Inc.
- Ste. Michelle Wine Estates
- Stockholm Environment Institute
- Stoel Rives
- Strategies 360
- SWCAA
- Tacoma Power
- Terre-Source LLC
- Tesoro
- The Climate Trust
- The Evergreen State College
- The News Tribune
- The Northwest Seaport Alliance
- The TSB Group
- Thompson Consulting Group
- Tidewater Barge Lines
- TransAlta
- TransCanada
- Transportation Choices
- Trinity Consultants
- True North Public Affairs
- Tyson Foods, Inc.
- U.S. Department of Energy
- Union of Concerned Scientists
- United Steelworkers Local 338
- University of Washington
- Valero
- Van Ness Feldman, LLP
- Vitol Inc.
- WA Food Industry Assn.
- WA Oil Marketers Assn.
- WA PUD Association
- WaferTech, LLC
- Washington Environmental Council
- Washington Oil Marketers Association
- Washington State House of Representatives
- Washington State House Republican Caucus
- Washington State Legislature
- Washington State Senate
- Washington State Senate Committee Services
- Washington State University

- Washington Trucking Associations
- Waste Connections
- Waterside Energy
- WCV
- Western Pneumatic Tube Co. LLC
- Western Power Trading Forum
- Western States Petroleum Association
- Western Washington University
- WestRock
- Weyerhaeuser
- WFPA
- William H. Wilson, P.E. - Engineering Consulting
- Williams
- Williams, Northwest Pipeline LLC
- WSU Energy Program
- WSU Extension
- WY
- Yakima Regional Clean Air Agency

Individual or group stakeholder meetings (some including the office of the governor) with:

- Alaska Airlines
- Alcoa
- Alliance (Labor, Health, environmental advocates, social equality advocates)
- Ashgrove Cement
- Asian Pacific Islander Coalition
- Association of Washington Business (AWB)
- Avista
- Boeing
- BNSF Railway
- British Petroleum
- California Air Resources Board
- Clark PUD
- Clean Tech Alliance
- Climate Solutions
- Community to Community
- Coyne, Jesernig, LLC
- Duwamish River Cleanup Coalition/TAG
- Friends of Toppenish Creek
- Front & Centered
- Got Green?
- Grays Harbor Energy Center
- Green Diamond
- House Representative Richard DeBolt
- Industrial Customer of Northwest Utilities (ICNU)
- Kaiser Aluminum
- King County Council
- Klickitat PUD
- Latino Community Fund
- NextGen
- Northwest Energy Coalition
- Northwest Pulp and Paper Association
- Nucor Steel Seattle, Inc.
- OneAmerica
- PacifiCorp
- Phillips 66
- Public Generating Pool
- Puget Sound Energy
- Puget Sound Sage



- Republic
- Renewable NW
- Renewable Products Marketing Group
- Shell
- Sierra Club
- Snohomish PUD
- Stockholm Environment Institute
- Stoel Rives, LLP
- Tacoma Power
- Tesoro
- TransAlta
- Tulalip Tribes
- Union of Concerned Scientists
- U.S. Oil & Refining Co.
- Valero Energy
- Washington Can!
- Washington Environmental Council
- Washington Physicians for Social Responsibility
- Washington PUD Association
- Western States Petroleum Association
- Weyerhaeuser

Ecology also briefed the directors of the seven local clean air agencies on the rule, during a meeting of the Washington air quality manager group.

**Chapter 6: The SIC Codes of Impacted Industries:**

The SIC (standard industry classification) system has long been replaced by the North American Industry Classification System (NAICS). The proposed rule applies to the following NAICS for stationary sources and fuel suppliers. The covered NAICS for fuel importers is more difficult to encompass, as fuel importers may be independent, but may also be part of businesses or other entities that perform other primary functions. This broadens the list of possibly affected NAICS to at least the set of 4-digit NAICS codes, and their underlying 5+ digit codes, below.

**Table 1: Likely affected business NAICS codes**

2111	3241	3274	3344	4247	4841
2211	3253	3311	3364	4451	4862
3114	3272	3313	4246	4471	5622
3221	3273	3314	4247	4543	6113

**Chapter 7: Impacts on Jobs:** Ecology used the Washington state office of financial management's 2007 Washington input-output model<sup>5</sup> (OFM-IO) to estimate the proposed rule's impact on jobs across the state. This includes direct, indirect, and induced (from spending of wages) jobs impacts. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Direct compliance costs incurred by an industry are entered in the OFM-IO model as a decrease in spending and investment. If that compliance cost money is spent in another industry, it is entered in the model as an increase in production.<sup>6</sup>

<sup>5</sup> WA Office of Financial Management (2007). Washington state input-output model. <http://www.ofm.wa.gov/economy/io/2007/default.asp>.

<sup>6</sup> Costs that are passed through to customers are indirectly represented in this analysis; direct compliance costs are incurred by the covered entities, and not offset by price increases. Models directly representing costs that are passed through to consumers would still include the offsetting spending on on-site (internal) or project-based GHG emissions reductions, but would reduce spending across a basket of goods purchased by consumers instead of reducing output at the basket of covered entities. This type of modeling would have impacts consistent with the results above.

Cost-savings resulting from GHG emissions reduction projects that improve efficiency, or those that may benefit the public through reduced energy spending are not included in this modeling. Models representing these cost-savings would reduce negative impacts to the economy, by reducing net compliance costs for covered entities, or reducing net costs to consumers, or both. Because we could not quantify the expected cost-reductions resulting from efficiency projects, or how many such projects would be undertaken, we could not quantitatively include these cost-savings in this modeling.

Ecology estimated jobs impacts (full-time employees; FTEs), for various scenarios of how covered parties comply with the proposed rule, using high-end compliance costs of reducing carbon emissions. Because some categories of covered party contained multiple industries, we conservatively estimated net jobs impacts by assuming costs were borne by the industry with the largest jobs impact per dollar of cost, and transfers (if any) were gained by the industry with the lowest jobs impact per dollar of cost. We translated them to equivalent numbers of ongoing positions.

Depending on the compliance methods chosen, the proposed rule could result in:<sup>7</sup>

<sup>7</sup> Note that this model does not allow for impacts of pass-through costs, shifts in demand resulting from efficiency improvements, or macroeconomic variables.

- A net gain of three thousand nine hundred eighty-eight equivalent ongoing positions, if covered parties reduce emissions on site, and those payments are transferred to in-state engineering services.
- A net loss of forty-three equivalent ongoing positions, if covered parties reduce emissions using in-state projects, assuming those payments are transferred to the industries of registered project developers with the lowest positive jobs impacts (to maintain conservatively high potential job loss estimates).
- A net loss of five hundred forty-four equivalent ongoing positions, if covered parties reduce emissions using market allowances, assuming those payments are fully transferred out-of-state.
- If covered parties reduce emissions using RECs:
  - o A net loss of four hundred forty-eight equivalent ongoing positions, if payments are transferred to parties out-of-state.
  - o A net gain of one hundred forty-two equivalent ongoing positions, if payments are transferred to utilities in the state.

These impacts are estimated using high-end twenty year present value compliance costs, and baseline emissions based on reported GHG emissions to date. They exclude minor contributions of reporting and verification costs. Real jobs impacts will likely result from a combination of compliance through on-site, project, and market GHG emissions reductions, and will be within this range of jobs impacts.

A copy of the statement may be obtained by contacting Kasia Patora, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail Kasia.Patora@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kasia Patora, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail Kasia.Patora@ecy.wa.gov.

May 31, 2016  
Polly Zehm  
Deputy Director

AMENDATORY SECTION (Amending WSR 15-04-051, filed 1/29/15, effective 3/1/15)

**WAC 173-441-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **Definitions specific to this chapter:**

(a) "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, including products, by-products, residues and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(b) "Carbon dioxide equivalent" or "CO<sub>2</sub>e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(c) "Department of licensing" or "DOL" means the Washington state department of licensing.

(d) "Director" means the director of the department of ecology.

(e) "Ecology" means the Washington state department of ecology.

(f) "Facility" unless otherwise specified in any subpart of 40 C.F.R. Part 98 as adopted by ((~~January 1, 2015~~)) May 1, 2016, means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

(g) "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Beginning on January 1, 2012, "greenhouse gas" also includes any other gas or gases designated by ecology by rule in Table A-1 in WAC 173-441-040.

(h) "Person" includes:

(i) An owner or operator, as those terms are defined by the United States Environmental Protection Agency in its

mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted by ((~~January 1, 2015~~)) May 1, 2016; and

(ii) A supplier.

(i) "Product data" means data related to a facility's production that is part of the annual GHG report.

(j) "Supplier" means any person who is:

(i) A motor vehicle fuel or special fuel supplier or ((~~a motor vehicle fuel importer~~)) distributor, as those terms are defined in RCW ((~~82.36.010~~)) 82.38.020; or

(ii) ((~~A special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; or~~

((~~iii~~))) A distributor of aircraft fuel, as the term is defined in RCW 82.42.010.

(2) **Definitions specific to suppliers.** Suppliers must use the definitions found in the following ((~~regulations~~)) statutes unless the definition is in conflict with a definition found in subsection (1) of this section. These definitions do not apply to facilities.

(a) ((~~WAC 308-72-800~~;

~~b) WAC 308-77-005; and~~

~~c) WAC 308-78-010~~) Chapter 82.38 RCW; and

b) Chapter 82.42 RCW.

(3) **Definitions from 40 C.F.R. Part 98.** For those terms not listed in subsection (1) or (2) of this section, the definitions found in 40 C.F.R. § 98.6 or a subpart as adopted in WAC 173-441-120, as adopted by ((~~January 1, 2015~~)) May 1, 2016, are adopted by reference as modified in WAC 173-441-120(2).

(4) **Definitions from chapter 173-400 WAC.** If no definition is provided in subsections (1) through (3) in this section, use the definition found in chapter 173-400 WAC.

AMENDATORY SECTION (Amending WSR 15-04-051, filed 1/29/15, effective 3/1/15)

**WAC 173-441-050 General monitoring, reporting, recordkeeping and verification requirements.** Persons subject to the requirements of this chapter must submit GHG reports to ecology, as specified in this section.

(1) **General.** Follow the procedures for emission calculation, monitoring, quality assurance, missing data, recordkeeping, and reporting that are specified in each relevant section of this chapter.

(2) **Schedule.** The annual GHG report must be submitted as follows:

(a) Report submission due date:

(i) A person required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than March 31st of each calendar year for GHG emissions in the previous calendar year.

(ii) A person not required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than October 31st of each calendar year for GHG emissions in the previous calendar year.

(iii) Unless otherwise stated, if the final day of any time period falls on a weekend or a state holiday, the time period shall be extended to the next business day.

(b) Reporting requirements begin:

(i) For an existing facility or supplier that began operation before January 1, 2012, report emissions for calendar year 2012 and each subsequent calendar year.

(ii) For a new facility or supplier that begins operation on or after January 1, 2012, and becomes subject to the rule in the year that it becomes operational, report emissions beginning with the first operating month and ending on December 31st of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(iii) For any facility or supplier that becomes subject to this rule because of a physical or operational change that is made after January 1, 2012, report emissions for the first calendar year in which the change occurs.

(A) Facilities begin reporting with the first month of the change and ending on December 31st of that year. For a facility that becomes subject to this rule solely because of an increase in hours of operation or level of production, the first month of the change is the month in which the increased hours of operation or level of production, if maintained for the remainder of the year, would cause the facility or supplier to exceed the applicable threshold.

(B) Suppliers begin reporting January 1st and ending on December 31st the year of the change.

(C) For both facilities and suppliers, each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(3) **Content of the annual report.** Each annual GHG report must contain the following information:

(a) Facility name or supplier name (as appropriate), facility or supplier ID number, and physical street address of the facility or supplier, including the city, state, and zip code. If the facility does not have a physical street address, then the facility must provide the latitude and longitude representing the geographic centroid or center point of facility operations in decimal degree format. This must be provided in a comma-delimited "latitude, longitude" coordinate pair reported in decimal degrees to at least four digits to the right of the decimal point.

(b) Year and months covered by the report.

(c) Date of submittal.

(d) For facilities, report annual emissions of each GHG (as defined in WAC 173-441-020) and each fluorinated heat transfer fluid, as follows:

(i) Annual emissions (including biogenic CO<sub>2</sub>) aggregated for all GHGs from all applicable source categories in WAC 173-441-120 and expressed in metric tons of CO<sub>2</sub>e calculated using Equation A-1 of WAC 173-441-030 (1)(b)(iii).

(ii) Annual emissions of biogenic CO<sub>2</sub> aggregated for all applicable source categories in WAC 173-441-120, expressed in metric tons.

(iii) Annual emissions from each applicable source category in WAC 173-441-120, expressed in metric tons of each applicable GHG listed in subsections (3)(d)(iii)(A) through (F) of this section.

(A) Biogenic CO<sub>2</sub>.

(B) CO<sub>2</sub> (including biogenic CO<sub>2</sub>).

(C) CH<sub>4</sub>.

(D) N<sub>2</sub>O.

(E) Each fluorinated GHG.

(F) For electronics manufacturing each fluorinated heat transfer fluid that is not also a fluorinated GHG as specified under WAC 173-441-040.

(iv) Emissions and other data for individual units, processes, activities, and operations as specified in the "data reporting requirements" section of each applicable source category referenced in WAC 173-441-120.

(v) Indicate (yes or no) whether reported emissions include emissions from a cogeneration unit located at the facility.

(vi) When applying subsection (3)(d)(i) of this section to fluorinated GHGs and fluorinated heat transfer fluids, calculate and report CO<sub>2</sub>e for only those fluorinated GHGs and fluorinated heat transfer fluids listed in WAC 173-441-040.

(vii) For reporting year 2014 and thereafter, you must enter into verification software specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

(e) For suppliers, report the following information:

(i) Annual emissions of CO<sub>2</sub>, expressed in metric tons of CO<sub>2</sub>, as required in subsections (3)(e)(i)(A) and (B) of this section that would be emitted from the complete combustion or oxidation of the fuels reported to DOL as sold in Washington state during the calendar year.

(A) Aggregate biogenic CO<sub>2</sub>.

(B) Aggregate CO<sub>2</sub> (including nonbiogenic and biogenic CO<sub>2</sub>).

(ii) All contact information reported to DOL not included in (a) of this subsection.

(f) A written explanation, as required under subsection (4) of this section, if you change emission calculation methodologies during the reporting period.

(g) Each data element for which a missing data procedure was used according to the procedures of an applicable subpart referenced in WAC 173-441-120 and the total number of hours in the year that a missing data procedure was used for each data element.

(h) A signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of WAC 173-441-060 (5)(a).

(i) NAICS code(s) that apply to the facility or supplier.

(i) Primary NAICS code. Report the NAICS code that most accurately describes the facility or supplier's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the facility or supplier. A facility or supplier that has two distinct products/activities/services providing comparable revenue may report a second primary NAICS code.

(ii) Additional NAICS code(s). Report all additional NAICS codes that describe all product(s)/activity(s)/service(s) at the facility or supplier that are not related to the principal source of revenue.

(j) Legal name(s) and physical address(es) of the highest-level United States parent company(s) of the owners (or operators) of the facility or supplier and the percentage of ownership interest for each listed parent company as of December 31st of the year for which data are being reported according to the following instructions:

(i) If the facility or supplier is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report one hundred percent ownership.

(ii) If the facility or supplier is entirely owned by a single United States company that is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hierarchy as the United States parent company and report one hundred percent ownership.

(iii) If the facility or supplier is owned by more than one United States company (e.g., company A owns forty percent, company B owns thirty-five percent, and company C owns twenty-five percent), provide the legal names and physical addresses of all the highest-level companies with an ownership interest as the United States parent companies and report the percent ownership of each company.

(iv) If the facility or supplier is owned by a joint venture or a cooperative, the joint venture or cooperative is its own United States parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report one hundred percent ownership by the joint venture or cooperative.

(v) If the facility or supplier is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report one hundred percent ownership.

(vi) If the facility or supplier is partially owned by a foreign company and partially owned by one or more United States companies, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of the other United States parent companies, and report the percent ownership of each of these companies.

(vii) If the facility or supplier is a federally owned facility, report "U.S. Government" and do not report physical address or percent ownership.

(k) An indication of whether the facility includes one or more plant sites that have been assigned a "plant code" by either the Department of Energy's Energy Information Administration or by the Environmental Protection Agency's (EPA) Clean Air Markets Division.

(4) **Emission calculations.** In preparing the GHG report, you must use the calculation methodologies specified in the relevant sections of this chapter. For each source category, you must use the same calculation methodology throughout a

reporting period unless you provide a written explanation of why a change in methodology was required.

(5) **Verification.** To verify the completeness and accuracy of reported GHG emissions, ecology may review the certification statements described in subsection (3)(h) of this section and any other credible evidence, in conjunction with a comprehensive review of the GHG reports and periodic audits of selected reporting facilities. Nothing in this section prohibits ecology from using additional information to verify the completeness and accuracy of the reports.

(6) **Recordkeeping.** A person that is required to report GHGs under this chapter must keep records as specified in this subsection. Retain all required records for at least three years from the date of submission of the annual GHG report for the reporting year in which the record was generated. Upon request by ecology, the records required under this section must be made available to ecology. Records may be retained off-site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records must be made available, or, if requested by ecology, electronic records must be converted to paper documents. You must retain the following records, in addition to those records prescribed in each applicable section of this chapter:

(a) A list of all units, operations, processes, and activities for which GHG emissions were calculated.

(b) The data used to calculate the GHG emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include, but are not limited to, the following information:

(i) The GHG emissions calculations and methods used.

(ii) Analytical results for the development of site-specific emissions factors.

(iii) The results of all required analyses for high heat value, carbon content, and other required fuel or feedstock parameters.

(iv) Any facility operating data or process information used for the GHG emission calculations.

(c) The annual GHG reports.

(d) Missing data computations. For each missing data event, also retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment.

(e) Owners or operators required to report under WAC 173-441-030(1) must keep a written GHG monitoring plan (monitoring plan, plan).

(i) At a minimum, the GHG monitoring plan must include the following elements:

(A) Identification of positions of responsibility (i.e., job titles) for collection of the emissions data.

(B) Explanation of the processes and methods used to collect the necessary data for the GHG calculations.

(C) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(ii) The GHG monitoring plan may rely on references to existing corporate documents (e.g., standard operating proce-

dures, quality assurance programs under appendix F to 40 C.F.R. Part 60 or appendix B to 40 C.F.R. Part 75, and other documents) provided that the elements required by (e)(i) of this subsection are easily recognizable.

(iii) The owner or operator must revise the GHG monitoring plan as needed to reflect changes in production processes, monitoring instrumentation, and quality assurance procedures; or to improve procedures for the maintenance and repair of monitoring systems to reduce the frequency of monitoring equipment downtime.

(iv) Upon request by ecology, the owner or operator must make all information that is collected in conformance with the GHG monitoring plan available for review during an audit. Electronic storage of the information in the plan is permissible, provided that the information can be made available in hard copy upon request during an audit.

(f) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(g) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(h) Suppliers must retain any other data specified in WAC 173-441-130(5).

**(7) Annual GHG report revisions.**

(a) A person must submit a revised annual GHG report within forty-five days of discovering that an annual GHG report that the person previously submitted contains one or more substantive errors. The revised report must correct all substantive errors.

(b) Ecology may notify the person in writing that an annual GHG report previously submitted by the person contains one or more substantive errors. Such notification will identify each such substantive error. The person must, within forty-five days of receipt of the notification, either resubmit the report that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this chapter) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

(c) A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

(d) Notwithstanding (a) and (b) of this subsection, upon request by a person, ecology may provide reasonable extensions of the forty-five day period for submission of the revised report or information under (a) and (b) of this subsection. If ecology receives a request for extension of the forty-five day period, by e-mail to [ghgreporting@ecy.wa.gov](mailto:ghgreporting@ecy.wa.gov), at least two business days prior to the expiration of the forty-five day period, and ecology does not respond to the request by the end of such period, the extension request is deemed to be automatically granted for thirty more days. During the automatic thirty-day extension, ecology will determine what extension, if any, beyond the automatic extension is reasonable and will provide any such additional extension.

(e) The owner or operator must retain documentation for three years to support any revision made to an annual GHG report.

(8) **Calibration and accuracy requirements.** The owner or operator of a facility that is subject to the requirements of this chapter must meet the applicable flow meter calibration and accuracy requirements of this subsection. The accuracy specifications in this subsection do not apply where either the use of company records (as defined in WAC 173-441-020(3)) or the use of "best available information" is specified in an applicable subsection of this chapter to quantify fuel usage and/or other parameters. Further, the provisions of this subsection do not apply to stationary fuel combustion units that use the methodologies in 40 C.F.R. Part 75 to calculate CO<sub>2</sub> mass emissions. Suppliers subject to the requirements of this chapter must meet the calibration accuracy requirements in chapters 308-72, 308-77, and 308-78 WAC.

(a) Except as otherwise provided in (d) through (f) of this subsection, flow meters that measure liquid and gaseous fuel feed rates, process stream flow rates, or feedstock flow rates and provide data for the GHG emissions calculations, must be calibrated prior to January 1, 2012, using the procedures specified in this subsection when such calibration is specified in a relevant section of this chapter. Each of these flow meters must meet the applicable accuracy specification in (b) or (c) of this subsection. All other measurement devices (e.g., weighing devices) that are required by a relevant subsection of this chapter, and that are used to provide data for the GHG emissions calculations, must also be calibrated prior to January 1, 2012; however, the accuracy specifications in (b) and (c) of this subsection do not apply to these devices. Rather, each of these measurement devices must be calibrated to meet the accuracy requirement specified for the device in the applicable subsection of this chapter, or, in the absence of such accuracy requirement, the device must be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based on an applicable operating standard including, but not limited to, manufacturer's specifications and industry standards. The procedures and methods used to quality-assure the data from each measurement device must be documented in the written monitoring plan, pursuant to subsection (6)(e)(i)(C) of this section.

(i) All flow meters and other measurement devices that are subject to the provisions of this subsection must be calibrated according to one of the following: You may use the manufacturer's recommended procedures; an appropriate industry consensus standard method; or a method specified in a relevant section of this chapter. The calibration method(s) used must be documented in the monitoring plan required under subsection (6)(e) of this section.

(ii) For facilities and suppliers that become subject to this chapter after January 1, 2012, all flow meters and other measurement devices (if any) that are required by the relevant subsection(s) of this chapter to provide data for the GHG emissions calculations must be installed no later than the date on which data collection is required to begin using the measurement device, and the initial calibration(s) required by this subsection (if any) must be performed no later than that date.

(iii) Except as otherwise provided in (d) through (f) of this subsection, subsequent recalibrations of the flow meters and other measurement devices subject to the requirements of this subsection must be performed at one of the following frequencies:

(A) You may use the frequency specified in each applicable subsection of this chapter.

(B) You may use the frequency recommended by the manufacturer or by an industry consensus standard practice, if no recalibration frequency is specified in an applicable subsection.

(b) Perform all flow meter calibration at measurement points that are representative of the normal operating range of the meter. Except for the orifice, nozzle, and venturi flow meters described in (c) of this subsection, calculate the calibration error at each measurement point using Equation A-2 of this subsection. The terms "R" and "A" in Equation A-2 must be expressed in consistent units of measure (e.g., gallons/minute, ft<sup>3</sup>/min). The calibration error at each measurement point must not exceed 5.0 percent of the reference value.

$$CE = \frac{|R-A|}{R} \times 100 \quad (Eq. A-2)$$

Where:

- CE = Calibration error (%)
- R = Reference value
- A = Flow meter response to the reference value

(c) For orifice, nozzle, and venturi flow meters, the initial quality assurance consists of in situ calibration of the differential pressure (delta-P), total pressure, and temperature transmitters.

(i) Calibrate each transmitter at a zero point and at least one upscale point. Fixed reference points, such as the freezing point of water, may be used for temperature transmitter calibrations. Calculate the calibration error of each transmitter at each measurement point, using Equation A-3 of this subsection. The terms "R," "A," and "FS" in Equation A-3 of this subsection must be in consistent units of measure (e.g., milliamperes, inches of water, psi, degrees). For each transmitter, the CE value at each measurement point must not exceed 2.0 percent of full-scale. Alternatively, the results are acceptable if the sum of the calculated CE values for the three transmitters at each calibration level (i.e., at the zero level and at each upscale level) does not exceed 6.0 percent.

$$CE = \frac{|R-A|}{FS} \times 100 \quad (Eq. A-3)$$

Where:

- CE = Calibration error (%)
- R = Reference value

- A = Transmitter response to the reference value
- FS = Full-scale value of the transmitter

(ii) In cases where there are only two transmitters (i.e., differential pressure and either temperature or total pressure) in the immediate vicinity of the flow meter's primary element (e.g., the orifice plate), or when there is only a differential pressure transmitter in close proximity to the primary element, calibration of these existing transmitters to a CE of 2.0 percent or less at each measurement point is still required, in accordance with (c)(i) of this subsection; alternatively, when two transmitters are calibrated, the results are acceptable if the sum of the CE values for the two transmitters at each calibration level does not exceed 4.0 percent. However, note that installation and calibration of an additional transmitter (or transmitters) at the flow monitor location to measure temperature or total pressure or both is not required in these cases. Instead, you may use assumed values for temperature and/or total pressure, based on measurements of these parameters at a remote location (or locations), provided that the following conditions are met:

(A) You must demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions.

(B) You must make all temperature and/or total pressure measurements in the demonstration described in (c)(ii)(A) of this subsection with calibrated gauges, sensors, transmitters, or other appropriate measurement devices. At a minimum, calibrate each of these devices to an accuracy within the appropriate error range for the specific measurement technology, according to one of the following: You may calibrate using a manufacturer's specification or an industry consensus standard.

(C) You must document the methods used for the demonstration described in (c)(ii)(A) of this subsection in the written GHG monitoring plan under subsection (6)(e)(i)(C) of this section. You must also include the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations in the GHG monitoring plan. You must maintain all of this information in a format suitable for auditing and inspection.

(D) You must use the mathematical correlation(s) derived from the demonstration described in (c)(ii)(A) of this subsection to convert the remote temperature or the total pressure readings, or both, to the actual temperature or total pressure at the flow meter, or both, on a daily basis. You must then use the actual temperature and total pressure values to correct the measured flow rates to standard conditions.

(E) You must periodically check the correlation(s) between the remote and actual readings (at least once a year), and make any necessary adjustments to the mathematical relationship(s).

(d) Fuel billing meters are exempted from the calibration requirements of this section and from the GHG monitoring plan and recordkeeping provisions of subsections (6)(e)(i)(C) and (g) of this section, provided that the fuel supplier and any unit combusting the fuel do not have any common owners

and are not owned by subsidiaries or affiliates of the same company. Meters used exclusively to measure the flow rates of fuels that are used for unit startup are also exempted from the calibration requirements of this section.

(e) For a flow meter that has been previously calibrated in accordance with (a) of this subsection, an additional calibration is not required by the date specified in (a) of this subsection if, as of that date, the previous calibration is still active (i.e., the device is not yet due for recalibration because the time interval between successive calibrations has not elapsed). In this case, the deadline for the successive calibrations of the flow meter must be set according to one of the following: You may use either the manufacturer's recommended calibration schedule or you may use the industry consensus calibration schedule.

(f) For units and processes that operate continuously with infrequent outages, it may not be possible to meet the deadline established in (a) of this subsection for the initial calibration of a flow meter or other measurement device without disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage. The best available information from company records may be used in the interim. The subsequent required recalibrations of the flow meters may be similarly postponed. Such postponements must be documented in the monitoring plan that is required under subsection (6)(e) of this section.

(g) If the results of an initial calibration or a recalibration fail to meet the required accuracy specification, data from the flow meter must be considered invalid, beginning with the hour of the failed calibration and continuing until a successful calibration is completed. You must follow the missing data provisions provided in the relevant missing data sections during the period of data invalidation.

(9) **Measurement device installation.** 40 C.F.R. § 98.3(j) and 40 C.F.R. § 98.3(d) as adopted by ((January 1, 2015)) May 1, 2016, are adopted by reference as modified in WAC 173-441-120(2).

**AMENDATORY SECTION** (Amending WSR 15-04-051, filed 1/29/15, effective 3/1/15)

**WAC 173-441-080 Standardized methods and conversion factors incorporated by reference.** (1) The materials incorporated by reference by EPA in 40 C.F.R. § 98.7, as adopted by ((January 1, 2015)) May 1, 2016, are incorporated by reference in this chapter for use in the sections of this chapter that correspond to the sections of 40 C.F.R. Part 98 referenced here.

(2) Table A-2 of this section provides a conversion table for some of the common units of measure used in this chapter.

**Table A-2:  
Units of Measure Conversions**

To convert from	To	Multiply by
Kilograms (kg)	Pounds (lbs)	2.20462
Pounds (lbs)	Kilograms (kg)	0.45359
Pounds (lbs)	Metric tons	4.53592 x 10 <sup>-4</sup>

To convert from	To	Multiply by
Short tons	Pounds (lbs)	2,000
Short tons	Metric tons	0.90718
Metric tons	Short tons	1.10231
Metric tons	Kilograms (kg)	1,000
Cubic meters (m <sup>3</sup> )	Cubic feet (ft <sup>3</sup> )	35.31467
Cubic feet (ft <sup>3</sup> )	Cubic meters (m <sup>3</sup> )	0.028317
Gallons (liquid, US)	Liters (l)	3.78541
Liters (l)	Gallons (liquid, US)	0.26417
Barrels of liquid fuel (bbl)	Cubic meters (m <sup>3</sup> )	0.15891
Cubic meters (m <sup>3</sup> )	Barrels of liquid fuel (bbl)	6.289
Barrels of liquid fuel (bbl)	Gallons (liquid, US)	42
Gallons (liquid, US)	Barrels of liquid fuel (bbl)	0.023810
Gallons (liquid, US)	Cubic meters (m <sup>3</sup> )	0.0037854
Liters (l)	Cubic meters (m <sup>3</sup> )	0.001
Feet (ft)	Meters (m)	0.3048
Meters (m)	Feet (ft)	3.28084
Miles (mi)	Kilometers (km)	1.60934
Kilometers (km)	Miles (mi)	0.62137
Square feet (ft <sup>2</sup> )	Acres	2.29568 x 10 <sup>-5</sup>
Square meters (m <sup>2</sup> )	Acres	2.47105 x 10 <sup>-4</sup>
Square miles (mi <sup>2</sup> )	Square kilometers (km <sup>2</sup> )	2.58999
Degrees Celsius (°C)	Degrees Fahrenheit (°F)	°C = (5/9) x (°F - 32)
Degrees Fahrenheit (°F)	Degrees Celsius (°C)	°F = (9/5) x (°C + 32)
Degrees Celsius (°C)	Kelvin (K)	K = °C + 273.15
Kelvin (K)	Degrees Rankine (°R)	1.8
Joules	Btu	9.47817 x 10 <sup>-4</sup>
Btu	MMBtu	1 x 10 <sup>-6</sup>
Pascals (Pa)	Inches of Mercury (in Hg)	2.95334 x 10 <sup>-4</sup>
Inches of Mercury (in Hg)	Pounds per square inch (psi)	0.49110
Pounds per square inch (psi)	Inches of Mercury (in Hg)	2.03625

**NEW SECTION**

**WAC 173-441-085 Third-party verification.** The owner or operator of a facility that exceeds the compliance threshold under WAC 173-442-030 or voluntarily participating under WAC 173-442-030(6) must have the facility's annual GHG reports verified by a third party as specified in this section.

(1) **Annual GHG reports must be third-party verified each emissions year that:**

(a) The facility has a GHG emission reduction pathway under WAC 173-442-060;

(b) The facility is voluntarily participating under WAC 173-442-030(6);

(c) Is part of a baseline calculation for a new entrant after 2020 under WAC 173-442-050 (1)(b); or

(d) For the first year after no longer meeting the requirements of (a) through (c) of this subsection unless the operations of the facility are changed such that all applicable GHG emitting processes and operations listed in WAC 173-441-120 permanently cease to operate.

(2) **Emissions subject to third-party verification.** All covered GHG emissions under chapter 173-442 WAC are subject to the requirements of this section.

(3) **Verification standards.** The third-party verifier must certify that annual GHG reports meet the following conditions:

(a) Annual GHG reports must be consistent with the relevant requirements and methods in this chapter.

(b) The absolute value of any discrepancy, omission, or misreporting, or aggregation of the three, must be less than five percent of total reported covered emissions (metric tons of CO<sub>2</sub>e) or the verification will result in an adverse verification statement. This standard also separately applies to any covered product data in the annual GHG report.

(i) "Discrepancies" means any differences between the reported covered emissions or covered product data and the third-party verifier's review of covered emissions or covered product data for a data source or product data subject to this section.

(ii) "Omissions" means any covered emissions or covered product data the third-party verifier concludes must be part of the annual GHG report, but were not included by the reporting entity in the annual GHG report.

(iii) "Misreporting" means duplicate, incomplete or other covered emissions the third-party verifier concludes should, or should not, be part of the annual GHG report or duplicate or other product data the verifier concludes should not be part of the annual GHG report.

(iv) "Total reported covered emissions or covered product data" means the total annual reporting entity covered emissions or total reported covered product data for which the third-party verifier is conducting an assessment.

**(4) Verification services.**

(a) Full verification is required at least once every three reporting years. The first year of third-party verification for a facility must be full verification. An owner or operator may choose to obtain less intensive verification services for the remaining two years in the three-year period as long as:

(i) No year in the three-year period has an adverse verification statement;

(ii) The third-party verifier can provide findings with a reasonable level of assurance;

(iii) There has not been a change in the third-party verifier;

(iv) There has not been a change in operational control of the facility; and

(v) There has not been a significant change in sources or emissions. A difference in emissions of greater than twenty-five percent relative to the preceding year's emissions is considered significant unless that change can be directly shown to result from a verifiable change in product data.

(b) Full verification. A full verification report must be in a format specified by ecology and contain:

(i) Documentation identifying the facility reporting emissions and the scope of emissions verified in the report.

(ii) Documentation identifying the third-party verifier, including all relevant information about the third-party verifier in subsection (7)(a) of this section and the names, roles, and sector specific qualifications (if any) of all individuals working on the verification report.

(iii) Documentation demonstrating and certifying that the requirements of subsection (7)(b) and (c) of this section have been met.

(iv) A verification plan that details the data and methodologies used to verify the annual GHG report and schedule describing when the verification services occurred. This must include a sampling plan that describes how the third-party verifier prioritized which emissions to verify and a summary of the data checks used to determine the reliability of the annual GHG report. Full verification requires a more complete sampling of data and additional data checks than less intensive verification.

(v) Documentation of the third-party verifier's review of facility operations to identify applicable GHG emissions sources and product data. Any applicable GHG emissions sources or product data not included in the annual GHG report must be identified. The third-party verifier must also ensure that the reported current NAICS code(s) accurately represents the activities on-site.

(vi) Documentation of any corrections made to the annual GHG report.

(vii) Documentation supporting the third-party verifiers' findings evaluating if the annual GHG report is compliant with the requirements in subsection (3) of this section. This must include a log of any issues (if any) identified in the course of verification, their potential impact on the quality of the annual GHG report, and their resolution.

(viii) The individuals conducting the third-party verification must certify that the verification report is true, accurate, and complete to the best of their knowledge and belief.

(ix) Information about the required on-site visit, including date(s) and a description of the verification services conducted on-site. At least one accredited verifier in the verification team, including the sector specific verifier, if applicable, must at a minimum make one site visit, during each year full verification is required. The third-party verifier must visit the headquarters or other location of central data management when the facility is a supplier of petroleum products or supplier of natural gas and natural gas liquids. During the site visit, the third-party verifier must:

(A) Confirm that all applicable emissions are included in the annual GHG report.

(B) Check that all sources specified in the annual GHG report are identified appropriately.

(C) Review and understand the data management systems used by the owners or operators to track, quantify, and report GHG emissions and, when applicable, product data and fuel transactions. The third-party verifier must evaluate the uncertainty and effectiveness of these systems.

(D) Interview key personnel.

(E) Make direct observations of equipment for data sources and equipment supplying data for sources determined to be high risk.

(F) Assess conformance with measurement accuracy, data capture, and missing data substitution requirements.



(G) Review financial transactions to confirm fuel, feedstock, and product data, and confirming the complete and accurate reporting of required data such as facility fuel suppliers, fuel quantities delivered, and if fuel was received directly from an interstate pipeline.

(c) Less intensive verification. A less intensive verification report must be in a format specified by ecology and meet the requirements of subsection (4)(b)(i) through (viii) of this section. Less intensive verification of an annual GHG report allows for less detailed data checks and document reviews of the annual GHG report based on the analysis and risk assessment in the most current sampling plan developed as part of the most current full verification.

(5) **Annual GHG report corrections.** Owners or operators subject to this section must correct errors in their annual GHG report.

(a) Corrections are required if errors are identified by:

- (i) The third-party verifier;
- (ii) The owner or operator;
- (iii) Ecology; or
- (iv) EPA.

(b) The owner or operator must fix all correctable errors that affect covered emissions, noncovered emissions, or covered product data in the submitted emissions data report, and submit a revised emissions data report to ecology. Failure to do so will result in an adverse verification statement.

(c) Failure to fix correctable errors that do not affect covered emissions, noncovered emissions, or covered product data represents a nonconformance with this chapter but does not, absent other errors, result in an adverse verification statement.

(d) The owner or operator must maintain documentation to support any revisions made to the initial emissions data report. Documentation for all emissions data report submissions must be retained by the reporting entity for ten years.

(6) **Timing.** The third-party verifier must submit a complete verification report to ecology for each year as required under subsection (1) of this section no later than one hundred fifty days after the report submission due date for the facility, specified in WAC 173-441-050(2) for GHG emissions occurring in the previous calendar year. Any corrections to the annual GHG report or verification report must be submitted to ecology no later than forty-five days after discovery of the error. Records must be retained following the requirements of WAC 173-441-050(6).

(7) **Eligible third-party verifiers.**

(a) Owners or operators subject to this section must have their annual GHG report verified by a third-party verifier certified by ecology. Certification requires:

(i) Registering as a third-party verifier with ecology. Registration is required for both the verification organization and all individuals performing verification services for the verification organization.

(ii) Demonstrating to ecology's satisfaction that the third-party verifier has sufficient knowledge of the relevant methods and protocols in this chapter. Certification may be limited to certain types or sources of emissions.

(iii) Active accreditation or recognition as a third-party verifier under at least one of the following GHG programs:

(A) California ARB's Mandatory Reporting of Greenhouse Gas Emissions program;

(B) The Climate Registry;

(C) Climate Action Reserve;

(D) American National Standards Institute (ANSI); or

(E) Other GHG verification standard approved by ecology.

(b) An owner or operator must not use the same third-party verifier (either organization or individuals) for a period of more than six consecutive years. The owner or operator must wait at least three years before using the previous third-party verifier to verify their annual GHG reports.

(c) An owner or operator and third-party verifier must certify that there is not a conflict of interest in verifying the annual GHG report. The potential for a conflict of interest must be deemed to be high where:

(i) The third-party verifier and facility share any management staff or board of directors membership, or any of the senior management staff of the facility have been employed by the third-party verifier, or vice versa, within the previous five years; or

(ii) Any employee of the third-party verifier, or any employee of a related entity, or a subcontractor who is a member of the verification team has provided to the facility any services within the previous five years.

(iii) Any staff member of the third-party verifier provides any type of incentive to a facility to secure a verification services contract.

(8) **Ecology verification.** Ecology retains full authority in determining if an annual GHG report contains a discrepancy, omission, or misreporting, or any aggregation of the three, that impacts the verification status of the annual GHG report. Ecology may issue an adverse verification statement for an annual GHG report even if the annual GHG report has received a positive verification statement from the third-party verifier. Ecology may also issue an adverse verification statement for:

(a) Failure to submit a complete annual GHG report in a timely manner;

(b) Failure to complete third-party verification if required by this subsection; or

(c) Other forms of noncompliance with this chapter.

#### NEW SECTION

**WAC 173-441-086 Assigned emissions level.** (1) Ecology may assign an emissions level to any annual GHG report that:

(a) Failed to submit a complete annual GHG report by the report submission due date, specified in WAC 173-441-050(2);

(b) Failed to meet the third-party verification requirements in WAC 173-441-085;

(c) Has an adverse verification statement; or

(d) Ecology determines the absolute value of any discrepancy, omission, or misreporting, or aggregation of the three, is at least five percent of total reported covered emissions (metric tons of CO<sub>2</sub>e). This standard also separately applies to any covered product data in the annual GHG report.

(i) "Discrepancies" means any differences between the reported covered emissions or covered product data and ecology's review of covered emissions or covered product data for a data source or product data.

(ii) "Omissions" means any covered emissions or covered product data ecology concludes must be part of the annual GHG report, but were not included by the reporting entity in the annual GHG report.

(iii) "Misreporting" means duplicate, incomplete or other covered emissions ecology concludes should, or should not, be part of the annual GHG report or duplicate or other product data ecology concludes should not be part of the annual GHG report.

(iv) "Total reported covered emissions or covered product data" means the total annual reporting entity covered emissions or total reported covered product data for which ecology is conducting an assessment.

(2) The assigned emissions level must be used when determining compliance with chapter 173-442 WAC.

(3) Ecology must use conservative assumptions when setting the assigned emissions level to avoid underestimating emissions in a compliance year or overestimating emissions in a baseline year.

(a) Within five working days of a written request by ecology, the third-party verifier (if applicable) must provide any available verification services information or correspondence related to the emissions data.

(b) Within five working days of a written request by ecology, the owner or operator of a facility must provide the data that is required to calculate GHG emissions for the facility according to the requirements of this chapter, the preliminary or final detailed verification report prepared by the third-party verifier (if applicable), and other information requested by ecology, including the operating days and hours of the facility during the data year. The owner or operator must also make available personnel who can assist ecology's determination of an assigned emissions level for the data year.

(4) Ecology may adjust the assigned emissions level if the owner or operator is able to obtain a positive verification statement for the annual GHG report at a later date.

AMENDATORY SECTION (Amending WSR 15-04-051, filed 1/29/15, effective 3/1/15)

**WAC 173-441-090 Compliance and enforcement.** (1) **Violations.** Any violation of any requirement of this chapter must be a violation of chapter 70.94 RCW and subject to enforcement as provided in that chapter. A violation includes, but is not limited to, failure to report GHG emissions by the reporting deadline, failure to report accurately, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emissions, failure to calculate GHG emissions following the methodologies specified in this chapter, failure to have the annual GHG report third-party verified, and failure to pay the required reporting fee. Each day and each metric ton CO<sub>2</sub>e of emissions of a violation constitutes a separate violation.

(2) **Enforcement responsibility.** Ecology must enforce the requirements of this chapter unless ecology approves a

local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

**WAC 173-441-110 Fees.** (1) **Fee determination.** All persons required to report (~~(or voluntarily reporting)~~) under WAC 173-441-030(1) must pay a reporting fee for each year they submit a report to ecology. Ecology must establish reporting fees based on workload using the process outlined below. The fees must be sufficient to cover ecology's costs to administer the GHG emissions reporting program.

(2) **Fee eligible activities.** All costs of activities associated with administering this reporting program, as described in RCW 70.94.151(2), are fee eligible.

(3) **Workload analysis and budget development.** Each biennium, ecology must conduct a workload analysis and develop a budget based on the process outlined below:

(a) Ecology must conduct a workload analysis projecting resource requirements for administering the reporting program, organized by categories of fee eligible activities, for the purpose of preparing the budget. Ecology must prepare the workload analysis for the two-year period corresponding to each biennium. The workload analysis must identify the fee eligible administrative activities related to the reporting program that it will perform during the biennium and must estimate the resources required to perform these activities.

(b) Ecology must prepare a budget for administering the reporting program for the two-year period corresponding to each biennium. Ecology must base the budget on the resource requirements identified in the workload analysis for the biennium and must take into account the reporting program account balance at the start of the biennium.

(4) **Allocation methodology.** (~~Ecology must allocate the reporting program budget among the persons required to report or voluntarily reporting under WAC 173-441-030 according to the following components-~~

(a)) The reporting fee for an owner or operator of a facility required to report (~~(or voluntarily reporting)~~) under WAC 173-441-030(1) is calculated by the equal division of (~~seventy-five percent of~~) the budget amount by the total number of facilities (~~(reporting)~~) required to report GHG emissions under this chapter in a given calendar year. A person required to report (~~(or voluntarily reporting)~~) multiple facilities under WAC 173-441-030(1) must pay a fee for each facility reported.

(~~(b) The reporting fee for a supplier required to report or voluntarily reporting under WAC 173-441-030 is calculated by the equal division of twenty-five percent of the budget amount by the total number of suppliers reporting GHG emissions under this chapter in a given calendar year-~~

(c) ~~A person required to report or voluntarily reporting under WAC 173-441-030 both as an owner or operator of a facility or facilities and as a supplier must pay a fee for each facility reported and a fee for reporting as a supplier.)~~

(5) **Fee schedule.** Ecology must issue annually a fee schedule reflecting the reporting fee to be paid per facility or supplier. Ecology must base the fee schedule on the budget and workload analysis described above and conducted each

biennium. Ecology must publish the fee schedule for the following year on or before October 31st of each year.

(6) **Fee payments.** Fees specified in this section must be paid within sixty days of receipt of ecology's billing statement. All fees collected under this chapter must be made payable to the Washington department of ecology. A late fee surcharge of fifty dollars or ten percent of the fee, whichever is more, may be assessed for any fee received after ninety days past the due date for fee payment.

(7) **Dedicated account.** Ecology must deposit all reporting fees they collect in the air pollution control account.

AMENDATORY SECTION (Amending WSR 15-04-051, filed 1/29/15, effective 3/1/15)

**WAC 173-441-120 Calculation methods incorporated by reference from 40 C.F.R. Part 98 for facilities.** Owners and operators of facilities that are subject to this chapter must follow the requirements of this chapter and all subparts of 40 C.F.R. Part 98 listed in Table 120-1 of this section.

If a conflict exists between a provision in WAC 173-441-050(3) through 173-441-080 and any applicable provision of this section, the requirements of this section must take precedence.

(1) **Source categories and calculation methods for facilities.** An owner or operator of a facility subject to the requirements of this chapter must report GHG emissions, including GHG emissions from biomass, from all applicable source categories in Washington state listed in Table 120-1 of this section using the methods incorporated by reference in Table 120-1. Table 120-1 and subsection (2) of this section list modifications and exceptions to calculation methods adopted by reference in this section. ~~((CO<sub>2</sub> collected and transferred off-site must be included in the emissions calculation as required under WAC 173-441-030 (1)(b)(iv) using the methods established in 40 C.F.R. Part 98 Subpart PP as adopted by January 1, 2015. Owners or operators are not required to comply with requirements in Subpart PP that do not address CO<sub>2</sub> collected and transferred off-site.))~~

**Table 120-1:  
Source Categories and Calculation Methods  
Incorporated by Reference from 40 C.F.R. Part 98 for Facilities**

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria <sup>##</sup>
General Stationary Fuel Combustion Sources	C	
Electricity Generation	D	
Adipic Acid Production	E	
Aluminum Production	F	
Ammonia Manufacturing	G	
Cement Production	H	
Electronics Manufacturing	I	In § 98.91, replace "To calculate total annual GHG emissions for comparison to the 25,000 metric ton CO <sub>2</sub> e per year emission threshold in paragraph § 98.2 (a)(2), follow the requirements of § 98.2(b), with one exception" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1), follow the requirements of WAC 173-441-030 (1)(b), with one exception."
Ferroalloy Production	K	
Fluorinated Gas Production	L	In § 98.121, replace "To calculate GHG emissions for comparison to the 25,000 metric ton CO <sub>2</sub> e per year emission threshold in § 98.2 (a)(2)" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1)."
Glass Production	N	
HCFC-22 Production and HFC-23 Destruction	O	
Hydrogen Production	P	
Iron and Steel Production	Q	
Lead Production	R	
Lime Manufacturing	S	

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria <sup>+#</sup>
Magnesium Production	T	
Miscellaneous Uses of Carbonate	U	
Nitric Acid Production	V	
Petroleum and Natural Gas Systems	W	§ 98.231(a) should read: "You must report GHG emissions under this subpart if your facility contains petroleum and natural gas systems and the facility meets the requirements of WAC 173-441-030(1)."
Petrochemical Production	X	
Petroleum Refineries	Y	
Phosphoric Acid Production	Z	
Pulp and Paper Manufacturing	AA	
Silicon Carbide Production	BB	
Soda Ash Manufacturing	CC	
Electrical Transmission and Distribution Equipment Use	DD	§ 98.301 should read: "You must report GHG emissions under this subpart if your facility contains any electrical transmission and distribution equipment use process and the facility meets the requirements of WAC 173-441-030(1)." See subsection (2)(f) of this section.
Titanium Dioxide Production	EE	
Underground Coal Mines	FF	
Zinc Production	GG	
Municipal Solid Waste Landfills	HH	CO <sub>2</sub> from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Industrial Wastewater Treatment	II	CO <sub>2</sub> from combustion of wastewater biogas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Manure Management	JJ	See subsection (2)(e) of this section.
<u>Suppliers of Coal-Based Liquid Fuels</u>	<u>LL</u>	<u>§ 98.380(b) should read: "An importer or exporter shall have the same meaning given in WAC 173-441-120 (2)(h)." § 98.381 should include: "Reporting of exports is voluntary."</u>
<u>Suppliers of Petroleum Products</u>	<u>MM</u>	<u>§ 98.391 should read: "Any refiner or importer that meets the requirements of WAC 173-441-030(1) must report GHG emissions. Any exporter of petroleum products and natural gas liquids may report GHG emissions associated with exported petroleum products using the methods established in this subpart." See subsection (2)(h) of this section.</u>
<u>Suppliers of Natural Gas and Natural Gas Liquids</u>	<u>NN</u>	<u>§ 98.401 should read: "Any supplier of natural gas and natural gas liquids that meets the requirements of WAC 173-441-030(1) must report GHG emissions."</u>
<u>Suppliers of Industrial Greenhouse Gases</u>	<u>OO</u>	<u>§ 98.411 should include: "Reporting of exports is voluntary."</u>

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria <sup>‡</sup>
Suppliers of Carbon Dioxide	PP	<del>((Owners or operators are only required to calculate and report emissions specified in WAC 173-441-030(1)(b)(iv).))</del> § 98.421 should read: " <u>Any supplier of CO<sub>2</sub> who meets the requirements of WAC 173-441-030(1) must report the mass of CO<sub>2</sub> captured, extracted, or imported. The mass of CO<sub>2</sub> exported may be reported using the methods established in this subpart.</u> "
<u>Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams</u>	QQ	§ 98.431 should read: " <u>Any importer of fluorinated GHGs contained in pre-charged equipment or closed-cell foams who meets the requirements of WAC 173-441-030(1) must report each fluorinated GHG contained in the imported pre-charged equipment or closed-cell foams. Any exporter of fluorinated GHGs contained in pre-charged equipment or closed-cell foams may report GHG emissions associated with exported products using the methods established in this subpart.</u> "
Geologic Sequestration of Carbon Dioxide	RR	§ 98.441(a) should read: "You must report GHG emissions under this subpart if any well or group of wells within your facility injects any amount of CO <sub>2</sub> for long-term containment in subsurface geologic formations and the facility meets the requirements of WAC 173-441-030(1)."
Electrical Equipment Manufacture or Refurbishment	SS	§ 98.451 should read: "You must report GHG emissions under this subpart if your facility contains an electrical equipment manufacturing or refurbishing process and the facility meets the requirements of WAC 173-441-030(1)."
Industrial Waste Landfills	TT	CO <sub>2</sub> from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Injection of Carbon Dioxide	UU	§ 98.471 should read: "(a) You must report GHG emissions under this subpart if your facility contains an injection of carbon dioxide process and the facility meets the requirements of WAC 173-441-030(1). For purposes of this subpart, any reference to CO <sub>2</sub> emissions in WAC 173-441-030 means CO <sub>2</sub> received."

\* Unless otherwise noted, all calculation methods are from 40 C.F.R. Part 98, as adopted by ((January 1, 2015)) May 1, 2016.

+ Modifications and exceptions in subsection (2) of this section and WAC 173-441-010 through 173-441-050(2) also apply.

# Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

**(2) Modifications and exceptions to calculation methods adopted by reference.** Except as otherwise specifically provided:

(a) Wherever the term "administrator" is used in the rules incorporated by reference in this chapter, the term "director" must be substituted.

(b) Wherever the term "EPA" is used in the rules incorporated by reference in this chapter, the term "ecology" must be substituted.

(c) Wherever the term "United States" is used in the rules incorporated by reference in this chapter, the term "Washington state" must be substituted.

(d) Wherever a calculation method adopted by reference in Table 120-1 of this section or a definition adopted by reference from 40 C.F.R. Part 98.6 refers to another subpart or paragraph of 40 C.F.R. Part 98:

(i) If Table 120-2 of this section lists the reference, then replace the reference with the corresponding reference to this chapter as specified in Table 120-2.

(ii) If the reference is to a subpart or subsection of a reference listed in Table 120-2 of this section, then replace the reference with the appropriate subsection of the corresponding reference to this chapter as specified in Table 120-2.

(iii) If the reference is to a subpart or paragraph of 40 C.F.R. Part 98 Subparts C through UU incorporated by refer-

ence in Table 120-1, then use the existing reference except as modified by this chapter.

(e) For manure management, use the following subsections instead of the corresponding subsections in 40 C.F.R. § 98.360 as adopted by ~~((January 1, 2015))~~ May 1, 2016.

(i) 40 C.F.R. § 98.360(a): This source category consists of livestock facilities with manure management systems.

(A) § 98.360 (a)(1) is not adopted by reference.

(B) § 98.360 (a)(2) is not adopted by reference.

(ii) 40 C.F.R. § 98.360(b): A manure management system (MMS) is a system that stabilizes and/or stores livestock manure, litter, or manure wastewater in one or more of the following system components: Uncovered anaerobic lagoons, liquid/slurry systems with and without crust covers (including, but not limited to, ponds and tanks), storage pits, digesters, solid manure storage, dry lots (including feedlots), high-rise houses for poultry production (poultry without litter), poultry production with litter, deep bedding systems for cattle and swine, manure composting, and aerobic treatment.

(iii) 40 C.F.R. § 98.360(c): This source category does not include system components at a livestock facility that are unrelated to the stabilization and/or storage of manure such as daily spread or pasture/range/paddock systems or land application activities or any method of manure utilization that is not listed in § 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii).

(iv) 40 C.F.R. § 98.360(d): This source category does not include manure management activities located off-site from a livestock facility or off-site manure composting operations.

(v) 40 C.F.R. § 98.361: Livestock facilities must report GHG emissions under this subpart if the facility contains a manure management system as defined in 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii), and meets the requirements of WAC 173-441-030(1).

(vi) 40 C.F.R. § 98.362 (b) and (c) are not adopted by reference.

(vii) 40 C.F.R. § 98.362(a), 40 C.F.R. § 98.363 through 40 C.F.R. § 98.368, Equations JJ-2 through JJ-15, and Tables JJ-2 through JJ-7 as adopted by ~~((January 1, 2015))~~ May 1, 2016, remain unchanged unless otherwise modified in this chapter.

(viii) CO<sub>2</sub> from combustion of gas from manure management must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

(f) For electrical transmission and distribution equipment use facilities where the electrical power system crosses Washington state boundaries, limit the GHG report to emissions that occur in Washington state using one of the following methods:

(i) Direct, state specific measurements;

(ii) Prorate the total emissions of the electric power system based upon either nameplate capacity or transmission line miles in the respective service areas by state using company records. Update the nameplate capacity or transmission line miles factor each reporting year and include the data used to establish the nameplate capacity or transmission line miles factor with your annual GHG report((-));

(iii) Prorate the total emissions of the electric power system based upon population in the respective service areas by state using the most recent U.S. Census data. Update the pop-

ulation factor each reporting year and include the data used to establish the population factor with your annual GHG report.

(g) Use the following method to obtain specific version or date references for any reference in 40 C.F.R. Part 98 that refers to any document not contained in 40 C.F.R. Part 98:

(i) If the reference in 40 C.F.R. Part 98 includes a specific version or date reference, then use the version or date as specified in 40 C.F.R. Part 98.

(ii) If the reference in 40 C.F.R. Part 98 does not include a specific version or date reference, then use the version of the referenced document as available on the date of adoption of this chapter.

(h) For suppliers of petroleum products or coal-based liquid fuels, use the following subsections instead of the corresponding subsections in 40 C.F.R. § 98.390 as adopted by May 1, 2016.

(i) 40 C.F.R. § 98.390: Definition of the source category.

This source category consists of petroleum refineries and importers and exporters of petroleum products and natural gas liquids as listed in Table MM-1 of this subpart.

(A) A petroleum refinery for the purpose of this subpart is any facility engaged in producing petroleum products through the distillation of crude oil.

(B) A refiner is the owner or operator of a petroleum refinery.

(C) Importer has the same meaning given in subsection (2)(h)(ii) of this section and includes any entity that imports petroleum products, natural gas liquids, or coal-based liquid fuels as listed in Table MM-1 of this subpart. Any blender or refiner of refined or semi-refined petroleum products shall be considered an importer if it otherwise satisfies the aforementioned definition.

(D) Exporter has the same meaning given in subsection (2)(h)(ii) of this section and includes any entity that exports petroleum products, natural gas liquids, or coal-based liquid fuels as listed in Table MM-1 of this subpart. Any blender or refiner of refined or semi-refined petroleum products shall be considered an exporter if it otherwise satisfies the aforementioned definition.

(ii) Definitions specific to imports and exports:

(A) Export means to transport a product from inside Washington state to persons outside Washington state, excluding any such transport on behalf of the United States military including foreign military sales under the Arms Export Control Act. The final distribution of the product must occur outside of Washington state.

(B) Exporter means any person, company or organization of record that transfers for sale or for other benefit, products from Washington state to another state, country, or to an affiliate in another country, excluding any such transfers on behalf of the United States military or military purposes including foreign military sales under the Arms Export Control Act. The final distribution of the product must occur outside of Washington state. An exporter is not the entity merely transporting the domestic products, rather an exporter is the entity deriving the principal benefit from the transaction.

(C) Import means, to land on, bring into, or introduce into, any place subject to the jurisdiction of Washington state.

(D) Importer means any person, company, or organization of record that for any reason brings a product into Wash-

ington state from a different state or foreign country, excluding introduction into Washington state jurisdiction exclusively for United States military purposes. The term includes, as appropriate:

(I) The consignee.

(II) The importer of record.

(III) The actual owner.

(IV) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

(iii) Each importer shall report all information at the state level.

(iv) Each exporter choosing to report emissions associated with exported products to ecology under these subparts shall report all information at the state level:

(v) Exporters choosing to report emissions associated with exported products to ecology under these subparts and refineries and importers must report information for each product where emissions were calculated.

**Table 120-2:  
Corresponding References in 40 C.F.R. Part 98 and  
Chapter 173-441 WAC**

Reference in 40 C.F.R. Part 98		Corresponding Reference in Chapter 173-441 WAC	
Section	Topic	Section	Topic
40 C.F.R. Part 98 or "part"	Mandatory Greenhouse Gas Reporting	Chapter 173-441 WAC	Reporting of Emissions of Greenhouse Gases
Subpart A	General Provision	WAC 173-441-010 through 173-441-100	General Provisions
§ 98.1	Purpose and scope	WAC 173-441-010	Scope
§ 98.2	Who must report?	WAC 173-441-030	Applicability
§ 98.2(a)	Applicability: Facility reporting	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(1)	Applicability: Facility reporting Table A-3	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(2)	Applicability: Facility reporting Table A-4	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(3)	Applicability: Facility reporting source categories that meet all three of the conditions listed in this paragraph (a)(3)	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(4)	Applicability: Facility reporting Table A-5 source categories	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2(b)	Calculating emissions for comparison to the threshold	WAC 173-441-030 (1)(b)	Calculating facility emissions for comparison to the threshold
§ 98.2(i)	Reporting requirements when emissions of greenhouse gases fall below reporting thresholds	WAC 173-441-030(5)	Reporting requirements when emissions of greenhouse gases fall below reporting thresholds
§ 98.3	What are the general monitoring, reporting, recordkeeping and verification requirements of this part?	WAC 173-441-050	General monitoring, reporting, recordkeeping and verification requirements
§ 98.3(c)	Content of the annual report	WAC 173-441-050(3)	Content of the annual report
§ 98.3(g)	Recordkeeping	WAC 173-441-050(6)	Recordkeeping
§ 98.3 (g)(5)	A written GHG monitoring plan	WAC 173-441-050 (6)(e)	A written GHG monitoring plan
§ 98.3(i)	Calibration accuracy requirements	WAC 173-441-050(8)	Calibration and accuracy requirements
§ 98.3 (i)(6)	Calibration accuracy requirements: Initial calibration	WAC 173-441-050 (8)(f)	Calibration accuracy requirements: Initial calibration
§ 98.4	Authorization and responsibilities of the designated representative	WAC 173-441-060	Authorization and responsibilities of the designated representative
§ 98.5	How is the report submitted?	WAC 173-441-070	Report submittal
§ 98.5(b)	Verification software	WAC 173-441-070(1)	Facility report submittal
§ 98.6	Definitions	WAC 173-441-020	Definitions
§ 98.7	What standardized methods are incorporated by reference into this part?	WAC 173-441-080	Standardized methods and conversion factors incorporated by reference
§ 98.8	What are the compliance and enforcement provisions of this part?	WAC 173-441-090	Compliance and enforcement
§ 98.9	Addresses	WAC 173-441-100	Addresses
Table A-1 to Subpart A of Part 98—Global Warming Potentials, Table A-1 of this part, or Table A-1 of this subpart	Global Warming Potentials	Table A-1 of WAC 173-441-040	Global Warming Potentials

Reference in 40 C.F.R. Part 98		Corresponding Reference in Chapter 173-441 WAC	
Table A-2 to Subpart A of Part 98—Units of Measure Conversions	Units of Measure Conversions	Table A-2 of WAC 173-441-080	Units of Measure Conversions

(3) **Calculation methods for voluntary reporting.** GHG emissions reported voluntarily under WAC 173-441-030(4) must be calculated using the following methods:

(a) If the GHG emissions have calculation methods specified in Table 120-1 of this section, use the methods specified in Table 120-1.

(b) If the GHG emissions have calculation methods specified in WAC 173-441-130, use the methods specified in WAC 173-441-130.

(c) For all GHG emissions from facilities not covered in Table 120-1 of this section or persons supplying any product other than those listed in WAC 173-441-130, contact ecology for an appropriate calculation method no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2) or submit a petition for alternative calculation methods according to the requirements of WAC 173-441-140.

(4) **Alternative calculation methods approved by petition.** An owner or operator may petition ecology to use calculation methods other than those specified in Table 120-1 of this section to calculate its facility GHG emissions. Such alternative calculation methods must be approved by ecology prior to reporting and must meet the requirements of WAC 173-441-140.

AMENDATORY SECTION (Amending WSR 15-04-051, filed 1/29/15, effective 3/1/15)

**WAC 173-441-130 Calculation methods for suppliers.** Suppliers of (~~liquid~~) motor vehicle fuel, special fuel, or aircraft fuel subject to the requirements of this chapter must calculate the CO<sub>2</sub> emissions that would result from the complete combustion or oxidation of each fuel that is reported to DOL as sold in Washington state using the methods in this section.

(1) **Applicable fuels.** Suppliers are responsible for calculating CO<sub>2</sub> emissions from the following applicable fossil fuels and biomass derived fuels:

(a) All taxed (~~liquid~~) motor vehicle fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of motor vehicle fuel sales under chapter (~~308-72 WAC~~) 82.38 RCW.

(b) All taxed special fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of special fuel sales under chapter (~~308-77 WAC~~) 82.38 RCW.

(c) All taxed and untaxed aircraft fuel supplied to end users that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of aircraft fuel under chapter (~~308-78 WAC~~) 82.42 RCW.

(2) Calculating CO<sub>2</sub> emissions separately for each fuel type. CO<sub>2</sub> emissions must be calculated separately for each applicable fuel type using Equation 130-1 of this section. Use Equation 130-2 of this section to separate each blended fuel

into pure fuel types prior to calculating emissions using Equation 130-1.

$$CO_{2i} = Fuel\ Type_i \times EF_i \quad (Eq. 130-1)$$

Where:

- CO<sub>2i</sub> = Annual CO<sub>2</sub> emissions that would result from the complete combustion or oxidation of each fuel type "i" (metric tons)
- Fuel Type<sub>i</sub> = Annual volume of fuel type "i" supplied by the supplier (gallons).
- EF<sub>i</sub> = Fuel type-specific CO<sub>2</sub> emission factor (metric tons CO<sub>2</sub> per gallon) found in Table 130-1 of this section.

$$Fuel\ Type_i = Fuel_i \times \%Vol_i \quad (Eq. 130-2)$$

Where:

- Fuel Type<sub>i</sub> = Annual volume of fuel type "i" supplied by the supplier (gallons).
- Fuel<sub>i</sub> = Annual volume of blended fuel "i" supplied by the supplier (gallons).
- %Vol<sub>i</sub> = Percent volume of product "i" that is fuel type<sub>i</sub>.

(3) **Calculating total CO<sub>2</sub> emissions.** A supplier must calculate total annual CO<sub>2</sub> emissions from all fuels using Equation 130-3 of this section.

$$CO_{2x} = \sum(CO_{2i}) \quad (Eq. 130-3)$$

Where:

- CO<sub>2x</sub> = Annual CO<sub>2</sub> emissions that would result from the complete combustion or oxidation of all fuels (metric tons).
- CO<sub>2i</sub> = Annual CO<sub>2</sub> emissions that would result from the complete combustion or oxidation of each fuel type "i" (gallons).



(4) **Monitoring and QA/QC requirements.** Comply with all monitoring and QA/QC requirements under chapters 308-72, 308-77, and 308-78 WAC.

(5) **Data recordkeeping requirements.** In addition to the annual GHG report required by WAC 173-441-050 (6)(c), the following records must be retained by the supplier in accordance with the requirements established in WAC 173-441-050(6):

(a) For each fuel type listed in Table 130-1 of this section, the annual quantity of applicable fuel in gallons of pure fuel supplied in Washington state.

(b) The CO<sub>2</sub> emissions in metric tons that would result from the complete combustion or oxidation of each fuel type for which subsection (5)(a) of this section requires records to be retained, calculated according to subsection (2) of this section.

(c) The sum of biogenic CO<sub>2</sub> emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(d) The sum of nonbiogenic and biogenic CO<sub>2</sub> emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(e) All records required under chapters 308-72, 308-77, and 308-78 WAC in the format required by DOL.

**Table 130-1:  
Emission Factors for Applicable (~~Liquid~~) Motor Vehicle Fuels, Special Fuels, and Aircraft Fuels**

Fuel Type (pure fuel)	Emission Factor (metric tons CO <sub>2</sub> per gallon)
Gasoline	0.008960
Ethanol (E100)	0.005767
Diesel	0.010230
Biodiesel (B100)	0.009421
Propane	0.005593
Natural gas	0.000055*
Kerosene	0.010150
Jet fuel	0.009750
Aviation gasoline	0.008310

Contact ecology to obtain an emission factor for any applicable fuel type not listed in this table.

\*In units of metric tons CO<sub>2</sub> per scf. When using Equation 130-1 of this section, enter fuel in units of scf.

**Chapter 173-442 WAC**

**CLEAN AIR RULE**

**SECTION 1 - OVERVIEW**

NEW SECTION

**WAC 173-442-010 Scope.** This rule establishes GHG emissions standards starting in 2017 for:

- Certain stationary sources.
- Petroleum product producers and importers.
- Natural gas distributors.

NEW SECTION

**WAC 173-442-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) Definitions.

(a) **"Actual emissions"** means GHG emissions reported under chapter 173-441 WAC except for emissions exempted under WAC 173-442-040.

(b) **"Baseline GHG emissions value"** means a value defined by WAC 173-442-050.

(c) **"Calendar year"** means January 1 through December 31.

(d) **"Carbon dioxide equivalent"** or **"CO<sub>2</sub> equivalent"** or **"CO<sub>2</sub>e"** means a metric measure used to compare the emissions from various GHGs based upon their global warming potential. Ecology uses the global warming potential values listed in WAC 173-441-040 to determine the CO<sub>2</sub> equivalent of emissions.

(e) **"Compliance obligation"** means the value calculated using WAC 173-442-200(3).

(f) **"Compliance period"** means a consecutive three-year period beginning in 2017 (2017 through 2019), and continuing forward (2020 through 2022; 2023 through 2025; etc.).

(g) **"Compliance report"** means the report required by WAC 173-442-210.

(h) **"Compliance threshold"** means the emission levels in WAC 173-442-030(3).

(i) **"Covered GHG emissions"** means any of the following:

(i) **"Covered stationary source GHG emissions"** means GHG emissions from source categories listed in WAC 173-441-120. This includes emissions voluntarily reported under chapter 173-441 WAC using methods established in WAC 173-441-120.

(ii) **"Covered petroleum product producer or importer GHG emissions"** means CO<sub>2</sub> emissions that result from the complete combustion or oxidation of products covered under the Suppliers of Petroleum Products, 40 C.F.R. Part 98, Subpart MM, source category listed in WAC 173-441-120. This includes emissions voluntarily reported under chapter 173-441 WAC using methods established in WAC 173-441-120.

(iii) **"Covered natural gas distributor GHG emissions"** means CO<sub>2</sub> emissions that result from the complete combustion or oxidation of products covered under WAC 173-441-120. This includes:

(A) Natural gas and natural gas liquids listed under 40 C.F.R. Part 98, Subpart NN; and

(B) Emissions voluntarily reported under chapter 173-441 WAC.

(iv) Exemptions are listed in WAC 173-442-040.

(j) **"Covered party"** means the owner or operator of a:

(i) Stationary source located in Washington;

(ii) Petroleum product producer in Washington or importer to Washington; or

(iii) Natural gas distributor in Washington.

(k) **"Curtailement"** means the cessation of production at a stationary source greater than four consecutive months in a calendar year. Curtailement does not include the following activities:

(i) Cessation of production to:

(A) Perform routine maintenance;

(B) Perform nonroutine maintenance;

(C) Make capital improvements to the covered party's facility; or

(D) Perform facility life extension projects.

(ii) Electric generating units are ineligible for this provision.

(l) **"EITE covered party"** means a covered party with a primary North American Industry Classification System (NAICS) code included in the following list:

(i) 311411: Frozen fruit, juice, and vegetable manufacturing;

(ii) 311423: Dried and dehydrated food manufacturing;

(iii) 311611: Animal (except poultry) slaughtering;

(iv) 322110: Pulp mills;

(v) 322121: Paper (except newsprint) mills;

(vi) 322122: Newsprint mills;

(vii) 322130: Paperboard mills;

(viii) 325188: All other basic inorganic chemical manufacturing;

(ix) 325199: All other basic organic chemical manufacturing;

(x) 325311: Nitrogenous fertilizer manufacturing;

(xi) 327211: Flat glass manufacturing;

(xii) 327213: Glass container manufacturing;

(xiii) 327310: Cement manufacturing;

(xiv) 327410: Lime manufacturing;

(xv) 327420: Gypsum product manufacturing;

(xvi) 327992: Ultra high purity silicon manufacturing;

(xvii) 331111: Iron and steel mills;

(xviii) 331312: Primary aluminum production;

(xix) 331315: Aluminum sheet, plate, and foil manufacturing;

(xx) 331419: Primary smelting and refining of nonferrous metal (except copper and aluminum);

(xxi) 334413: Semiconductor and related device manufacturing;

(xxii) 336411: Aircraft manufacturing;

(xxiii) 336413: Other aircraft parts and auxiliary equipment manufacturing.

(m) **"Emission reduction unit"** or **"ERU"** means one unit equivalent to one metric ton of CO<sub>2</sub>e. An emission reduction unit is composed of any GHG listed in WAC 173-441-040, or, for the purposes of using WAC 173-442-160 (6)(b), destroyed chlorofluorocarbons or hydrochlorofluorocarbons.

(n) **"Emission reduction pathway"** means the annual reduction requirement established in WAC 173-442-060 and 173-442-070.

(o) **"Emission reduction requirement"** means a covered party's limit in MT CO<sub>2</sub>e for a compliance period based

on the sum of the GHG emission reduction pathways for that period.

(p) **"Independent qualified organization"** means an organization identified by the energy facility site evaluation council as meeting the requirements of RCW 80.70.050.

(q) **"Renewable energy credit"** means a tradable certificate of proof of an eligible renewable resource that is verified by the renewable energy credit tracking system identified in WAC 194-37-210(1) and which includes all of the nonpower attributes associated with that electricity as identified in RCW 19.285.030.

(r) **"Reserve"** means an account established by ecology to ensure consistency with an aggregate emission reduction limit for the program and for purposes consistent with this chapter.

(s) **"Vintage year"** means the calendar year in which an ERU is first recorded, or, in the case of an allowance, the year designated as the vintage year for that allowance by the external program supplying the allowance.

(2) **Definitions from chapter 173-441 WAC.** If subsection (1) of this section provides no definition, the definition found in chapter 173-441 WAC applies.

(3) **Definitions from chapter 173-400 WAC.** If subsections (1) and (2) of this section provide no definition, the definition found in chapter 173-400 WAC applies.

(4) **Acronym list.**

**CO<sub>2</sub>** means carbon dioxide.

**CO<sub>2</sub>e** means carbon dioxide equivalent.

**EITE** means energy intensive and trade exposed.

**ERU** means an emission reduction unit.

**GHG** means greenhouse gas.

**MT** means metric ton.

**MT CO<sub>2</sub>e** means metric ton of carbon dioxide equivalent.

**REC** means Renewable Energy Credit.

## SECTION 2 - APPLICABILITY REQUIREMENTS

### NEW SECTION

**WAC 173-442-030 Applicability. Who does this rule apply to?**

(1) Emission reduction requirements apply to a covered party when their baseline GHG emissions value is greater than or equal to the compliance threshold in the corresponding compliance period in Table 1 of this section. An EITE covered party's baseline GHG emissions for applicability under this section is established in WAC 173-442-070 (2)(c).

(2) Exception. Applicability to this chapter begins no earlier than 2020 for EITE covered parties and petroleum product importers.

(3) Compliance threshold. A covered party with covered GHG emissions that are greater than or equal to the compliance threshold in Table 1 must comply with their compliance obligation under WAC 173-442-200.

**Table 1**  
**Compliance Threshold**

<b>Compliance Threshold (MT CO<sub>2</sub>e/Year)</b>	<b>First Compliance Period (Calendar Year)</b>
100,000	2017-19
95,000	2020-22
90,000	2023-25
85,000	2026-28
80,000	2029-31
75,000	2032-34
70,000	2035 and beyond

(4) Whenever there is any change that affects covered GHG emissions, a covered party must reevaluate whether this chapter applies. Changes include, but are not limited to:

- (a) Revised emissions calculations or other calculations;
- (b) Process modifications;
- (c) Changes in operating hours;
- (d) Changes in production;
- (e) Changes in fuel or raw material use;
- (f) Addition of equipment;
- (g) Source expansion;
- (h) Changes in the compliance threshold; and
- (i) Changes to this chapter.

(5) A covered party is not subject to the requirements in this section:

(a) After three consecutive years of covered GHG emissions less than 50,000 MT CO<sub>2</sub>e; and

(b) Compliance with the requirements in WAC 173-442-210(7).

(6) Voluntary participation.

(a) An entity with covered GHG emissions below the compliance threshold during a compliance period can choose to participate voluntarily in this chapter. A voluntary participant must comply with the requirements for a covered party except that a voluntary participant does not have a GHG emission reduction requirement.

(b) Opt-out.

(i) A voluntary party who elected to become a covered party by voluntarily participating in this chapter may decide later to return to exempt status.

(ii) For a voluntary party to opt-out of this chapter and for it to be effective, the voluntary party must complete all actions specified below.

(A) The actions must be completed and documentation submitted in a format specified by ecology.

(B) A voluntary covered party that wishes to opt-out of this program must apply to ecology by September 1 of the last year of a compliance period.

(iii) Notification requirements.

(A) Provide a ninety-day notice of intent to opt-out and a proposed effective date for the completion of the opt-out process; and

(B) Submit a final compliance report.

## NEW SECTION

**WAC 173-442-040 Exemptions.** (1) Covered GHG emissions do not include:

(a) The following subparts referenced in Table 120-1 in WAC 173-441-120;

(i) Manure Management: Subpart JJ;

(ii) Suppliers of Coal-Based Liquid Fuels: Subpart LL;

(iii) Suppliers of Industrial Greenhouse Gases: Subpart OO;

(iv) Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams: Subpart QQ.

(b) CO<sub>2</sub> from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals, as provided in RCW 70.235.020(3);

(c) CO<sub>2</sub> that is converted into mineral form and that is not emitted into the atmosphere; and

(d) Emissions from a coal-fired baseload electric generation facility in Washington that emitted more than one million tons of GHGs in any calendar year prior to 2008, as provided in RCW 80.80.040(3).

(2) Covered GHG emissions from petroleum product producer or importer do not include:

(a) CO<sub>2</sub> emissions that would result from the complete combustion or oxidation of the following products as specified in 40 C.F.R. Part 98, Table MM-1, as adopted by May 1, 2016:

(i) Kerosene-type jet fuel;

(ii) Residual fuel oil No. 5 (navy special);

(iii) Residual fuel oil No. 6 (a.k.a. bunker C);

(iv) Petrochemical feedstocks: Naphthas (< 401 °F);

(v) Petrochemical feedstocks: Other oils (> 401 °F);

(vi) Lubricants;

(vii) Waxes; and

(viii) Asphalt and road oil.

(b) CO<sub>2</sub> emissions that result from the complete combustion or oxidation of products when all of the following occur:

(i) The products are exported from Washington;

(ii) Final distribution of the product occurs outside of Washington; and

(iii) The GHG emissions associated with exported petroleum products are voluntarily reported in compliance with chapter 173-441 WAC.

(3) Covered GHG emissions for a natural gas distributor do not include:

(a) Emissions from the combustion or oxidation of products supplied to a covered party that has an emission reduction requirement; or

(b) Units or processes exempted in subsection (4) of this section.

(4) Stationary sources included in the Clean Power Plan (40 C.F.R. Part 60 Subpart UUUU) will be considered to comply with the requirements of this chapter at the beginning of the first compliance period of the Clean Power Plan provided that:

(a) EPA has approved Washington's implementation plan;

(b) The approved implementation plan requires greater GHG emissions reduction than required under 40 C.F.R. Part 60, Subpart UUUU; and

(c) When a unit within a covered party's facility is subject to the Clean Power Plan, then only the GHG emissions from that unit(s) are covered under this subsection.

**NEW SECTION**

**WAC 173-442-050 Baseline GHG emissions value for non-EITE covered parties.** (1) Ecology must assign a baseline GHG emissions value to each non-EITE covered party. Covered parties fall into two categories:

(a) **Category 1.** A covered party with covered GHG emissions averaging greater than or equal to 70,000 MT CO<sub>2</sub>e per year during calendar years 2012 through 2016; or

(b) **Category 2.** A covered party which:

(i) Is a voluntary participant who chooses to participate in the program;

(ii) Did not operate between calendar years 2012 through 2016;

(iii) Had average covered GHG emissions less than 70,000 MT CO<sub>2</sub>e per year during calendar years 2012 through 2016; or

(iv) Is a petroleum product importer. This only applies to covered GHG emissions associated with imported petroleum products.

(c) Ecology may adjust the baseline GHG emissions value for Category 1 or 2 covered parties based on:

(i) Reported GHG emissions data when the calculation methodology approved under chapter 173-441 WAC changes.

(ii) Updated annual GHG reports or an assigned emissions level under WAC 173-441-086.

**Table 2  
Baseline GHG Emissions Value Determination for Non-EITE Covered Parties**

<b>Covered Party</b>	<b>Operated 2012 - 2016 (at least 3 calendar years)</b>	<b>Average GHG Emissions (MT CO<sub>2</sub>e/year)</b>	<b>Ecology Action</b>
Category 1	Yes	≥ 70,000	Assign baseline Refer to subsections (1), (2) and (3) of this section
Category 2	Yes	< 70,000	Assign baseline when emissions reach 70,000 MT CO <sub>2</sub> e, or if requested Refer to subsections (1), (4) and (5) of this section
	No		
	N/A or No	≥ 70,000	Assign baseline Refer to subsections (1), (4) and (5) of this section

(2) **Data sources for setting a Category 1 baseline GHG emissions value.** Ecology must use the following sources of data to set a Category 1 baseline GHG emissions value.

(a) Annual GHG emissions reports submitted under chapter 173-441 WAC; or

(b) An assigned emissions level established under WAC 173-441-086.

(c) Petroleum product producers and natural gas distributors must submit to ecology all emissions data submitted to EPA, or required to be retained by EPA, under 40 C.F.R. Part 98, Subparts MM and NN for calendar years 2012 through 2016. This submission to ecology must be complete by March 31, 2017, and consistent with the methods established in chapter 173-441 WAC.

(d) Ecology must use one of the following sources of information to adjust the baseline GHG emissions value of petroleum product producers that adjust their compliance obligation to account for exported petroleum products as specified in WAC 173-442-040 (2)(b):

(i) The petroleum products producer's GHG emissions for calendar years 2012 through 2016 associated with exported petroleum products voluntarily reported by October

31, 2017, using the methods established in WAC 173-441-120; or

(ii) An assigned GHG emissions level for the petroleum product producer's exported petroleum products based on methods established in WAC 173-441-086. Ecology may choose to base the assigned emissions level on either:

(A) GHG emissions data associated with exported petroleum products reported during calendar years 2017 through 2019 using the methods established in WAC 173-441-120; or

(B) Ecology's estimate of the petroleum product producer's GHG emissions data associated with exported petroleum products during calendar years 2012 through 2016.

(3) **Process to calculate a Category 1 baseline GHG emissions value.**

(a) Ecology must calculate the Category 1 baseline GHG emissions value based on the average (in MT CO<sub>2</sub>e per year) of:

(i) Five years of covered GHG emissions data between 2012 through 2016; or

(ii) At least three years of covered GHG emissions subject to (b) of this subsection.

(b) Ecology may omit a specific calendar year from calculating the baseline GHG emissions value when the data meets at least one of the following criteria:

(i) The data represents a significant difference from the average data based on all of the following:

(A) Primarily caused by a change in the GHG emissions calculation methodology approved under chapter 173-441 WAC during the baseline period that is not correctable by adjusting the existing reported GHG data;

(B) The GHG emissions calculation methodology produced a fifteen percent or more difference between that calendar year's GHG emissions and the 2012 through 2016 average of GHG emissions using the methodology in (a) of this subsection; and

(C) The change is not the result of a process or production change regardless of how large, unusual, or outside of the control of the covered party; or

(ii) The calendar year contains a period of curtailment.

(4) **Setting a Category 2 baseline GHG emissions value.** Ecology must assign a baseline GHG emissions value based on the first three consecutive calendar years after 2012 with average covered GHG emissions during normal operations greater than or equal to 70,000 MT CO<sub>2</sub>e, or when requested by a voluntary participant. Ecology must use one of the following methods to set a Category 2 baseline GHG emissions value consistent with subsection (3)(a) of this section.

(a) Method 1: For existing operations, ecology must set the baseline GHG emissions value:

(i) Using the average of three years of covered GHG emissions (MT CO<sub>2</sub>e/year) from annual GHG reports (WAC 173-441-120 or 173-441-086);

(ii) Ecology may adjust covered GHG emissions using existing reported GHG emissions data when the calculation methodology approved under chapter 173-441 WAC changes.

(b) Method 2: For modified operations, ecology must set the baseline GHG emissions value for a covered party that modifies its operations using the following methods:

(i) Existing emission unit: Use method 1; and

(ii) New or modified emissions unit: Use method 3.

(c) Method 3: For new operations that result in a new covered party, ecology must set the baseline GHG emissions value using one of the following methods:

(i) The average of the first three years of covered GHG emissions (MT CO<sub>2</sub>e/year) under normal operation from annual GHG reports (WAC 173-441-120 or 173-441-086); or

(ii) The benchmarking process in subsection (5) of this section.

(5) **Benchmarking process.**

(a) Responsibilities for covered parties subject to subsection (4)(c) of this section.

(i) The covered party must provide requested emissions information to ecology within sixty working days of a request.

(ii) The covered party must provide documentation of the following data to allow ecology to calculate actual or projected actual emissions:

(A) Information about the GHG emitting processes;

(B) Actual or projected production data;

(C) Actual or projected operating days and hours of operation during a calendar year;

(D) Other information requested by ecology;

(iii) Application materials submitted to ecology for a permit action need only reference dates of the submittal and the office that received the information.

(iv) The covered party must provide access to personnel or hired consultants who can assist ecology in assigning the baseline GHG emissions value.

(b) Ecology responsibilities. Ecology must set the baseline GHG emissions value using the following method:

(i) Ecology must set the baseline GHG emissions value at an emissions rate equal to the ninety percent most efficient facility in all surveyed stationary sources using the benchmarking process in (b)(ii) of this subsection.

(ii) In establishing the benchmark, ecology must:

(A) Use data from similar or identical existing parties and sources.

(B) Determine the appropriate production or product measure for the benchmark.

(C) Use operating and emissions data from existing sources from calendar years 2012 through 2016. Beginning in January 1, 2017, use emissions data for the most recent three years of data.

(D) Calculate covered GHG emissions using methodologies in WAC 173-441-120.

(E) Estimate covered GHG emissions using best available information when a covered party fails to provide emissions data within sixty working days of a request.

(c) To set the baseline GHG emissions value, ecology may request from a covered party:

(i) Information about the GHG emitting processes included in a notice of construction, prevention of significant deterioration, or nonattainment area new source review permit application.

(ii) Materials submitted to a nonecology permitting authority related to a permit application.

(iii) Other information necessary to calculate actual or projected emissions.

#### NEW SECTION

**WAC 173-442-060 GHG emission reduction pathway.** Ecology must assign a GHG emission reduction pathway to all covered parties with baseline GHG emissions values greater than or equal to 70,000 MT CO<sub>2</sub>e, or when requested by a voluntary participant.

(1) For non-EITE covered parties, ecology assigns the GHG emission reduction pathway to the covered party based on their baseline GHG emissions value.

(a) The GHG emission reduction pathway for the first calendar year a covered party meets or exceeds the compliance threshold in WAC 173-442-030(3) is the baseline GHG emissions value for that covered party.

(b) Annual decrease.

(i) The GHG emission reduction pathway decreases annually by an additional one and seven tenths of a percent (1.7%) of the covered party's baseline GHG emissions value.

(ii) The additional one and seven tenths of a percent (1.7%) adjustment to a GHG emission reduction pathway does not apply to any calendar year that includes curtailment recognized by ecology.

(iii) Beginning in calendar year 2036, the emission reduction pathway remains constant at the value calculated for calendar year 2035.

(c) Ecology will issue a regulatory order as provided in WAC 173-442-200(6) to each covered party with its GHG emission reduction pathway in units of MT CO<sub>2</sub>e for each calendar year in the compliance period.

(2) For EITE covered parties the GHG emission reduction pathway is determined per WAC 173-442-070.

#### NEW SECTION

**WAC 173-442-070 GHG emission reduction pathway and emission reduction requirement for EITE covered parties.** Ecology must establish the GHG emission reduction pathway for each EITE covered party using the procedures in this section. A mass-based GHG emission reduction pathway under WAC 173-442-060(1) does not apply to EITE covered parties.

(1) **Production data reporting requirements.** Each EITE covered party must report annual sector-specific production data, as specified by ecology, concurrent with their annual GHG report under chapter 173-441 WAC. Production data must be reported for each calendar year in the baseline period and each calendar year with an emission reduction requirement.

(2) **Determine the output-based baseline.** Ecology must calculate the output-based baseline for each EITE covered party. The output-based baseline is calculated once for each EITE covered party and remains constant for all calendar years.

(a) Determine average GHG emissions and production data for the output-based baseline period.

(i) Use the EITE covered party's average emissions and average production data during the 2012 through 2016 period for EITE covered parties with:

(A) Covered GHG emissions averaging greater than or equal to 70,000 MT CO<sub>2</sub>e per year during calendar years 2012 through 2016; and

(B) At least three full calendar years of covered GHG emissions reported under chapter 173-441 WAC during that period.

(ii) For all other EITE covered parties, use the EITE covered party's average emissions and average production data during the first three consecutive calendar years after 2012 of covered GHG emissions under normal operations greater than or equal to 70,000 MT CO<sub>2</sub>e per year reported under chapter 173-441 WAC.

(iii) The data used for (a)(i) and (ii) of this subsection will not include data for years that would meet the criteria in WAC 173-442-050 (3)(b).

(b) Divide average emissions by average production to get the output-based baseline.

(c) An EITE covered party's baseline GHG emissions value for purposes of applicability under WAC 173-442-030 is the EITE covered party's average emissions (MT CO<sub>2</sub>e/year) over the baseline period as specified in (a) of this subsection.

(d) Ecology may adjust the output-based baseline and baseline GHG emissions value for EITE covered parties based on:

(i) Reported GHG emissions data when the calculation methodology approved under chapter 173-441 WAC changes.

(ii) Updated annual GHG reports or an assigned emissions level under WAC 173-441-086.

(3) **Determine the efficiency reduction rate.** Ecology must calculate the efficiency reduction rate for each EITE covered party. The efficiency reduction rate is calculated once for each EITE covered party concurrently with the output-based baseline and remains constant for all calendar years.

(a) Ecology must calculate an efficiency intensity distribution for each sector with an EITE covered party that meets the requirements in WAC 173-442-030.

(i) Ecology must use the following information to calculate the efficiency intensity distribution for each sector:

(A) GHG emissions data must be comparable to the EITE covered party's data reported under chapter 173-441 WAC and come from the following sources:

(I) EPA's GHG Reporting Program;

(II) Other national programs;

(III) Trade associations; or

(IV) Other similar sources.

(B) Production data must come from:

(I) EPA's GHG Reporting Program;

(II) National emissions inventory;

(III) Energy information agency;

(IV) Other national programs;

(V) Trade associations; or

(VI) Other similar sources.

(C) If ecology determines no production data or emissions data is available to establish an efficiency intensity distribution for a sector, ecology may use existing benchmarking information for the sector. To use the data, ecology must determine that the benchmark is:

(I) Reasonably current; and

(II) Detailed enough to determine the efficiency intensity distribution.

(D) Ecology must use data from the same time period as the output-based baseline period whenever possible.

(ii) Ecology calculates the efficiency intensity distribution for a sector by using paired GHG emissions and production data to create a ranking of efficiencies for sample facilities in that sector. Alternately, existing benchmarking information is used as described in (a)(i)(C) of this subsection.

(b) Ecology must compare the output-based baseline for each EITE covered party to the efficiency intensity distribution for that EITE covered party's sector to determine the EITE covered party's efficiency reduction rate.

(i) If the EITE covered party's output-based baseline is less than or equal to the twenty-fifth percentile value of the sector's efficiency intensity distribution, then ecology must set the EITE covered party's efficiency reduction rate at a level that would reduce emissions at a rate greater than required to meet the GHG emission reduction pathway that would have been required by WAC 173-442-060 (1)(a).

(ii) If the EITE covered party's output-based baseline is greater than or equal to the seventy-fifth percentile value of the sector's efficiency intensity distribution, then ecology must set the EITE covered party's efficiency reduction rate at a level that would reduce emissions at a rate less than required to meet the GHG emission reduction pathway that would have been required by WAC 173-442-060 (1)(a).

(iii) If the EITE covered party's output-based baseline is between the twenty-fifth and seventy-fifth percentile value of the sector's efficiency intensity distribution, then ecology must set the EITE covered party's efficiency reduction rate at a level that would reduce emissions at a rate consistent with meeting the GHG emission reduction pathway that would have been required by WAC 173-442-060 (1)(a).

(iv) If ecology determines an EITE covered party has not supplied sufficient information to complete this assessment, then the EITE covered party's efficiency reduction rate must be set at a level that would reduce emissions at a rate greater than required to meet the GHG emission reduction pathway that would have been required by WAC 173-442-060 (1)(a).

(v) If ecology determines that there is not enough information to establish an efficiency intensity distribution for a sector, then EITE covered parties in that sector will be assigned an efficiency reduction rate at a level that would reduce emissions at a rate consistent with meeting the GHG emission reduction pathway that would have been required by WAC 173-442-060 (1)(a).

**(4) Determine the GHG emission reduction pathway.** By January 30 of the second year of each compliance period, ecology will issue a regulatory order as provided in WAC 173-442-200(6) to each EITE covered party with its GHG emission reduction pathway in units of MT CO<sub>2</sub>e for each calendar year in the compliance period. Ecology will determine the GHG emission reduction pathway for each compliance period using the following approach:

(a) Calculate the EITE covered party's average production based on reported data for the following time period:

(i) For the 2020 through 2022 compliance period: Use average production data from calendar years 2017 through 2019.

(ii) For EITE covered parties with a first compliance obligation after the 2020 through 2022 compliance period: Use average production data from the three calendar year period prior to their first compliance period with a compliance obligation.

(iii) For all other compliance periods, use average production data from the previous compliance period.

(b) The EITE covered party's GHG emission reduction pathway is calculated using Equation 1.

Equation 1

$$RP_x = (AP \times OB) - (AP \times OB \times RR \times (Y_x - 1))$$

Where:

RP<sub>x</sub> = GHG emission reduction pathway for year "x" (MT CO<sub>2</sub>e for year "x")

AP = Average production data as specified in subsection (4)(a) of this section (units of production)

OB = Output-based baseline as specified in subsection (2) of this section (MT CO<sub>2</sub>e/units of production)

RR = Efficiency reduction rate as specified in subsection (3) of this section (%)

Y<sub>x</sub> = The number of calendar years the EITE covered party has been subject to WAC 173-442-030. The first calendar year is designated as calendar year number one.

(c) Any calendar year containing curtailment recognized by ecology does not count toward the total years in Y<sub>x</sub>.

(d) Beginning in calendar year 2036, Y<sub>x</sub> remains constant at the number of years determined for calendar year 2035.

### SECTION 3 - COMPLIANCE OPTIONS

#### NEW SECTION

**WAC 173-442-100 Emission reduction units.** (1) A covered party may use ERUs to meet the compliance obligation in WAC 173-442-200.

(2) ERUs must originate from GHG emission reductions occurring within Washington unless derived from allowances under WAC 173-442-170.

(3) Mandatory retirement of ERUs for compliance.

(a) Ecology must retire an ERU applied to meet a compliance obligation.

(b) The use of an ERU for compliance, as recorded in a compliance report required by WAC 173-442-200 or the registry established in WAC 173-442-230, permanently and irrevocably disqualifies any further use of the unit.

#### NEW SECTION

**WAC 173-442-110 Generating emission reduction units.** ERUs may be generated in the following manner:

(1) Actual emissions below GHG emission reduction requirement. Covered parties (including voluntary parties) may generate an ERU when actual covered GHG emissions, as reported per the requirements of chapter 173-441 WAC for a compliance period, are below the emission reduction requirements for that compliance period. The covered party may generate ERUs in an amount equal to the difference between the reported covered GHG emissions and the higher GHG emission reduction requirement.

(2) Emission reduction projects or programs. A project or program allowed under WAC 173-442-160 may generate ERUs consistent with WAC 173-442-150.

(3) External emission markets. A covered party may generate ERUs consistent with WAC 173-442-170.

#### NEW SECTION

**WAC 173-442-120 Recording emission reduction units.** (1) ERUs exist solely as an accounting mechanism and are not property rights.

(2) Each covered party must keep a record for ten years in a manner prescribed by ecology of any ERUs generated or obtained.

(3) Any ERU generated must be recorded with its vintage year in the registry established in WAC 173-442-230 and the compliance report of the covered party.

(4) A covered party must report ERUs through the compliance report and accounts maintained in the registry established in WAC 173-442-230.

#### NEW SECTION

**WAC 173-442-130 Banking emission reduction units.** (1) A covered party may bank an ERU for ten years.

(2) Banked ERUs are recorded in the registry established in WAC 173-442-230.

(3) First in, first out provision.

(a) The covered party must withdraw an ERU with the oldest vintage year first.

(b) Within the same vintage year the covered party has the option to select which ERUs to withdraw.

#### NEW SECTION

**WAC 173-442-140 Exchanging emission reduction units.** Covered parties may transfer ERUs under the conditions in this section.

(1) Required documentation.

(a) Documentation of an ERU transfer may consist of contractual arrangements, memoranda of understanding, or other similar records with sufficient detail to document the transfer of the ERU from one covered party to another.

(b) The transfer of ERUs occurs between accounts in the registry established in WAC 173-442-230.

(2) Tracking emission reduction units. The covered party must document each transfer of an ERU in the compliance report in a format specified by ecology and in the registry established in WAC 173-442-230.

(3) Role of third parties.

(a) Third parties may only facilitate, broker, or assist covered parties to transfer ERUs recorded in accounts in the registry.

(b) Third parties may not own ERUs.

#### NEW SECTION

**WAC 173-442-150 Criteria for activities and programs generating emission reduction units.** (1) General criteria. An activity or program generating ERUs must meet all of the following criteria. Emission reductions from activities or programs must be:

(a) Real, specific, identifiable, and quantifiable;

(b) Permanent: The activity or program must result in an irrevocable and nonreversible reduction in GHGs released to the atmosphere;

(c) Enforceable by the state of Washington;

(d) Verifiable as described by WAC 173-442-210; and

(e) Additional to existing law or rule.

(i) If an emission reduction is required by another statute, rule, or other legal requirement, the emission reduction cannot be used in this program.

(ii) Emission reductions resulting in part or in whole from the policies below can be used to comply with the requirements of this chapter:

(A) The EPA Clean Power Plan (40 C.F.R. Part 60, Subpart UUUU) consistent with WAC 173-442-040(4).

(B) Washington's GHG emission performance standard (RCW 80.80.040);

(C) Washington's CO<sub>2</sub> mitigation standard for fossil-fueled thermal electric generation facilities (chapter 80.70 RCW); emission reductions must result from mitigation projects, as defined in RCW 80.70.010; or

(D) Commute trip reduction programs as established through RCW 70.94.527 per WAC 173-442-160(3).

(2) RCW 70.235.030(3) establishes that CO<sub>2</sub> emissions from the industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals are carbon neutral and result in zero CO<sub>2</sub> emissions.

#### NEW SECTION

**WAC 173-442-160 Activities and programs recognized as generating emission reduction units.** (1) Ecology will accept ERUs from the activities and programs described below, provided they comply with third-party verification under WAC 173-442-220, the requirements of this section, and WAC 173-442-150:

- Transportation activities;
- Combined heat and power activities;
- Energy activities;
- Livestock and agricultural activities;
- Waste and wastewater activities;
- Industrial sector activities;
- Certain EFSEC recognized emission reductions; and
- Ecology approved emission reductions.

(2) To generate an ERU, the following must occur:

(a) If a protocol is listed from an external registry program, then the emission reduction must be registered on that registry along with the information necessary to establish eligibility to meet the criteria of this chapter.

(b) Where a process is listed instead of a registry-specific protocol, all steps of the process must be followed in a manner approved by ecology and any other departments referenced in the applicable process.

(c) Project types must not be included in the methodologies used in the emission calculations that generate the covered GHG emissions for any covered party reporting as per chapter 173-441 WAC.

(d) Third-party verification must occur as per WAC 173-442-220.

(3) **Transportation activities.** Transportation activities must:

(a) Use less energy or different forms of energy for transportation through the application of:

(i) *Improved Efficiency of Vehicle Fleets* protocol from the American Carbon Registry (as of May 1, 2016); or

(ii) *Truck Stop Electrification* protocol from the American Carbon Registry (as of May 1, 2016).

(b) Exceed workplace goals for the commute trip reduction program as required by RCW 70.94.527 according to the following:

(i) Organizations that participate in commute trip reduction programs may generate ERUs if they provide data and



surveys consistent with the requirements of their applicable program and those of the department of transportation.

(ii) Generation of ERUs will be derived from reductions in the drive-alone trip rate at workplaces participating in commute trip reduction programs, as tracked and reported by the department of transportation.

(iii) The drive-alone trip rate will be measured relative to a baseline maintained by the department of transportation consisting of the average of the 2013/2014 and 2015/2016 commute trip reduction program survey years. An imputed baseline will be used for organizations that enter commute trip reduction programs in years after 2016.

(iv) GHG emission reductions associated with reductions in the drive-alone trip rate will be calculated by the department of transportation.

(v) Ecology will assign the appropriate quantity of ERUs.

(4) **Combined heat and power activities.** Combined heat and power projects demonstrating GHG emission reductions through a methodology submitted to and approved by ecology.

(5) **Energy measures.** Energy efficiency measures and demand side management of electricity and natural gas consumption in Washington, and alternative energy generation technologies located in Washington may generate ERUs.

(a) The acquisition of conservation and energy efficiency in excess of the targets required by the Energy Independence Act per RCW 19.285.040 and any additional acquisition targets established by the utilities and transportation commission by rule or order may generate ERUs.

(i) Eligible conservation and energy efficiency must be reported to the department of commerce or the utilities and transportation commission in accordance with its rules or orders, and consistent with RCW 19.285.070.

(ii) Utilities that are not qualifying utilities, as defined in RCW 19.285.030, may voluntarily submit data on their conservation and energy efficiency acquisitions to the department of commerce in accordance with its rules and in a manner consistent with RCW 19.285.070 to generate ERUs under this section.

(iii) Only conservation and energy efficiency that exceeds the targets established through RCW 19.285.040, targets for natural gas conservation put in place through order, and any additional targets established by the utilities and transportation commission by rule or order is eligible to generate ERUs.

(iv) Natural gas conservation and efficiency must be expressed in units of megawatt-hours using procedures established by the utilities and transportation commission.

(b) The acquisition and subsequent retirement of renewable energy credits that are not retired for purposes of complying with the Energy Independence Act or other regulatory or voluntary programs may generate ERUs.

(i) Renewable resources eligible for generating ERUs include eligible renewable resources as defined by RCW 19.285.030(12) except that only those eligible renewable resources physically located in Washington may generate ERUs.

(ii) ERUs may only be generated if a sufficient quantity of renewable energy credits are retired in the renewable

energy credit tracking system identified in WAC 194-37-210(1) and the following conditions are met:

(A) Each renewable energy credit retired must have the appropriate notation within the tracking system that the renewable resource is eligible for Washington compliance for the Energy Independence Act or this rule.

(B) Renewable energy credits must be retired consistent with the operating rules of the renewable energy credit tracking system and in the proper retirement account within the tracking system as designated by the Washington renewable energy credit tracking system administrator.

(C) Any renewable energy credit used for the purposes of generating ERUs must not have been retired or otherwise used for any other program or requirements.

(D) The renewable energy credit tracking system account holder must establish the department of commerce as a state program administrator with access to the account holder's compliance reports.

(c) The quantity of ERUs generated from exceeding conservation targets as per WAC 173-442-170 (2)(a) or from retiring renewable energy credits as per WAC 173-442-170 (2)(b) is computed by assuming:

(i) The marginal resource for which the conservation or renewable energy generation is avoiding is a new combined-cycle natural gas thermal electric generation turbine sited in Washington.

(ii) The average rate of GHG emissions for such a turbine is nine hundred seventy pounds per megawatt-hour, as per the determination made in WAC 194-26-020.

(iii) That under these assumptions one ERU may be generated by retiring two and one-quarter renewable energy credits or for exceeding a conservation target by two and one-quarter megawatt-hours.

(d) Ecology will allocate the appropriate quantity of ERUs as determined in this subsection.

(6) **Livestock and agricultural activities.** GHG management activities addressing agricultural and livestock activities using:

(a) *Nitrous Oxide Emissions Reductions from Reduced Use of Nitrogen Fertilizer on Agricultural Crops* protocol from the American Carbon Registry (as of May 1, 2016).

(b) The enteric methane, manure methane, and nitrous oxide from fertilizer use modules from the *Grazing Land and Livestock Management* protocol from the American Carbon Registry (as of May 1, 2016). The biotic sequestration and fossil fuel modules of this protocol may not generate ERUs.

(c) The *U.S. Livestock* protocol from the Climate Action Reserve (as of May 1, 2016).

(7) **Waste and wastewater activities.** GHG management activities addressing waste and wastewater infrastructure and activities using:

(a) *U.S. Landfill* protocol from the Climate Action Reserve (as of May 1, 2016);

(b) *Organic Waste Composting* protocol from the Climate Action Reserve (as of May 1, 2016); or

(c) *Organic Waste Digestion* protocol from the Climate Action Reserve (as of May 1, 2016).

(8) **Industrial sector activities.** GHG process and equipment management, operations, and changes affecting industry and manufacturing using:

(a) *Replacement of SF<sub>6</sub> with Alternate Cover Gas in the Magnesium Industry* protocol from the American Carbon Registry (as of May 1, 2016);

(b) *Certified Reclaimed HFC Refrigerants and Advanced Refrigeration Systems* protocol from the American Carbon Registry (as of May 1, 2016);

(c) *Conversion of High-Bleed Pneumatic Controllers in Oil and Natural Gas Systems* protocol from the American Carbon Registry (as of May 1, 2016); or

(d) *Emission Reduction Measurement and Monitoring Methodology for the Transition to Advanced Formulation Blowing Agents in Foam Manufacturing and Use* protocol from the American Carbon Registry (as of May 1, 2016).

(9) Emission reductions derived from one of the activity categories in subsections (3) through (8) of this section and that are from an independent qualified organization recognized by the energy facility site evaluation council under RCW 80.70.050.

(10) Emission reductions derived from one of the activity categories in subsections (3) through (8) of this section through a methodology approved by ecology.

**NEW SECTION**

**WAC 173-442-170 Limitations on the use of allowances.** (1) A covered party may use allowances from external GHG emission reduction programs to generate ERUs when ecology determines:

(a) The allowances are issued by an established multisector GHG emission reduction program;

(b) The covered party is allowed to purchase allowances within that program; and

(c) The allowances are derived from methodologies congruent with chapter 173-441 WAC.

(2) A covered party may demonstrate compliance through the acquisition and use of allowances based on the limitations in this subsection.

(a) A covered party may use allowances for a compliance period consistent with the percentages in Table 3:

**Table 3**

**Percentage Limit on Usage of Allowances for Covered Parties**

Compliance Period	Upper Limit
2017-19	100%
2020-22	100%
2023-25	50%
2026-28	25%
2029-31	15%
2032-34	10%
2035 and beyond	5%

(b) A covered party may use allowances from a single vintage year within a compliance period consistent with the percentages in Table 4. The originating program assigns the vintage year for each allowance.

**Table 4**

**Limits on Use of Allowances from a Vintage Year Within a Compliance Period**

Year within the compliance period	Vintage year of allowance	Percentage not to exceed (%)
1st year	Same year as the 1st year of the compliance period	35
2nd year	Same year as the 2nd year of the compliance period	40
3rd year	Same year as the 3rd year of the compliance period	40

(3) The covered party must document that an allowance used as an ERU has been invalidated from use or placed into a permanent holding account in its originating market.

**SECTION 4 - DEMONSTRATING COMPLIANCE**

**NEW SECTION**

**WAC 173-442-200 Demonstrating compliance.** (1) A covered party must demonstrate compliance with their compliance obligation at the end of each applicable compliance period.

(2) The compliance period is the three-year period specified in WAC 173-442-020 and 173-442-030(3) (Table 1).

(3) Calculation of the compliance obligation and ERU balance.

$$\text{Compliance obligation} = (\text{Sum of covered GHG emissions for the compliance period}) - (\text{Emission reduction requirement for the compliance period})$$

(in MT CO<sub>2</sub>e)

If difference > 1, then must acquire ERUs

If difference < 0, then have excess ERUs

(4) Covered parties must demonstrate compliance by submitting:

(a) GHG reporting data under chapter 173-441 WAC;

(b) ERUs under WAC 173-442-120; or

(c) A combination of (a) and (b) of this subsection that achieves a level meeting the compliance obligation.

(5) A covered party must document compliance consistent with the requirements in WAC 173-442-210.

(6) Regulatory order.

(a) By January 30 of the second year of a covered party's first compliance period, ecology will issue a regulatory order establishing emission reduction requirements for each covered party consistent with their emission reduction pathway.

(b) The emission reduction requirement established for the compliance period ending in 2035 must continue to be met for all following compliance periods.

(c) Ecology must assign GHG emission reduction requirements to each covered party with a baseline GHG emissions value greater than or equal to 70,000 MT CO<sub>2</sub>e per year, or when requested by a voluntary party.

(d) The regulatory order establishes the following:

(i) The baseline GHG emissions value for the:

(A) Covered party determined through WAC 173-442-050; or

(B) EITE covered party determined through WAC 173-442-070; and

(ii) Emission reduction requirements for each compliance period consistent with WAC 173-442-060 and this section.

#### NEW SECTION

**WAC 173-442-210 Compliance report.** (1) Each covered party must submit a compliance report:

(a) In a format prescribed by ecology;

(b) That includes verification complying with WAC 173-442-220; and

(c) By the deadline in WAC 173-442-250.

(2) The covered party is solely responsible for ensuring that ecology receives its compliance report by the deadlines.

(3) The compliance report must contain the following information:

(a) Record of ERUs generated.

(i) The record of each ERU generated must include:

(A) The source of each ERU(s).

(B) The source of the emissions data or computational method used to generate each ERU.

(C) The vintage year of each ERU.

(ii) The record may cover a distinct ERU or a block of ERUs from an identical source.

(b) Record of ERUs banked. The record of ERUs banked must include:

(i) Vintage year of the ERU.

(ii) Origin of the ERU.

(c) Record of ERU transactions. The record of each ERU transaction must include:

(i) The origin of any ERUs acquired.

(ii) The destination of any ERUs transferred.

(iii) The names and contact information of any third-parties who facilitated, brokered, or provided liaison services between the parties making the transfer.

(iv) The vintage year of the ERUs.

(d) Documentation that a third party verified the compliance report.

(e) Signature of the chapter 173-441 WAC covered party's designated representative or alternate designated representative.

(f) Statement attesting to the report's accuracy and validity.

(4) A covered party must retain records for ten years.

(5) **Compliance report corrections.**

(a) Covered parties must correct errors in their compliance report no later than forty-five days after discovery of an error.

(b) Ecology requires corrections regardless of whether errors are identified by:

(i) The third-party verifier;

(ii) The covered party; or

(iii) Ecology.

(c) A covered party may request to have a submitted compliance report for the most recent compliance period reopened for corrective edits and resubmittal.

(d) The covered party must provide justification to ecology for the report correction(s) and indicate the specific corrections they will make to the report.

(e) Each submitted request is subject to ecology review and approval. Permissions to correct a report does not preclude enforcement based on misreporting.

(6) **Ecology denial of compliance report.**

(a) Ecology will determine if the compliance report contains errors that impact the verification status of the compliance report.

(b) Ecology may deny a compliance report regardless of verification. Ecology may deny for these reasons:

(i) Failure to submit a complete compliance report by the deadline;

(ii) Failure to complete third-party verification if required; or

(iii) Other forms of noncompliance with this chapter.

(7) **Requirements when covered GHG emissions fall below the compliance threshold.**

(a) A covered party may discontinue submitting a compliance report for the purposes of this chapter under the following conditions:

(i) After three consecutive years of reporting covered GHG emissions less than 50,000 MT CO<sub>2</sub>e/yr; and

(ii) The covered party notified ecology of its intent to discontinue the report by the compliance report deadline in WAC 173-442-250.

(iii) Covered parties must continue to submit annual GHG reports required by chapter 173-441 WAC.

(b) A covered party that shuts down or changes operations to eliminate covered GHG emissions is exempt from submitting future compliance reports under the following conditions:

(i) The covered party must:

(A) Submit a compliance report for the last year of operation;

(B) Certify the closure of all GHG emitting processes and operations; and

(C) Notify ecology of its intent to discontinue the compliance report by the compliance report deadline in WAC 173-442-250.

(ii) Exemptions. This provision does not apply to:

(A) Seasonal or temporary cessation of operations;

(B) Municipal solid waste landfills;

(C) Industrial waste landfills; or

(D) Underground coal mines.

(iii) The covered party must resume submitting a compliance report for any future calendar year when GHG-emitting processes or operations resume operation.

(c) A covered party must resume submitting a compliance report when total covered GHG emissions exceed 50,000 MT CO<sub>2</sub>e/year.

**(8) Ecology actions.**

(a) Ecology is not responsible for failure of electronically submitted reports.

(b) Ecology must deem a report submitted electronically to be validly signed when accompanied by a digital signature that meets the requirements designated by ecology.

NEW SECTION

**WAC 173-442-220 Verification. (1) Emission reductions subject to third-party verification.** All emission reductions for which ERUs are generated under WAC 173-442-160 and 173-442-150(2) are:

(a) Subject to the verification procedure requirements of this section;

(b) Subject to any verification criteria, procedures, or methods that are part of the protocols, processes, or methodologies applicable for the type of emission reduction detailed in WAC 173-442-160 and 173-442-150(2); and

(c) Subject to verification by a certified verifier using processes and procedures consistent with the International Organization for Standardization 14064-3:2006 protocol (as of May 1, 2016).

(2) The third-party verifier must certify that compliance reports are consistent with the requirements in this chapter.

(3) **Verification report content.** The verification report must be in a format specified by ecology. The report must include:

(a) Documentation identifying that the covered party complied with the requirements of chapter 173-441 WAC;

(b) Name and other information about the third-party verifier, including:

(i) All relevant information about the third-party verifier in subsection (6)(a) of this section;

(ii) The names, roles, and sector specific qualifications of individuals working on the verification report;

(iii) Document that the verifier met the requirements in WAC 173-441-085; and

(iv) Certify that the verification report is true, accurate, and complete to the best of their knowledge.

(c) A verification plan that details methodologies used to verify the compliance report and schedule describing when the verification occurred.

(d) The third-party verifier's review of the covered party's accounting of emissions, emissions reductions, ERUs, and all information relevant to demonstrating compliance with the applicable emission standards.

(e) Corrections made to the compliance report.

(f) The third-party verifier's evaluation of the compliance report. This must include a log of issues identified in the course of verification, their potential impact on the quality of the compliance report, and their resolution.

(g) Documentation of required on-site visit. Information about the required on-site visit, including date(s) and a description of the verification services conducted on-site.

(i) The third-party verifier must conduct an on-site visit at least once during a compliance period. During the on-site visit, the verifier must:

(A) Check that all sources specified in the compliance report are identified appropriately.

(B) Confirm that all relevant emissions, emission reductions, and accounting for ERUs are included in the compliance report.

(C) Review the data management systems used by the covered party to track, quantify, and report GHG emissions and, when applicable, product data and fuel transactions. The third-party verifier must evaluate the uncertainty and effectiveness of these systems.

(D) Interview key personnel.

(E) Make direct observations of equipment for data sources and equipment supplying data for sources determined to be high risk.

(F) Assess conformance with measurement accuracy, data capture, and missing data substitution requirements.

(G) Review financial transactions to confirm:

(I) Fuel, feedstock, and product data; and

(II) Complete and accurate reporting of required data, such as facility fuel suppliers, fuel quantities delivered, and if fuel was received directly from an interstate pipeline.

(ii) The verifier must document the findings from the visit and the dates of the visit.

(h) For petroleum product producers or importers, or natural gas distributors, the third-party verifier must visit the headquarters or other location of central data management.

(4) **Verification deadline.** The third-party verifier must submit a complete verification report to ecology by the compliance report deadline in WAC 173-442-250.

(5) **Corrections.** The covered party must submit corrections to the verification report to ecology no later than forty-five days after discovery of the error.

**(6) Eligible third-party verifiers.**

(a) A third-party verifier must be approved by ecology. Approval requires:

(i) Demonstrating to ecology's satisfaction that the third-party verifier has sufficient knowledge of the relevant methods and protocols in this chapter. Ecology may limit certification to certain types or sources of emissions.

(ii) Registering as a third party with ecology (both individuals and organizations); and

(iii) Active accreditation or recognition as a third-party verifier under at least one of the following GHG programs:

(A) California Air Resources Board's mandatory reporting of GHG emissions program;

(B) The Climate Registry;

(C) Climate Action Reserve;

(D) American National Standards Institute (ANSI); or

(E) Other GHG verification program approved by ecology.

(b) A covered party must not use the same third-party verifier (either organization or individuals) for a period of more than six consecutive years. The covered party must wait

at least three years before using the previous third-party verifier to verify their compliance reports.

(c) A covered party and third-party verifier must certify that there is not a conflict of interest in verifying the compliance report. A conflict of interest exists when:

(i) The third-party verifier and covered party share any management staff or board of directors membership, or the third-party verifier has employed any of the senior management staff of the covered party, or vice versa, within the previous five years; or

(ii) Any employee of the third-party verifier, or any employee of a related entity, or a subcontractor who is a member of the verification team has provided to the covered party any services within the previous five years.

(iii) Any staff member of the third-party verifier provides any type of incentive to a covered party to secure a verification services contract.

#### NEW SECTION

**WAC 173-442-230 Registry.** (1) Ecology will develop an electronic data base to ensure a secure and reliable method to track ERUs.

(2) The data base must:

(a) Create and assign unique identifiers to ERUs;

(b) Track movement of ERUs, including:

(i) Transfers of ERUs between parties; and

(ii) Retirement of ERUs.

(c) Interface with other carbon registries or tracking systems, as possible.

#### NEW SECTION

**WAC 173-442-240 Reserve.** Ecology will establish an account of reserve ERUs for the purposes described in this section.

(1) **Contributions to the reserve.**

(a) Ecology must allocate to the reserve:

(i) Two percent of each:

(A) Covered party's emission reduction pathway annual decrease in WAC 173-442-060 (1)(b); and

(B) EITE covered party's contribution as follows:

(I) If the EITE covered party's  $RA_x$  is greater than zero, then the difference in MT CO<sub>2</sub>e of GHG emissions results in ERUs allocated to the reserve.

(II) If the EITE covered party's  $RA_x$  is less than zero, then the difference in MT CO<sub>2</sub>e of GHG emissions results in ERUs retired from the reserve.

(III) Calculate MT CO<sub>2</sub>e of GHG emissions of ERUs allocated to or retired from the reserve using Equation 2.

Equation 2

$$RA_x = ((BP \times OB) - (BP \times OB \times RR \times (Y_x - 1))) - RP_x$$

Where:

$RA_x$  = Reserve adjustment for given EITE covered party for calendar year "x" (MT CO<sub>2</sub>e for year "x")

$RP_x$  = GHG emission reduction pathway for given EITE covered party for calendar year "x" as specified in WAC 173-442-070 (4)(b) (MT CO<sub>2</sub>e for year "x")

BP = Baseline production data for given EITE covered party as specified in WAC 173-442-070 (2)(a) (units of production)

OB = Output-based baseline for given EITE covered party as specified in WAC 173-442-070(2) (MT CO<sub>2</sub>e/units of production)

RR = Efficiency reduction rate for given EITE covered party as specified in WAC 173-442-070(3) (%)

$Y_x$  = The number of calendar years the EITE covered party has been subject to WAC 173-442-030. The first calendar year is designated as calendar year number one.

(C) Any calendar year containing curtailment recognized by Ecology does not count toward the total years in  $Y_x$ .

(D) Beginning in calendar year 2036,  $Y_x$  remains constant at the number of years determined for calendar year 2035.

(ii) ERUs generated as a result of facility curtailment.

(b) Ecology must transfer into the reserve the ERUs specified in (a)(ii) of this subsection within one hundred twenty days after each applicable compliance period (WAC 173-442-200).

(c) Ecology will not accept into the reserve retired or expired ERUs.

(2) **Retirements within the reserve.** Ecology may retire reserve ERUs to ensure consistency with an aggregate emission reduction limit for the program and for purposes consistent with this rule. Ecology may retire reserve ERUs:

(a) For covered GHG emissions from covered parties that do not have a GHG baseline emissions value established through WAC 173-442-050 (1)(a), or existing stationary sources that expand, or physically modify their operations.

(b) To address conditions where two ERUs may be generated for each metric ton of reduced GHG emissions from programs or activities.

(c) To promote the viability of voluntary renewable energy programs in Washington.

(i) Ecology, in conjunction with the departments of commerce and the utilities and transportation commission, will engage stakeholders and renewable energy market experts to estimate demand for voluntary renewable energy programs serving Washington customers.

(ii) Ecology may allocate a portion of the reserve ERUs for retirement as voluntary renewable energy purchases by Washington customers consistent with the estimate in (c)(i) of this subsection, after taking into account the availability of reserve ERUs.

(iii) Ecology will determine the number of reserve ERUs retired for each representative unit of renewable energy purchased on the voluntary market.

(3) **Withdrawals from the reserve.** Ecology may assign reserve ERUs to covered parties for the following purposes:

(a) A curtailed stationary source that restarts operations will be assigned fifty percent of the ERUs that were allocated to the reserve during the calendar year prior to restart as per subsection (1)(a)(ii) of this section.

(b) The Environmental Justice Advisory Committee.

(i) Ecology will convene an Environmental Justice Advisory Committee comprised of persons who are well-informed on the principles of environmental justice and who represent communities of color, low-income communities, and environmental justice interests from geographically diverse areas of the state.

(ii) Ecology will determine the amount of reserve ERUs available to the committee at the end of each applicable compliance period.

(iii) The purpose of the committee is to award reserve ERUs to covered parties that implement, fund, or otherwise facilitate emission reduction projects or programs consistent with the priorities and environmental justice criteria determined by the committee.

(iv) The committee must award reserve ERUs on a one-for-one or a two-for-one matching basis with ERUs from an emission reduction activity or project that is consistent with WAC 173-442-160.

(v) The committee does not have to allocate its entire allotment of reserve ERUs.

(vi) Unallocated reserve ERUs return to the reserve.

(4) **Priority of reserve uses.** Ecology will allocate or retire reserve ERUs in the following priority:

(a) Startup of curtailed facilities consistent with subsection (3)(a) of this section.

(b) Covered parties entering the program that do not have a GHG baseline emissions value established through WAC 173-442-050 (1)(a), or existing stationary sources that expand, or physically modify their operations consistent with subsection (2)(a) of this section.

(c) Changes in production consistent with subsection (1)(a)(i)(B)(III) of this section.

(d) Harmonizing ERU generation with reduced GHG emissions consistent with subsection (2)(b) of this section.

(e) Projects or programs with positive environmental justice impacts consistent with subsection (3)(b) of this section.

(f) Supporting voluntary green power renewable programs consistent with subsection (2)(c) of this section.

NEW SECTION

**WAC 173-442-250 Compliance report and verification due date.** (1) Covered parties required to report GHG emissions to EPA to comply with 40 C.F.R. Part 98 must submit their compliance report and verification by the dates in the "Report to EPA" column in Table 5.

(2) All other covered parties must submit their compliance report and verification by the dates in the "Report to Ecology" column in Table 5.

**Table 5**

**Compliance Report and Verification Due Date**

<b>Compliance Period</b> (Calendar year)	<b>Report to EPA</b> Due December 31	<b>Report to Ecology</b> Due July 28
2017 through 2019	2020	2021

<b>Compliance Period</b> (Calendar year)	<b>Report to EPA</b> Due December 31	<b>Report to Ecology</b> Due July 28
2020 through 2022	2023	2024
2023 through 2025	2026	2027
2026 through 2028	2029	2030
2029 through 2031	2032	2033
2032 through 2034	2035	2036
2035 through 2037	2038	2039
Every 3 years	Every 3 years	Every 3 years

**SECTION 5 - OTHER REQUIREMENTS**

NEW SECTION

**WAC 173-442-320 Program review.** (1) Ecology will periodically review the program established by this chapter.

(2) If another program establishes GHG reduction requirements from covered parties, ecology will compare the programs. As a result of this comparison, ecology may suspend, alter, or repeal some or all of the requirements if ecology determines the new program requires similar or greater GHG reductions from the covered parties.

NEW SECTION

**WAC 173-442-330 Air operating permit.** (1) The regulatory order issued under WAC 173-442-200(6) is an applicable requirement that must be included in an air operating permit required by chapter 173-401 WAC.

(2) In an air operating permit, the clean air rule regulatory order must be listed as a "state only" requirement.

(3) The regulatory order is a stand-alone appendix to an air operating permit.

(4) Only ecology implements and enforces the terms of the regulatory order.

NEW SECTION

**WAC 173-442-340 Enforcement.** (1) A violation of any requirement of this chapter subjects the covered party to enforcement in chapter 70.94 RCW.

(2) Each metric ton of covered GHG emissions that a covered party emits that exceeds the covered party's compliance obligation, and is not covered by an ERU is a separate violation.

(3) Each day that the covered party does not meet the compliance obligation is a separate violation.

(4) Ecology is solely responsible for enforcing the requirements of this chapter. Nothing in this chapter other-

wise alters a local air authority's ability to regulate covered parties in their jurisdiction.

(5) Penalties may be appealed to the pollution control hearings board per chapter 43.21B RCW.

#### NEW SECTION

**WAC 173-442-350 Confidentiality.** (1) **Emissions data.** Emissions data submitted to ecology is public information and is not confidential.

(2) **ERU data.** Data about an ERU is considered public information unless ecology approves a request under subsection (3) of this section.

(3) **Confidentiality requests.** A covered party may request proprietary information that is not emissions data be kept confidential. The request must show how the data:

(a) Meets the requirements of RCW 70.94.205 (Confidentiality of records and information); or

(b) Is exempt from public disclosure under the Washington Public Records Act (chapter 42.56 RCW).

(4) **Verification status.** Ecology's determination of the verification status of each report is public information. All confidential data used in the verification process will remain confidential.

#### NEW SECTION

**WAC 173-442-360 Addresses.** Submit all requests, notifications, and communications to ecology in a format specified by ecology in either of the following:

(1) **For U.S. mail:** Clean Air Rule, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

(2) **For e-mail:** CAR@ecy.wa.gov.

#### NEW SECTION

**WAC 173-442-370 Severability.** If any provision of the rule or its application to any covered party, person, or circumstance is held invalid, the remainder of the rule or application of the provision to other covered parties, persons, or circumstances is not affected.

### WSR 16-12-104

#### PROPOSED RULES

#### DEPARTMENT OF TRANSPORTATION

[Filed June 1, 2016, 7:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-123.

Title of Rule and Other Identifying Information: New rules, chapter 468-602 WAC, Electric vehicle charging infrastructure pilot program.

Hearing Location(s): Transportation Building, Nisqually Conference Room, 310 Maple Park Avenue S.E., Olympia, WA 98504, on July 12, 2016, at 8:30 a.m.

Date of Intended Adoption: July 12, 2016.

Submit Written Comments to: Tonia Buell, Project Development Manager, Washington State Department of Transportation (WSDOT) Innovative Partnerships, 310 Maple Park Avenue S.E., Olympia, WA 98504-7395, buellt@wsdot.wa.gov, by July 11, 2016.

Assistance for Persons with Disabilities: Contact Grant Heap by July 11, 2016, TTY (800) 833-6388 or (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules, chapter 47.04 RCW directs the department's innovative partnerships office to adopt rules and develop a pilot program to support the deployment of electric vehicle charging infrastructure that is supported by private financing.

Reasons Supporting Proposal: 2ESSB 5987, Section 403 adds a new section to chapter 47.04 RCW directing WSDOT to adopt rules for a new electric vehicle charging infrastructure pilot program.

Statutory Authority for Adoption: Chapter 47.04 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: New rules as directed by chapter 47.04 RCW. See below for proposed rules, chapter 468-602 WAC, Electric vehicle charging infrastructure pilot program.

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting: Tonia Buell, Olympia, Washington, (360) 705-7439; Implementation and Enforcement: Anthony Buckley, Olympia, Washington, (360) 705-7023.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules will not result in a negative economic impact for small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. There are no additional costs required to implement these rules.

May 31, 2016

Kara Larsen

Director of Risk Management  
and Legal Services

### Chapter 468-602 WAC

#### ELECTRIC VEHICLE CHARGING INFRASTRUCTURE PILOT PROGRAM

#### NEW SECTION

**WAC 468-602-010 Authority and purpose.** RCW 47.04.350 directs the Washington state department of transportation public-private partnership office to develop a pilot program to support the deployment of electric vehicle charging infrastructure that is supported by private financing.

The pilot program will consist solely of projects that provide a benefit to the public through development, demonstration, and deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions or otherwise increase energy independence for the state.

Funds will be available for the deployment of electric vehicle quick-charging stations at key locations along state and federal highway corridors to support interurban, inter-state, and interregional travel.

#### NEW SECTION

**WAC 468-602-020 Definitions.** Bidder: Nonprofit organizations and government agencies including, but not limited to, federal, state and local public agencies such as cities, counties, municipal corporations, special purpose districts, tribes, ports, air quality districts, public utility districts, transit systems, and regional organizations serving areas adjacent to highway corridors.

Corridor: A state or federal highway and interconnected streets connecting communities or destinations and serving major sources of vehicular travel within the state of Washington.

Department: Washington state department of transportation.

Electric vehicle charging station: Products or assemblies installed for the purpose of safely delivering and managing the transfer of electrical energy from an electrical source to an electric vehicle.

Eligible project or project: The installation of one or more electric vehicle charging stations along a corridor within the state of Washington.

Indirect value: Benefits of the project that may accrue to project participants other than for the use of the charging equipment.

Industry standard charging equipment: Nonproprietary electric vehicle supply equipment (EVSE) that meets the common standards used for most mass-produced makes and models of plug-in electric vehicles sold in Washington including, but not limited to, CHAdeMO, SAE CCS, and SAE J1772.

Owner-operator: An entity involved in installing and operating charging equipment including dedicated charging service companies, charging equipment manufacturers, property owners acting as site hosts, automakers, electric utilities, electricity generators, and state and local governments.

Private sector partner: An entity contributing to the project who stands to gain indirect value from development of the project including, but not limited to, a motor vehicle manufacturer, retail store, nonprofit organization, or tourism stakeholder.

Profitable and sustainable: Yielding profit or financial gain after the initial project investment and the financial ability to maintain the equipment over time. Projects that strongly demonstrate their financial sustainability within a five-year performance period may be prioritized.

Project: Deployment of publicly accessible electric vehicle fast-charging stations at one or more accessible locations along a corridor.

#### NEW SECTION

**WAC 468-602-030 Priority corridors.** The department shall define the corridors within which bidders may propose to install electric vehicle charging infrastructure. Priority corridors include Interstate 5, U.S. Highway 2, Interstate 90,

U.S. Highway 101, and roadways connecting mid-size communities and major tourist destinations.

The department believes having an electric vehicle fast charger stationed within approximately 40 road miles of other publicly accessible electric vehicle fast chargers along the priority corridors will provide robust, dependable charging infrastructure. Bidders are encouraged to submit proposals that clearly support the department's goal of a 40-mile interval target. Bidders must explain how their project will lead to the eventual build out of the corridor, and/or planned future charging infrastructure along the corridor.

A bidder may submit a proposal for a project in a corridor that is not listed above as a priority corridor. The department will consider such proposals under the following guidelines:

- Must meet the requirements listed in WAC 468-602-040.
- Must provide supporting evidence that charging stations will be located where the charging services are in demand by electric vehicle customers.

#### NEW SECTION

**WAC 468-602-040 Project requirements.** Projects shall provide convenient, cost-competitive, reliable, and easy access for drivers to recharge mass-produced plug in electric vehicles with industry standard charging equipment. Projects shall expand the network of infrastructure geographical or strengthen the existing network by providing fault tolerance and redundancy. The department shall ensure projects meet the following requirements:

(1) Bidders must have private sector partners contributing to the project who stand to gain indirect value from development of the project including, but not limited to, motor vehicle manufacturers, retail stores, or tourism stakeholders;

(2) Bidders must demonstrate that the proposed project will be valuable to electric vehicle drivers and will address a gap in the state's electric vehicle charging station infrastructure;

(3) Projects must be expected to be profitable and sustainable over time for the owner-operator and/or the private sector partner, inclusive of indirect value gained;

(4) Bidders must specify how the project captures the indirect value of charging station deployment to the private sector partner; and

(5) Bidders and their private sector partners must agree to operate and maintain the stations for at least five years and must meet the requirements in the department's solicitation materials for networked equipment offerings, station operations and uptime, public access, payment options, customer service, signage, and period of performance.

#### NEW SECTION

**WAC 468-602-050 Selection process.** The selection process shall comply with all applicable state laws and policies that govern the department. Solicitations will include, but are not limited to, the following steps:

- Appointment of a procurement coordinator;
- A schedule of procurement activities;
- Bidder question and answer period;



- Public notification of apparently successful bidder;
- An optional bidder debrief; and
- Complaint and protest procedures.

In evaluating proposals, the department may use the electric vehicle financial analysis tool developed during the joint transportation committee's study of financing models for electric vehicle charging station infrastructure.

The department may award only one grant or loan per project from the electric vehicle charging infrastructure account.

June 1, 2016  
Randy Dorn  
State Superintendent  
of Public Instruction

**WSR 16-12-106**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed June 1, 2016, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-064.

Title of Rule and Other Identifying Information: WAC 392-160-015 Identification of eligible students, 395-160-020 Approved test for determining initial eligibility—English proficiency scores, and 395-160-035 Program exit requirements—Testing.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Billings Conference Room, 600 Washington Street S.E., Olympia, WA 98501, on July 6, 2016, at 1:00 p.m.

Date of Intended Adoption: July 8, 2016.

Submit Written Comments to: Collette Mason, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail collette.mason@k12.wa.us, fax (360) 725-0424, by July 6, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by July 6, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These WAC require updating to align with assessments currently used for English language learners. Clarification is needed to address the outdated language.

Statutory Authority for Adoption: RCW 28A.180.060.

Statute Being Implemented: RCW 28A.180.060.

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

Name of Agency Personnel Responsible for Drafting: Collette Mason, OSPI, 600 South Washington, Olympia, WA, (360) 725-6068; Implementation: Michael Middleton, OSPI, 600 South Washington, Olympia, WA, (360) 725-6434; and Enforcement: Robin Munson, OSPI, 600 South Washington, Olympia, WA, (360) 725-6336.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

AMENDATORY SECTION (Amending WSR 08-19-039, filed 9/10/08, effective 10/11/08)

**WAC 392-160-015 Identification of eligible students.**

(1) District procedures—Identification of primary language required: Every school district board of directors shall adopt written procedures governing the identification of each student's primary language and the determination of which students with a primary language other than English are eligible students. Such procedures shall include:

(a) A home language survey, completed by the student and the student's parent(s) or guardian(s), which identifies the student's primary language as other than English; and

(b) Provisions for testing students on the state-approved (~~Washington language proficiency placement test~~) screener.

(2) Deadline for determining eligibility of newly enrolled students: The primary language and eligibility of each newly enrolled student shall be established no later than the tenth school day after the date upon which the student registers and commences attendance at a particular school district. Provided that no eligible student shall be required to participate in a transitional bilingual instructional program or an alternative instructional program, if the parent/guardian chooses to opt the student out of program services.

(3) Annual reassessment of all (eligible) students is required: Each school year each school in which an eligible student is enrolled shall conduct an evaluation of the overall academic progress and English language development of the student. This evaluation must include, but not be limited to, the administration of a standardized test in reading, writing, listening and speaking in English as set forth in WAC 392-160-035.

AMENDATORY SECTION (Amending WSR 09-04-014, filed 1/23/09, effective 2/23/09)

**WAC 392-160-020 Approved test for determining initial eligibility—English proficiency scores.** Approved English proficiency test(~~Washington language proficiency placement test (WLPT)~~) as established by the office of superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 08-09-071, filed 4/16/08, effective 5/17/08)

**WAC 392-160-035 Program exit requirements—Testing.** (1) No student shall continue to be entitled to a transitional bilingual instructional program or alternative instructional program after the student has received instruction in a transitional bilingual instructional program or alternative instructional program conducted pursuant to this chapter within any one or more school districts for a period of three consecutive school years (i.e., 540 school days or portions thereof): Unless the student has not yet met exit criteria on (~~Washington~~) the English language proficiency (~~test~~)

assessment as established by the office of superintendent of public instruction.

(2) The approved test for measurement of improvement in English language skills for purposes of exit from the transitional bilingual instructional program or alternative instructional programs shall be the ((Washington)) English language proficiency ((test)) assessment.

(3) No student shall be eligible for continued funding in the transitional bilingual instructional program or alternative program upon meeting or exceeding the state standards as measured by the ((WLPF)) English language proficiency assessment. As provided for in this section and WAC 392-160-015, the parent/guardian retains the option to refuse program services for the eligible student.

**WSR 16-12-107**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed June 1, 2016, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-130.

Title of Rule and Other Identifying Information: Amending WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards.

Hearing Location(s): Red Lion, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 14 or 15, 2016, at 11:30 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 14 or 15, 2016.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by July 1, 2016.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In July 2015, the commissioners authorized group 12 amusement games to be played by persons twenty-one and over. This proposed rule change would require group 12 amusement games to prominently display on a sticker or on the screen a message to let players know the amusement game is not a slot machine, no cash prizes are allowed, and points to be awarded can be pre-viewed without the insertion of money or anything of value.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0201.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tina Griffin, Assistant Director, Lacey, (360) 486-3546; Implementation: David Trujillo, Director, Lacey, (360) 486-

3512; and Enforcement: Josh Stueckle, Acting Agent-in-Charge, Lacey, (509) 325-7909.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

**Proposed Changes to Rules:** WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards.

This rule change would require group 12 amusement games to prominently display on a sticker or on the screen, "This is not a slot machine. No cash prizes are allowed. You can preview the points to be awarded if the puzzle is correctly solved before each play of the game without the insertion of money or anything of value."

Involvement of Small Businesses: We filed the CR-101 on March 2, 2016, under WSR 16-06-130.

On [In] July 2015, the commissioners approved a new type of amusement game, group 12 amusement games with the passage of a new rule, WAC 230-13-067.

In October 2015, operators began putting group 12 amusement games into play and a number of questions arose regarding the operation, licensure, recordkeeping, and regulatory controls for this [these] new type[s] of amusement games. In an effort to address the questions and get information out to stakeholders timely, we started posting information on our web site under "Breaking News" on group 12 amusement games.

On November 9, 2015, we sent an e-mail to the Class B and above amusement game licensees that we had e-mail addresses for informing them that we had drafted rules for discussion on a number of different issues concerning group 12 amusement games. (These rules did not include this rule change.)

On November 12, 2015, we asked stakeholders that attended the study session, which is open to the general public, to submit any comments or rule change language, not limited to the rules staff drafted, to address the issues surrounding group 12 amusement games to commission staff by November 30, 2015.

On December 24, 2015, we sent notice to all commercial and amusement game licensees of the updated rule proposals based [on] the feedback we received during the comment period. We also posted the draft rules on our web site.

At their February 11, 2016, meeting, the commissioners asked staff to explore regulating the appearance so that the game does not look like a slot machine. On February 12, 2016, staff posted a summary of the commissioners' request for a rule change in the special "Breaking News" section of our web site for group 12 amusement game information. We also posted that we would hold a stakeholder meeting to discuss all group 12 amusement game rules currently being discussed, which included the commissioner's request for rule change to WAC 230-13-067.

On February 26, 2016, staff posted in the "Breaking News" section of the web site for group 12 amusement games a summary of the February 22, 2016, stakeholder meeting in which this proposed rule was discussed.

At least one week prior to the March 11, 2016, commission meeting, we posted this rules package, which included this specific rule, on our web site.

On March 25, 2016, we posted information on this rule as filed by the commissioners at their March 11, 2016, commission meeting in the special section of our web site for group 12 amusement games. We also posted that we would be holding a stakeholder meeting to discuss all group 12 amusement game rules pending on April 9, 2016.

On April 9, 2016, we held a stakeholder meeting to discuss all group 12 amusement game rules, which included all rules in this package, including this specific rule.

At least one week prior to the April 14, 2016, commission meeting, we posted this rules package, including this specific rule, on our web site.

At the April 14, 2016, commission meeting, a commissioner asked staff to make additional changes to the rule to make it clearer. On April 15, 2016, we posted in the "Breaking News" section of our web site for group 12 amusement games a summary of the rules discussed and action taken by the commissioners at the April commission meeting.

At least one week prior to the May 12, 2016, commission meeting, we posted this rules package, along with the commissioner's requested language change from the April 2016 commission meeting, on our web site.

At the May 12, 2016, study session, stakeholders were asked what costs they would incur if the rule proposal went into effect. Stakeholders provided feedback as indicated below.

In summary, the rule proposal to change WAC 230-13-067 was discussed at study sessions on the following dates: March 11, April 14, and May 12, 2016. It will also be discussed at the study session on July 14/15, 2016. The rule proposal was discussed and public comment taken at the commission meetings on March 11, April 14, and May 12, 2016. It will also be discussed and public comment will be taken at the July 14/15, 2016, commission meeting. Lastly, it was discussed at two stakeholder meeting[s] held on February 22 and April 9, 2016.

This process provided small businesses opportunities in the development of the new rule.

**1. Description of the Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:** In July 2015, the commissioners authorized group 12 amusement games to be played by persons twenty-one and over. Since this time, numerous questions and concerns have been raised.

At their February 2016 meeting, the commissioners asked staff to explore regulating the appearance of group 12 amusement games, so that the game does not look like a slot machine. Staff prepared a rule change with two options for consideration at the March meeting. The commissioners filed the rule option that requires group 12 amusement game operators to prominently display a sticker or an onscreen warning stating: "This is not a slot machine. No cash prizes are allowed. You can preview the points to be awarded if the puzzle is correctly solved available before each play of the game without the insertion of money or anything of value."

**2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply:** Small business licensees do not need to use any professional services to comply with this rule change. Licensees can chose [choose] how they will comply with this rule if it goes into effect. They can

either put a sticker on each group 12 amusement game or work with the manufacturer of the group 12 amusement game to have the game display the warning message on the game screen before a game is played.

If operators choose to put a sticker on each group 12 amusement game they own, they will need to create and print the sticker. Licensees should be able to use store bought labels and print the warning with a home/work computer and printer.

Alternatively, a licensee would only be able to work with its group 12 amusement game manufacturer to place the warning on the manufacturer's group 12 amusement game software. No additional professional services would be needed for this option.

**3. The Actual Costs to Small Businesses of Compliance, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:** There would be some costs to small business licensees to comply with this rule change. As of May 3, 2016, when we asked amusement game owners to tell us how many group 12 amusement games they had in the state, there were about two hundred eighty group 12 amusement games placed at about one hundred thirty-five licensed locations in Washington. The most a single owner had was one hundred twenty-eight group 12 amusement games in about fifty-five locations. The second highest number of group 12 amusement games by a single owner is about fifty in ten locations.

Small business licensees informed us at the May 2016 study session that their costs would include printing, labor and gas to print and put the stickers on each [of] their group 12 amusement games. Licensees have not provided an actual monetary cost associated with this rule change.

We contacted one group 12 amusement game manufacturer who estimated it would be a one-time cost of about \$1,000 for a software change to display the warning message.

Alternatively, creating warning label stickers on a work computer and printer should cost less than \$5.00 per sticker. This cost should mostly be a one-time cost unless a sticker needed to be replaced. A box of one thousand 2" x 4" labels, including tax, costs about \$48. Additional costs would include: Printer ink and gas and labor to place the labels onto devices they own.

There would also be a labor cost to track which group 12 amusement games had stickers and which did not. However, we don't know the labor costs per hour of each game owner and the gas it would take to travel to all approximately one hundred thirty-five locations in Washington for the approximately twenty game owners. Some of the games are collocated on the business premises while other games are in locations that are renting the games from the group 12 amusement game owner.

Currently, group 12 amusement game owners go to each location in which a game is in operation at least once a month to check on the game and withdraw the cash from the game. Therefore, game owners should be able to minimize the cost of compliance by placing the warning label onto the machine during one of their regularly scheduled visits to service the games.

Game owners would likely incur the same labor, gas and administrative tracking costs to install the upgraded software

on each group 12 amusement game they owned in Washington, which as of May 3, 2016, there were approximately two hundred eighty games in about one hundred thirty-five licensed locations. As stated above, we don't know the labor costs per hour, number of hours and the travel expenses each of the approximate [approximately] twenty game owners would incur to bring each group 12 amusement game into compliance with this rule.

**4. Whether Compliance with the Rule, Based on Feedback Received from Licensees, Will Cause Businesses to Lose Sales or Revenue:** This rule should not cause a small business to lose sales or revenue. Stakeholders have not indicated at the two stakeholder meetings and three study sessions that compliance with this rule will result in loss of sales or revenue.

**5. a Determination of Whether the Proposed Rule Will Have a Disproportionate Impact on Small Businesses:** This rule should not have a disproportionate impact on small business licensees. We have not received any feedback from small business licensees indicating this proposed rule change will cause them a hardship or disproportionately impact them compared to larger businesses.

All licensees that put a group 12 amusement game into play will have to comply with this rule regardless of the size of their business. The costs for compliance with each licensee to put stickers on their group 12 amusement games will depend on the number of games they own, the proximity [proximity] of the games to their business, and their labor costs.

We currently have three out-of-state manufacturers of group 12 amusement games. These manufacturers are not currently licensed and they are privately owned businesses. Therefore, we do not know if they qualify as a small business. If any are qualified to be considered a small business, we do not expect this rule to have disproportionate impact on them.

Additionally, it is difficult to determine if our small business licensees will be disproportionately impacted without their input. This is a new activity with the first group 12 amusement game approved at the end of September 2015. We do not yet have any financial information on the operation of the group 12 amusement games by their owners. We are, therefore, unable to know the total impact at this time unless licensees provide us information showing how this rule change would disproportionately impact them.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:"**

**a. Reducing, Modifying, or Eliminating Substantive Regulatory Requirements;**

This is a proposed rule for consumer protection to ensure players know group 12 amusement games do not operate as a gambling activity even though it can look similar to a slot machine. The commissioners initially looked into prohibiting group 12 amusement games from looking like slot machines. This would have placed a much higher burden on licensees and the proposed rule reduced the burden on licensees to only require them to place a warning sticker or have a warning label on the game screen before play of the game.

Additionally, this rule offers flexibility by allowing licensees to choose how they wish to comply with this rule. This also reduces the possible impacts on the licensee and allows the licensee to choose the cheapest, easiest way to provide consumer protection while complying with the rule.

**b. Simplifying, Reducing, or Eliminating Record-keeping and Reporting Requirements;**

This rule change does not require any additional record-keeping or reporting requirements.

**c. Reducing the Frequency of Inspections;**

This rule will not require additional inspections. Verification of the sticker on the games can be done during routine inspections to verify licensure, identification stamp, and other operational requirements.

**d. Delaying Compliance Timetables;**

Delaying compliance is impractical because it is in the public interest to provide this consumer protection. Additionally, the rule provides low-cost and flexible options for compliance negating any need to delay compliance with this rule should it become final.

**e. Reducing or Modifying Fine Schedules for Non-compliance; or**

There is no fine schedule related to this rule. Any finding of noncompliance with this rule would likely be handled like all other amusement game violations, which is a progressive enforcement model that includes verbal warnings, written warnings, fines, suspension, and revocation. Our goal is to seek voluntary compliance with our licensees through education and training.

**f. Any Other Mitigation Techniques Including Those Suggested by Small Businesses or Small Business Advocates.**

Only one small business licensee has requested or suggested any mitigation techniques for the implementation of this rule change. One licensee suggested we create and supply the stickers to the operators. We have determined that it is more efficient and cost effective for licensees to have the flexibility to print their own warning stickers and replace them or create a message on the electronic game itself. This provides them the greatest flexibility with the least amount of reliance on the agency for compliance with this rule. Additionally, licensees would still incur the labor and travel costs for installation of the sticker onto each group 12 amusement game regardless of who prints the stickers.

**7. A Description of How the Gambling Commission Will Involve Small Businesses in the Development of the Rule:** In December 2015, we sent notices of rule making to all amusement game licensees regarding rules for group 12 amusement games.

At their February 11, 2016, commission meeting during a discussion of other group 12 amusement game rules, the commissioners asked staff to explore regulating the appearance so that the group 12 game does not look like a slot machine. On February 12, 2016, staff posted a summary of the commissioners' request for a rule change in the special "Breaking News" section of our web site for group 12 amusement game information. We also posted that we would hold a stakeholder meeting to discuss all group 12 amusement game rules currently being discussed, which included the commissioner's request for rule change to WAC 230-13-067.

On February 26, 2016, staff posted in the "Breaking News" section of the web site for group 12 amusement games a summary of the February 22, 2016, stakeholder meeting in which this proposed rule was discussed.

At least one week prior to the March 11, 2016, commission meeting, we posted this rules package, which included this specific rule, on our web site.

On March 25, 2016, we posted information on this rule as filed by the commissioners at their March 11, 2016, commission meeting in the "Breaking News" section of our web site for group 12 amusement games. We also posted that we would be holding a stakeholder meeting to discuss all group 12 amusement game rules pending on April 9, 2016.

On April 15, 2016, we posted in the "Breaking News" section of our web site for group 12 amusement games a summary of the rules discussed and action taken by the commissioners at the April commission meeting.

The rules proposal to change WAC 230-13-067 was discussed at study sessions on the following dates: March 11, April 14, and May 12, 2016. It will also be discussed at the study session on July 14/15, 2016. In addition, the rule proposal was discussed and public comment taken at the commission meetings on March 11, April 14, and May 12, 2016. It will also be discussed and public comment will be taken at the July 14/15, 2016, commission meeting.

At the April 11, 2016, commission meeting, a commissioner asked staff to make additional changes to the rule to make it clearer. The language changes were posted on the agency web site with the May 2016 commission meeting agenda at least one week before the meeting. At the May 12, 2016, study session, stakeholders were asked what costs they would incur if the rule proposal went into effect. Stakeholders provided feedback, as indicated above.

**8. A List of Industries That Will Be Required to Comply with the Rule:** 7132. *(Leave this number here.)*

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule:** There is no evidence that any jobs will be created or lost as a result of this rule change. Small business licensees have not indicated any jobs would be created or lost as a result of compliance with this proposed rule change from the three study sessions and two stakeholder meetings we have discussed [in] this rule change.

A copy of the statement may be obtained by contacting Susan Newer, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, phone (360) 486-3466, fax (360) 486-3625, e-mail [susan.newer@wsgc.wa.gov](mailto:susan.newer@wsgc.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 31, 2016  
Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-15-063, filed 7/10/15, effective 8/10/15)

**WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards.** (1) In group 12 games, players must correctly solve a puzzle to win a ((prize)) game, which is viewable by the player before each puzzle is presented.

((+)) (2) The game must allow the player to ((view the prize that is available)) preview points to be awarded if the puzzle is correctly solved before each play of the game without the insertion of money or any other thing of value; and

((=)) (3) Prizes are awarded based upon the player's skill in correctly discerning a pattern and completing that pattern; and

((=)) (4) When a game presents a potential winning pattern, the puzzle must be capable of completion within the predetermined time period; and

((+)) (5) Group 12 amusement games are for adults over the age of twenty-one only and may only be operated by licensees where persons under the age of twenty-one are prohibited from entering((-)); and

(6) The amusement game must prominently display a sticker or on the screen, "This is not a slot machine. No cash prizes are allowed. You can preview the points to be awarded if the puzzle is correctly solved before each play of the game without the insertion of money or anything of value."

**WSR 16-12-108  
PROPOSED RULES  
GAMBLING COMMISSION**

[Filed June 1, 2016, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-130.

Title of Rule and Other Identifying Information: WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games, 230-13-170 Recordkeeping for commercial amusement games, 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations, and 230-13-005 Amusement games authorized.

Hearing Location(s): Red Lion, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 14 or 15, 2016, at 11:30 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 14 or 15, 2016.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by July 1, 2016.

Assistance for Persons with Disabilities: Contact Julie Anderson by July 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In July 2015, the commissioners authorized group 12 amusement games to be

played by persons twenty-one and over. These rules address recordkeeping and the nontransferability of tokens. Currently, amusement game operators are only required to notify us once a year of the amusement games they have. They are also only required to report their overall amusement game gross receipts. These rule changes will help staff know where group 12 amusement games are being operated and the gross receipts they are bringing in. The rule changes also address the nontransferability of group 12 amusement games, coupons, tickets, tokens or tokens on an electronic token card to other systems to help ensure cash is not indirectly awarded as prizes.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0201.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tina Griffin, Assistant Director, Lacey, (360) 486-3546; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Josh Stueckle, Acting Agent-in-Charge, Lacey, (509) 325-7909.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Proposed Changes to Rules:** WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games, 230-13-170 Recordkeeping for commercial amusement games, 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations, and 230-13-005 Amusement games authorized.

This rules package would:

- Require licensees to notify us within thirty days of putting into play and removing from play a group 12 amusement game in the format we require.
- Require licensees record gross gambling receipts received from players for group 12 amusement games separately from the gross gambling receipts from groups 1 through 11.
- Allow coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

**Involvement of Small Businesses:** We filed the CR-101 on March 2, 2016, under WSR 16-06-130.

On [In] July 2015, the commissioners approved a new type of amusement game, group 12 amusement games with the passage of a new rule.

In October 2015, operators began putting group 12 amusement games into play and a number of questions arose regarding the operation, licensure, recordkeeping, and regulatory controls for this [these] new type[s] of amusement games. In an effort to address the questions and get information out to stakeholders timely, we started posting informa-

tion on our web site under "Breaking News" on group 12 amusement games.

On November 9, 2015, we sent an e-mail to the Class B and above amusement game licensees that we had e-mail addresses for informing them that we had drafted rules for discussion on a number of different issues concerning group 12 amusement games. (These rules did not include this rule change.)

On November 12, 2015, we asked stakeholders that attended the study session, which is open to the general public, to submit any comments or rule change language, not limited to the rules staff drafted, to address the issues surrounding group 12 amusement games to commission staff by November 30, 2015.

On December 24, 2015, we sent notice to all commercial and amusement game licensees of the updated rule proposals based [on] the feedback we received during the comment period. We also posted the draft rules on our web site.

In February 2016, while other group 12 amusement game rules were being considered, staff put this rules package together, which included this specific rule, to address some other regulatory concerns with group 12 amusement games.

At least one week prior to the March 11, 2016, commission meeting, we posted this rules package on our web site.

On March 25, 2016, we posted information on this rules package as filed by the commissioners at their March 11, 2016, commission meeting in the special "Breaking News" section of our web site for group 12 amusement games. We also posted that we would be holding a stakeholder meeting to discuss all group 12 amusement game rules pending on April 9, 2016, to include this rules package, which included this specific rule.

On April 9, 2016, we held a stakeholder meeting to discuss all group 12 amusement game rules, which included all rules in this package, which included this specific rule.

At least one week prior to the April 14, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

On April 15, 2016, we posted in the special section of our web site for group 12 amusement games a summary of the rules discussed and action taken by the commissioners at the April commission meeting.

At least one week prior to the May 12, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

At the May 12, 2016, study session, stakeholders were asked what costs they would incur if the rule proposal went into effect. Stakeholders provided feedback as indicated below.

A meeting was held on May 19, 2016, with the stakeholder that wanted to explore possible options to the rule language being proposed.

In summary, the proposed rule changes were discussed at study sessions on the following dates: March 11, April 14, and May 12, 2016. It will also be discussed at the study session on July 14/15, 2016. The rule proposal was discussed and public comment taken at the commission meetings on March 11, April 14, and May 12, 2016. It will also be discussed and public comment will be taken at the July 14/15,

2016, commission meeting. The proposed changes were discussed at a stakeholder meeting on April 9, 2016, and with one stakeholder on May 19, 2016, to discuss possible changes to the proposed language.

This process provided small businesses opportunities in the development of the new rule.

### **1. Description of the Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:**

In July 2015, the commissioners authorized group 12 amusement games to be played by persons twenty-one and over with the passage of one rule. Since this time, numerous questions and concerns have been raised surrounding the operation and regulation of group 12 amusement games. We have discovered that more rules were needed with the new activity.

Reporting requirement - this rules package requires amusement game licensees to notify us within thirty days of placing a group 12 amusement game into play or removing it from play.

Currently, amusement game licensees are only required to report to us the amusement games they have in play once a year. Without this rule change, we have no way of knowing where these games, which have been of great interest and have been controversial, are placed. This will allow us to know, within a thirty day window, where and how many group 12 amusement games are in the state.

Recordkeeping requirement - this rules package requires licensees that operate group 12 amusement games to record gross gambling receipts of group 12 games separate from the gross gambling receipts of group 1 through 11 amusement games.

Currently, amusement game licensees must record the combined gross gambling receipts of amusement games regardless of the group or type of amusement game they operate.

Nontransferability of tokens awarded on group 12 amusement games - this rule package allows coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

This will prevent group 12 amusement game licensees from circumventing the prohibition against gift cards/cash by allowing cash/gift cards to be awarded through a player tracking or customer reward system. By not allowing operators to transfer tokens awarded from a group 12 amusement game, licensees will be required to follow the redemption and operation requirements set out in RCW 9.46.0201 and WAC 230-13-005.

**2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply:** Small businesses should not need any additional professional services other than those accounting services that may be currently used to assist with current reporting and recordkeeping requirements.

Reporting requirement - professional services will not be needed for small businesses to comply with this portion of the rule change. Licensees can provide the required information through the commission's My Account, which licensees are required to use to renew their license. My Account is an

online account, customized for each licensee. For those licensees that do not have a computer, they will have to submit a form. The information required to be submitted to the commission to comply with this rule will likely be the name of licensee, name and address of the licensed location where the game is physically located, the approved group 12 amusement game(s) placed or removed, the date the game(s) was placed or removed, and the number of approved group 12 amusement games placed or removed.

Recordkeeping requirement - rules already require commercial and nonprofit amusement game licensees to record and report amusement game gross receipts. Licensees record and report the combined gross receipts from all group 1 through 11 amusement games they operate. Licensees may be using professional services to comply with the current rule. The proposed rule would require licensees to add to their records a separate line item for group 12 gross receipts and report that to us separate from their total group 1 through 11 amusement game gross receipts.

Nontransferability of tokens awarded from group 12 amusement games - professional services will not be required for group 12 amusement game operators to comply with this rule proposal. This portion of the rules package allow[s] coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else. Conversely, it will not allow group 12 amusement game operators to transfer coupons, tickets, tokens or tokens on an electronic storage card awarded from a group 12 amusement game to another system, such as a player tracking or customer rewards system. Group 12 amusement game operators will have to redeem the actual coupons, tickets, tokens or tokens on an electronic storage card dispensed from the game.

The rule already requires group 12 amusement games to dispense coupons, tickets, tokens or tokens on an electronic token card to be redeemed for merchandise prizes. No modifications to the amusement games would be required to comply with this rule.

**3. The Actual Costs to Small Businesses of Compliance, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:** Cost should be minimal, if any, to small businesses.

Reporting - the cost for complying with this portion of the rule change will be labor costs to do the reporting and any mailing costs if the licensee does not have a computer. The information most likely required to be reported will be the name of licensee, name and address of the licensed location where the game is physically located, the approved group 12 amusement game(s) placed or removed, the date the game(s) was placed or removed, and the number of approved group 12 amusement games placed or removed.

Small business licensees should be familiar with their obligations to report certain business information to us within thirty days from the event. All reporting will be done through My Account, a free online program that all licensees must use for other reporting and to renew their licenses. Those licensees that do not have a computer or that find it easier to fill out a form can do so and mail it in to us.

Recordkeeping - there should be minimal increased administrative costs to develop a new line item and record the gross receipts for group 12 amusement games separately from the group 1 through 11 amusement games they operate. Small business licensees already must track and record the gross receipts from group 12 activity with the other amusement game gross receipts for other state agencies. There should also be minimal increased administrative costs to report the total group 12 amusement game gross receipts. Small business licensees already must track and report all amusement game gross receipts to us. This rule change solely requires them to separate group 12 gross receipts from receipts from groups 1-11.

Nontransferability of coupons, tickets, tokens or tokens on an electronic token card dispensed by a group 12 amusement game - there should be no additional costs for compliance with the rule proposal. Currently our rules require all group 12 amusement games to dispense coupons, tickets, tokens or tokens on an electronic token card. This rule proposal would allow coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

**4. Whether Compliance with the Rule, Based on Feedback Received from Licensees, Will Cause Businesses to Lose Sales or Revenue:** This rule should not cause a small business to lose sales or revenue. One small business licensee with forty-nine group 12 amusement games in operation at ten licensed locations in Washington indicated that he spent at least \$7,500 on a software program allowing him to store group 12 amusement game tokens on his player tracking system. This licensee indicated he will close down all of his group 12 amusement games in the state if this rule is passed. However, he did not share how sales or revenue would be affected by this rule change.

No other small business stakeholders indicated any possible loss of sales or revenue at the April 9, 2016, stakeholder meeting; the April 14, 2016, study session or commission meeting; or at the May 12, 2016, study session or commission meeting.

**5. A Determination of Whether the Proposed Rule Will Have a Disproportionate Impact on Small Businesses:** This rule should not have a disproportionate impact on small businesses. All licensees with group 12 amusement games in play will have to comply with this rule regardless of the size of their business.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:"**

**a. Reducing, Modifying, or Eliminating Substantive Regulatory Requirements;**

Group 12 amusement games were approved by the commissioners in July 2015 with the passage of one rule to allow the games. Since that time, we have determined that more rules are necessary to regulate the activity.

The commission kept the reporting timeline, thirty days from placing into or removing from play, the same as it has

for all other reportable information. We also will make the form available on our My Account to make reporting as easy as possible for licensees.

Licensees could allow coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

**b. Simplifying, Reducing, or Eliminating Record-keeping and Reporting Requirements;**

The commission is only requiring licensees to separately report group 12 amusement game gross receipts. The reporting requirement is simplified by allowing group 12 gross receipts to be reported online through My Account, which is available to licensees when they report their amusement game gross receipts now. Licensees are still allowed to report their combined group 1 through 11 gross receipts.

Additionally, reporting the placement or removal of group 12 amusement games can simply be done online through My Account. The commission is only requiring limited information, such as the name of licensee, name and address of the licensed location where the game is physically located, the approved group 12 amusement game(s) placed or removed, the date the game(s) was placed or removed, and the number of approved group 12 amusement games placed or removed.

**c. Reducing the Frequency of Inspections;**

This rule will not require additional inspections. Verification of compliance with these rules can be done during routine inspections to verify licensure, identification stamp, and other operational requirements.

**d. Delaying Compliance Timetables;**

Delaying compliance is unnecessary because the cost for compliance is minimal and these rules are necessary for monitoring and regulating these new electronic amusement games.

**e. Reducing or Modifying Fine Schedules for Non-compliance; or**

There is no fine schedule related to this rule. Any finding of noncompliance with this rule would likely be handled like all other amusement game violations, which is a progressive enforcement model that includes verbal warnings, written warnings, fines, suspension, and revocation. Our goal is to seek voluntary compliance with our licensees through education and training.

**f. Any Other Mitigation Techniques Including Those Suggested by Small Businesses or Small Business Advocates:**

Only one small business licensee has requested or suggested any mitigation techniques for the implementation of this rule change. This licensee's suggestion was to withdraw the rule change regarding nontransferability of tokens dispensed from a group 12 amusement game. The licensee did not suggest an alternative rule that would mitigate any cost the rule would have to his small business.

The commission considered changes to the original proposed rule language and has changed the language to allow coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for



redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

The commission has a responsibility to prevent amusement game licensees from circumventing the prohibition against gift cards/cash by allowing cash/gift cards to be awarded through a player tracking or customer reward system. By not allowing operators to transfer tokens awarded from a group 12 amusement game, licensees will be required to follow the redemption and operation requirements set out in RCW 9.46.0201 and WAC 230-13-005.

**7. A Description of How the Gambling Commission Will Involve Small Businesses in the Development of the Rule:** On November 9, 2015, we sent an e-mail to the Class B and above amusement game licensees that we had e-mail addresses for informing them that we had drafted rules for discussion on a number of different issues concerning group 12 amusement games. (These rules did not include this rule change.)

On November 12, 2015, we asked stakeholders that attended the study session, which is open to the general public, to submit any comments or rule change language, not limited to the rules staff drafted, to address the issues surrounding group 12 amusement games to commission staff by November 30, 2015.

On December 24, 2015, we sent notice to all commercial and amusement game licensees of the updated rule proposals based [on] the feedback we received during the comment period. We also posted the draft rules on our web site.

In February 2016, while other group 12 amusement game rules were being considered, staff put this rules package together to address some other regulatory concerns with group 12 amusement games.

At least one week prior to the March 11, 2016, commission meeting, we posted this rules package on our web site.

On March 25, 2016, we posted information on this rules package as filed by the commissioners at their March 11, 2016, commission meeting in the special section of our web site for group 12 amusement games. We also posted that we would be holding a stakeholder meeting to discuss all group 12 amusement game rules pending on April 9, 2016, to include this rules package.

On April 9, 2016, we held a stakeholder meeting to discuss all group 12 amusement game rules, which included all rules in this package and this specific rule.

At least one week prior to the April 14, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

On April 15, 2016, we posted in the special section of our web site for group 12 amusement games a summary of the rules discussed and action taken by the commissioners at the April commission meeting.

At least one week prior to the May 12, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

At the May 12, 2016, study session, stakeholders were asked what costs they would incur if the rule proposal went into effect.

A meeting was held on May 19, 2016, with the stakeholder that provided an e-mail in opposition to one of the rule changes.

**8. A list of industries that will be required to comply with the rule:** 7132. (*Leave this number here.*)

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule:** There is only evidence that one full-time and one part-time job will be lost as a result of the proposed rule changes. One small business licensee that has forty-nine group 12 amusement games in operation at ten licensed locations in Washington and spent at least \$7,500 on a software program to store tokens dispensed on the player tracking system indicated that they will stop operating all of their group 12 amusement games in the state. This action will result in the loss of one full-time bookkeeper, a part-time technician, and it will terminate the use of an on-call technician that flies in from California when his service is needed.

No other small business licensees have indicated that any jobs would be created or lost as a result of compliance with this proposed rule change.

A copy of the statement may be obtained by contacting Susan Newer, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, phone (360) 486-3466, fax (360) 486-3625, e-mail [susan.newer@wsgc.wa.gov](mailto:susan.newer@wsgc.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 31, 2016

Susan Newer  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 07-10-032, filed 4/24/07, effective 1/1/08)

**WAC 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations.** (1) Organizations operating without a license under RCW 9.46.0315 or 9.46.0321 and lower volume charitable or nonprofit licensees must keep a set of permanent monthly records of the gambling activities. Lower volume licensees include:

- (a) Fund-raising events;
  - (b) Bingo (Classes A, B, and C);
  - (c) Raffles (Classes A, B, C, and D);
  - (d) Amusement games (Classes A, B, C, and D); and
  - (e) Card games (Classes A, B, and C).
- (2) The monthly records must include, at least:
- (a) The gross receipts from each activity;
  - (b) The gross receipts from group 12 amusement games;
  - ~~(c)~~ The total amount of cash prizes actually paid out;
  - ~~((+))~~ (d) The total of the cost to the licensee of all merchandise prizes actually paid out for each activity;
  - ~~((+))~~ (e) A summary of all expenses related to each of the activities; and
  - ~~((+))~~ (f) The net income received from the activity, the purpose(s) for which the net income was raised, and the amount paid to each recipient.

(3) Licensees must keep these records for three years from the end of the license year for which the record was created.

(4) Organizations operating under RCW 9.46.0315 or 9.46.0321 must maintain their records for one year.

AMENDATORY SECTION (Amending WSR 15-15-063, filed 7/10/15, effective 8/10/15)

**WAC 230-13-005 Amusement games authorized.** (1) We authorize the approved groups of amusement games set forth in this chapter. Operators must only operate amusement games that meet the standards of at least one of the authorized groups.

(2) Commercial businesses or nonprofit or charitable organizations may apply for licenses for amusement games.

(3) Charitable or nonprofit organizations also may conduct amusement games without a license when authorized to do so under RCW 9.46.0321 and 9.46.0331.

(4) Operators must operate amusement games as either:

(a) An attended amusement game.

(i) An "attended amusement game" means an amusement game that requires the presence or assistance of a person (attendant) in the regular operation of the game; and

(ii) These games must award a merchandise prize to players if players achieve the objective with one cost of play; or

(b) A coin or token activated amusement game.

(i) A "coin or token activated amusement game" means an amusement game that uses a mechanical, electronic, or electro-mechanical machine to allow the player to activate the game by inserting coins ((€)), tokens, or tokens on an electronic token card; and

(ii) These games may dispense merchandise prizes, or coupons, tickets, ((€)) tokens, or tokens onto an electronic token card redeemable for merchandise prizes; and

(iii) For group 12 amusement games, coupons, tickets, tokens or tokens on an electronic token card are nontransferable, such as player tracking systems, customer rewards systems, etc.

(5) Amusement games must not award additional plays as prizes.

(6) Electronic token card means a card issued by the operator that stores purchased credits available to play the amusement game separate from the coupons, tickets, or tokens awarded or dispensed as prizes from the play of the amusement game. Coupons, tickets, or tokens awarded as prizes cannot be used to play amusement games and must only be redeemed for merchandise prizes.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

**WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games.** (1) Amusement game licensees must determine the authorized group number of each game and prepare a list of all games they plan to operate during each license year. They must submit this list to us with their activity report. The list must contain, at least, the name and group number of each game.

(2) Amusement game licensees must notify us within thirty days of putting into play and removing from play a group 12 amusement game. Reporting must be in the format we require.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

**WAC 230-13-170 Recordkeeping for commercial amusement games.** (1) Amusement game licensees must prepare a detailed record for each location where they operate games. They must retain the records for at least three years. The records must include details necessary to determine:

(a) Gross ((gambling)) receipts received from players from each group of amusement games; and

(b) Value of prizes awarded to winners.

(2) Records must include, at least:

(a) The gross ((gambling)) receipts collected from amusement games at each location, with receipting records; and

(b) An entry for each withdrawal of receipts from the games. Coin or token activated amusement games only require an entry of the ending meter reading, the number of plays, and gross ((gambling)) receipts at the end of each month; and

(c) A summary of the operation of the activity. This includes, at least, coin-in meter readings and gross ((gambling)) receipts. Operators must provide these coin-in meter readings and gross ((gambling)) receipts to charitable or nonprofit organizations each time they service a game or disburse money.

(3) Licensees must report at least monthly the number and actual cost of merchandise prizes awarded for each location.

(4) For amusement games that issue tickets for the redemption of prizes, licensees must at least log the beginning and ending nonresettable ticket out meters or ticket numbers during each collection of funds from each game.

(5) Licensees must provide the full details for all amusement game operating expenses.

**WSR 16-12-110  
PROPOSED RULES  
GAMBLING COMMISSION**

[Filed June 1, 2016, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-057.

Title of Rule and Other Identifying Information: Amending WAC 230-03-185 Applying for a manufacturer license, 230-03-190 Applying for a distributor license and 230-06-110 Buying, selling, or transferring gambling equipment; and new WAC 230-06-112 Buying, selling, renting and leasing amusement games.

Hearing Location(s): Red Lion, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 14 or 15, 2016, at 11:30 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa](http://www.wsgc.wa).

gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 14 or 15, 2016.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2016.

Assistance for Persons with Disabilities: Contact Julie Anderson by July 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** In March 2016, the commissioners approved rule changes that required distributors of group 12 amusement games to be licensed. Staff realized upon passage of the rule change that the rules would have required Class B and above amusement game licensees who would like to own and/or lease group 12 amusement games to have a distributor's license in addition to, or in place of, the license they currently have. This was not the intent of the original rule change. Rules are needed to clearly define the activities of a manufacturer and distributor of group 12 amusement games, Class A amusement game licensees, Class B and above amusement game licensees, and who needs a distributor license.

**Statutory Authority for Adoption:** RCW 9.46.070 and 9.46.0201.

**Statute Being Implemented:** Not applicable.

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

**Name of Proponent:** Washington state gambling commission, governmental.

**Name of Agency Personnel Responsible for Drafting:** Tina Griffin, Assistant Director, Lacey, (360) 486-3546; **Implementation:** David Trujillo, Director, Lacey, (360) 486-3512; and **Enforcement:** Josh Stueckle, Acting Agent-in-Charge, Lacey, (360) 325-7909.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Proposed Changes to Rules:** Amending WAC 230-03-185 Applying for a manufacturer license, 230-03-190 Applying for a distributor license and 230-06-110 Buying, selling, or transferring gambling equipment; and new WAC 230-06-112 Buying, selling, renting and leasing amusement games.

Businesses will need a:

- Distributor's license if they buy or lease a group 12 amusement game from another licensee and sell or lease the group 12 amusement game to a Class B or above amusement game licensee; or
- Class B or above amusement game license if they:
  - o Own and operate group 1 through 12 amusement games at their licensed premises; and
  - o Lease or buy group 12 amusement games from a licensed manufacturer or distributor and lease or rent them to a Class A amusement game licensee; and
  - o Lease or rent group 1 through 11 amusement games to Class A amusement game licensees.

**Involvement of Small Businesses:** We filed the CR-101 on April 4, 2016, under WSR 16-08-057.

On [In] July 2015, the commissioners approved a new type of amusement game, group 12 amusement games with the passage of a new rule, WAC 230-13-067.

In October 2015, operators began putting group 12 amusement games into play and a number of questions arose regarding the operation, licensure, recordkeeping, and regulatory controls for this [these] new type[s] of amusement games. In an effort to address the questions and get information out to stakeholders timely, we started posting information on our website under "Breaking News" on group 12 amusement games.

On November 9, 2015, we sent an e-mail to the Class B and above amusement game licensees that we had e-mail addresses for informing them that we had drafted rules for discussion on a number of different issues concerning group 12 amusement games. (These rules did not include this rule change.)

On November 12, 2015, we asked stakeholders that attended the study session, which is open to the general public, to submit any comments or rule change language, not limited to the rules staff drafted, to address the issues surrounding group 12 amusement games to commission staff by November 30, 2015.

On December 24, 2015, we sent notice to all commercial and amusement game licensees of the updated rule proposals based [on] the feedback we received during the comment period. We also posted the draft rules on our web site, which included licensing of manufacturers and distributors of group 12 amusement games.

Original rule changes to WAC 230-03-185, 230-03-190, and 230-06-110 to address group 12 amusement games were discussed at the study session, open to the general public, and the commission meetings, through discussion and public testimony, on January 14, 2016, February 11, 2016, meeting, and March 11, 2016.

On March 11, 2016, the commissioners approved the original rule changes to these three rules to incorporate group 12 amusement games; a small business economic impact statement (SBEIS) was prepared for this original rule change. Staff realized upon passage of the rule change that the rules would have required Class B and above amusement game licensees who would like to own and/or lease group 12 amusement games to have a distributor's license in addition to, or in place of, the license they currently have. This was not the intent of the original rule change.

This rules package was prepared to provide clarity of the type of license required, manufacturer, distributor or Class B or above amusement game license, based on who the licensee was selling or leasing the group 12 amusement game to.

On March 25, 2016, we posted in the special section of our web site for group 12 amusement game information that we would be holding a stakeholder meeting to discuss all group 12 amusement game rules pending on April 9, 2016, which included this new rules package and this specific rule.

On April 9, 2016, we held a stakeholder meeting to discuss all group 12 amusement game rules, which included all rules in this package and this specific rule.

At least one week prior to the April 14, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

At the April 14, 2016, commission meeting, this rules package was discussed at the study session and commission meeting. On April 15, 2016, we posted in the special section of our web site for group 12 amusement games a summary of the rules discussed and action taken by the commissioners at the April commission meeting.

At least one week prior to the May 12, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

At the May 12, 2016, study session, stakeholders were asked what costs they would incur if the rule proposal went into effect. Stakeholders provided feedback as indicated below.

In summary, these proposed rule changes were discussed at study sessions on the following dates: April 14 and May 12, 2016. It will also be discussed at the study session on July 14/15, 2016. The rule proposal was discussed and public comment taken at the commission meetings on April 14 and May 12, 2016. It will also be discussed and public comment will be taken at the July 14/15, 2016, commission meeting. Lastly, it was discussed at a stakeholder meeting on April 9, 2016.

This process provided small businesses opportunities in the development of the new rule.

**1. Description of the Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:** Businesses will need a:

- Distributor's license if they buy or lease a group 12 amusement game from another licensee and sell or lease the group 12 amusement game to a Class B or above amusement game licensee; or
- Class B or above amusement game license if they:
  - o Own and operate group 1 through 12 amusement games at their licensed premises; and
  - o Lease or buy group 12 amusement games from a licensed manufacturer or distributor and lease or rent them to a Class A amusement game licensee; and
  - o Lease or rent group 1 through 11 amusement games to Class A amusement game licensees.

Manufacturers, distributors and operators of group 12 amusement games are already required to be licensed. This rules package just clarifies the type of license required depending upon who the group 12 amusement game is bought or leased from and sold or leased to.

**2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply:** No professional services are needed to comply with this rule because manufacturers, distributors and operators of group 12 amusement games are already required to be licensed. This rules package just clarifies the type of license required depending upon who the group 12 amusement game is bought or leased from and sold or leased to.

Additionally, commission staff are available to answer any licensure questions and help businesses determine what license they need under this rule.

**3. The Actual Costs to Small Businesses of Compliance, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:** There should not be any additional costs to small businesses. Manufacturers, distributors and operators of group 12 amusement games are already required to be licensed. This rules package just clarifies the type of license required depending upon who the group 12 amusement game is bought or leased from and sold or leased to.

If a manufacturer, distributor, or amusement game licensee holds a current license but requires a different type of license because of these proposed rules, they will not be required to apply for the other license type. If there is a cost difference between the types of licenses a business currently holds and the license they are required to have based on this rule change, the business would get a refund or have to pay the difference for the remainder of their license year.

For example, if a Class B distributor needed a Class B amusement game license because of who they bought or leased the group 12 amusement games from and sold or leased them to, they would get a refund of \$910 prorated based on the number of months remaining in their license year. If a Class B amusement game licensee needed a Class B distributor license, they would need to pay \$910 prorated based on the number of months remaining in their license year.

Stakeholders did not indicate at the two study sessions, two commission meetings and stakeholder meeting any additional costs.

**4. Whether Compliance with the Rule, Based on Feedback Received from Licensees, Will Cause Businesses to Lose Sales or Revenue:** This rule should not cause a small business to lose sales or revenue. Stakeholders have not indicated at the two study sessions, two commission meetings and stakeholder meeting that this rule would cause them to lose sales or revenue.

**5. A Determination of Whether the Proposed Rule Will Have a Disproportionate Impact on Small Businesses:** This rule should not have a disproportionate impact on small businesses. Manufacturers, distributors and operators of group 12 amusement games are already required to be licensed. This rules package just clarifies the type of license required depending upon who the group 12 amusement game is bought or leased from and sold or leased to.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:"**

**a. Reducing, Modifying, or Eliminating Substantive Regulatory Requirements;**

Manufacturers, distributors and operators of group 12 amusement games are already required to be licensed. This rules package just clarifies the type of license required depending upon who the group 12 amusement game is bought or leased from and sold or leased to. Without this rule change, some businesses might be required to hold a more costly license or hold two licenses, which would also be more costly.

**b. Simplifying, Reducing, or Eliminating Record-keeping and Reporting Requirements;**

This rule change does not require any additional record-keeping or reporting requirements.

**c. Reducing the Frequency of Inspections;**

This rule will not require additional inspections.

**d. Delaying Compliance Timetables;**

Delaying compliance is unnecessary because this rule clarifies the type of license required under the rule. Immediate implementation of this rule provides clarity and possibly saves some small businesses money by ensuring they obtain the correct license.

**e. Reducing or Modifying Fine Schedules for Non-compliance; or**

There is no fine schedule related to this rule. Any finding of noncompliance with this rule would be handled like all other amusement game violations, which is a progressive enforcement model that includes verbal warnings, written warnings, fines, suspension, and revocation. Our goal is to seek voluntary compliance with our licensees through education and training.

**f. Any Other Mitigation Techniques Including Those Suggested by Small Businesses or Small Business Advocates.**

Small business stakeholders have not requested or suggested any mitigation techniques for the implementation of this rule change. Stakeholders have been told at study sessions and the stakeholder meetings to contact us with any comments on the proposed rule changes. No comments have been received from stakeholders on this rule change.

**7. A Description of How the Gambling Commission Will Involve Small Businesses in the Development of the Rule:** In December 2015, we sent notices of rule making to all amusement game licensees regarding rules for group 12 amusement games.

Original rule changes to WAC 230-03-185, 230-03-190, and 230-06-110 to address group 12 amusement games were discussed at the study session, open to the general public, and the commission meetings, through discussion and public testimony, on January 14, February 11 meeting, and March 11, 2016.

On March 11, 2016, the commissioners approved the original rule changes to these three rules to incorporate group 12 amusement games, an SBEIS was prepared for this original rule change. Staff realized upon passage of the rule change that the rules would have required Class B and above amusement game licensees who would like to own and/or lease group 12 amusement games to have a distributor's license in addition to, or in place of, the license they currently have. This was not the intent of the original rule change.

This rules package was prepared to provide clarity of the type of license required, manufacturer, distributor or Class B or above amusement game license, based on who the licensee was selling or leasing the group 12 amusement game to.

On March 25, 2016, we posted in the special section of our web site for group 12 amusement game information that we would be holding a stakeholder meeting to discuss all group 12 amusement game rules pending on April 9, 2016, which included this new rules package.

On April 9, 2016, we held a stakeholder meeting to discuss all group 12 amusement game rules, which included all rules in this package and this specific rule.

At least one week prior to the April 14, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

At the April 14, 2016, commission meeting, this rules package was discussed at the study session and commission meeting. On April 15, 2016, we posted in the special section of our web site for group 12 amusement games a summary of the rules discussed and action taken by the commissioners at the April commission meeting.

At least one week prior to the May 12, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

At the May 12, 2016, study session, stakeholders were asked what costs they would incur if the rule proposal went into effect. Stakeholders provided feedback as indicated below.

**8. A List of Industries That Will Be Required to Comply with the Rule:** 7132. *(Leave this number here.)*

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule:** There is no evidence that any jobs will be created or lost as a result of this rule change. Manufacturers, distributors, and operators of group 12 amusement games are already required to be licensed by rule. Stakeholders have not indicated any jobs would be created or lost as a result of compliance with this proposed rule change from the two study sessions and stakeholder meetings in which this rules package was discussed.

A copy of the statement may be obtained by contacting Susan Newer, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, phone (360) 486-3466, fax (360) 486-3625, e-mail [susan.newer@wsgc.wa.gov](mailto:susan.newer@wsgc.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 31, 2016  
Susan Newer  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 16-08-033, filed 3/30/16, effective 4/30/16)

**WAC 230-03-185 Applying for a manufacturer license.** (1) You must apply for a manufacturer license if you:

(a) Make or assemble a completed piece or pieces of gambling equipment for use in authorized gambling activities; or

(b) Convert, modify, combine, add to, or remove parts or components of any gambling equipment for use in authorized gambling activities; or

(c) Manufacture group 12 amusement. Manufacturers of group 12 amusement games that were approved before the effective date of this rule must apply by May 1, 2016, and be licensed by December 31, 2016. Manufacturers of group 12 amusement games can sell or lease group 12 amusement

games to a licensed distributor or a Class B or above amusement game licensee.

(2) You must demonstrate your ability to comply with all manufacturing, quality control, and operations restrictions imposed on authorized gambling equipment that you want to manufacture or market for use in Washington State.

(3) The licensing process may include an on-site review of your manufacturing equipment and process for each separate type of authorized gambling equipment to ensure compliance capability.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 16-08-033, filed 3/30/16, effective 4/30/16)

**WAC 230-03-190 Applying for a distributor license.**

You must apply for a distributor license if you:

(1) Buy or otherwise obtain a finished piece of gambling equipment for use in authorized gambling activities (~~(or a group 12 amusement game)~~) from another person and sell or provide that gambling equipment to a third person for resale, display, or use; or

(2) Are a manufacturer who sells or provides gambling equipment you do not make to any other person for resale, display, or use; or

(3) Service and repair authorized gambling equipment. However, distributors must not add, modify, or alter the gambling equipment; or

(4) Modify gambling equipment using materials provided by manufacturers to upgrade equipment to current technology.

(5) Buy or lease a group 12 amusement game from another licensee and sell or lease the group 12 amusement game to a Class B and above amusement game licensee.

AMENDATORY SECTION (Amending WSR 16-08-033, filed 3/30/16, effective 4/30/16)

**WAC 230-06-110 Buying, selling, or transferring gambling equipment.** (1) All licensees and persons authorized to possess gambling equipment must closely control the gambling equipment in their possession.

(2) Before selling gambling equipment, licensees must ensure that the buyer possesses a valid gambling license or can legally possess the equipment without a license.

(3) Before purchasing gambling equipment, licensees must ensure that the seller possesses a valid gambling license.

(4) Applicants for Class F or house-banked card room licenses may purchase and possess gambling equipment during the precensing process, but only after receiving written approval from us.

(5) Charitable and nonprofit organizations conducting unlicensed bingo games, as allowed by RCW 9.46.0321, may possess bingo equipment without a license.

(6) Group 12 amusement games can only be sold or leased to Class B and above amusement game licensees by a licensed manufacturer or distributor (~~(to a licensee)~~). Class B

and above amusement game licensees can lease or rent group 12 amusement games to Class A amusement game licensees.

Lease agreements entered into prior to the effective date of this rule may continue until the manufacturer is licensed or December 31, 2016, whichever occurs first.

(7) Licensees may transfer gambling equipment as a part of a sale of a business as long as a condition of the sale is that the buyer receives a gambling license before the sale is complete. Licensees must make a complete record of all gambling equipment transferred in this manner, including I.D. stamps. Licensees must report these transfers, including a copy of the inventory record, to us.

NEW SECTION

**WAC 230-06-112 Buying, selling, renting and leasing amusement games.** (1) Class A amusement game licensees can rent or lease amusement games from Class B and above amusement game licensees.

(2) Class B and above amusement game licensees can:

(a) Own and operate group 1 through 12 amusement games at their licensed premises; and

(b) Buy or lease group 12 amusement games from a licensed manufacturer or distributor and lease or rent them to Class A amusement game licensees.

(c) Rent or lease group 1 through 11 amusement games to Class A amusement game licensees.

**WSR 16-12-112**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed June 1, 2016, 11:34 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Chapter 16-545 WAC, Turfgrass seed commission.

Hearing Location(s): Ritzville Public Library, 302 West Main Avenue, Ritzville, WA 99169, on July 14, 2016, at 2:00 p.m.

Date of Intended Adoption: September 15, 2016.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail [tnorman@agr.wa.gov](mailto:tnorman@agr.wa.gov), fax (360) 902-2092, by 5:00 p.m., July 14, 2016.

Assistance for Persons with Disabilities: Contact Teresa Norman by June 9, 2016, (360) 902-2043, TTY 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 16-545 WAC is the marketing order for the Washington turfgrass seed commission. These proposed amendments update outdated language, allow the commission to develop programs to market and promote turfgrass seed produced in Washington, and, should no nominations be made for a district, provide for an "at large" position that may be filled by a producer of turfgrass seed in another district who meets all membership qualifications.

Reasons Supporting Proposal: Amending the marketing order improves clarity and reduces ambiguity and the risk

that the marketing order will be misinterpreted. Providing for an "at large" member helps ensure turfgrass seed producers across the state are represented on the commission.

Statutory Authority for Adoption: RCW 15.65.047 and 15.65.050; chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Any rule proposal will not be adopted unless the proposed rules are also approved in a referendum of affected turfgrass seed producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington turfgrass seed commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Teresa Norman, Olympia, Washington, (360) 902-2043.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rule-making proceedings conducted under chapter 15.66 RCW are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, the Regulatory Fairness Act, and RCW 43.135.055 when the adoption of the rules is determined by a referendum vote of the affected parties. This rule-making process will include a referendum vote of affected parties.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington turfgrass seed commission are not named agencies under RCW 34.05.328 (5)(a)(i).

May 31, 2016  
Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 04-22-073, filed 11/1/04, effective 12/2/04)

**WAC 16-545-006 Marketing order purposes.** This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; or increasing production efficiency of turfgrass seed in Washington state. The Washington state turfgrass seed commodity board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

To execute the purposes of the order, the board shall provide for a program in one or more of the following areas:

(1) Provide for research in the production, processing, irrigation, transportation, handling, or distribution of turfgrass seed and expend the necessary funds for the purposes. ~~((Insofar as practicable, the research must be carried out by experiment stations of Washington State University, but if in the judgment of the board that the experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefore, the project may be carried out by other research agencies selected by the board.))~~

(2) Provide for collection and dissemination of information pertaining to turfgrass seed and turfgrass seed by-prod-

ucts, including programs to market and promote turfgrass seed produced in Washington.

(3) Establish and conduct programs to develop markets for turfgrass seed by-products.

~~((4) Under no circumstances are any sections of this marketing order to be construed as authorizing or permitting any programs pertaining to marketing or promotion of turfgrass seed.))~~

AMENDATORY SECTION (Amending WSR 99-02-064, filed 1/6/99, effective 2/6/99)

**WAC 16-545-015 Turfgrass seed districts.** (1) District 1 consists of Chelan, Douglas, Ferry, Okanogan, Pend ~~((Or))~~ Oreille, Spokane and Stevens counties.

(2) District 2 consists of Asotin, Columbia, Garfield, Walla Walla, and Whitman counties.

(3) District 3 consists of Adams, Franklin, Grant, and Lincoln counties.

(4) District 4 consists of Benton, Kittitas, Klickitat, and Yakima counties.

AMENDATORY SECTION (Amending WSR 04-22-073, filed 11/1/04, effective 12/2/04)

**WAC 16-545-020 Turfgrass seed board.** (1) **Administration.** The provisions of this order and the applicable provisions of the act is administered and enforced by the board as the designee of the director.

(2) **Board membership.**

~~(a) The board consists of seven voting members ~~((Five members are affected producers appointed or elected under provisions of this order. One member is an affected handler appointed by the appointed or elected producers. The director appoints one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member))~~ numbered positions one through seven.~~

(b) Except as otherwise provided by this chapter, each district has one board member in positions one through four representing each of the numbered districts.

~~((i) Positions one through four represent each of the numbered districts.~~

~~((ii))~~ (c) Position five represents the district with the highest reported value of production of turfgrass seed the previous three years.

~~((iii))~~ (d) Position six is a handler appointed by the appointed or elected producer members of the board.

~~((iv))~~ (e) Position seven ~~((is the member representing))~~ represents and is appointed by the director.

(3) **Board membership qualifications.**

(a) ~~((The producer))~~ Positions one through five.

~~((The producer))~~ (i) Except as otherwise provided by this chapter, board members ~~((of the board))~~ in positions one through five must be practical producers of turfgrass seed in the district in and for which they are nominated, appointed, or elected and each shall be a citizen and resident of the state, over the age of eighteen years. Each producer board member must be and have been actually engaged in producing turfgrass seed within the state of Washington for a period of three years and has during that time derived a substantial portion of his or her

income therefrom and who is not engaged in business as a handler or other dealer.

(ii) If any district has fewer than three practical producers of turfgrass seed or if no nominations are made for a district, that district's position is deemed "at large" and may be filled by a producer of turfgrass seed in another district who meets all membership qualifications. This provision does not apply to position five.

(b) The ~~((handler member of the))~~ board member in position six must be a practical handler of turfgrass seed and must be a citizen and resident of the state, over the age of eighteen years. ~~((Each))~~ The handler board member must be and have been, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative actually engaged in handling turfgrass seed within the state of Washington for a period of five years and has during that period derived a substantial portion of his or her income therefrom.

(c) The board member in position seven must be neither a producer nor a handler.

(d) The qualifications of members of the board must continue during their term of office.

**(4) Term of office.**

(a) The term of office for members of the board is three years. One-third of the membership as nearly as possible must be appointed or elected each year.

~~(b) ((Membership positions on the board are designated numerically; affected producers will have positions one through five, the affected handler will have position six and the member representing the director will have position seven.~~

~~(c) The term of office for the initial board members must be as follows:~~

~~Positions one and three—Three years, ending on January 31, 2002.~~

~~Positions two and five—Two years, ending on January 31, 2001.~~

~~Positions four and six—One year, ending on January 31, 2000.~~

~~(d))~~ Except for the director's representative, no member of the board can serve more than two full consecutive three-year terms.

~~((c) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions 1, 4, and 5 shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.)~~

**(5) Nomination of elected or director-appointed board members.**

(a) Each year the director shall call a nomination meeting for elected and/or director-appointed producer board members in those districts whose board members term is about to expire. The meeting(s) must be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of a nomination meeting must be published in a newspaper of general circulation within the affected district at least ten days in advance of the date of the meeting and in addition, written notice of every meeting must be given to all

affected producers within the affected district according to the list maintained by the board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person will not invalidate the proceedings at the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at the nomination meetings. Nominations may also be made within five days after the meeting by written petition filed with the director, signed by at least five affected producers.

(e) When only one nominee is nominated by the affected producers for an elected and/or director-appointed position, RCW 15.65.250 shall apply.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open board position(s) by mail to all affected producers. Nominating petitions for producers must be signed by at least five affected producers of the district from which the candidate will be appointed or elected. The final date for filing nominations must be at least twenty days after the notice was mailed.

**(6) Election or advisory vote of board members.**

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of January. Each affected producer shall be entitled to one vote.

(b) Elected members of the board must be elected by a majority of the votes cast by the affected producers within the affected district. If a nominee does not receive a majority of the votes on the first ballot a runoff election must be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

(c) An advisory vote shall be conducted for producer board members appointed by the director under the provision of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, and advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership must be published in a newspaper of general circulation within the affected district at least ten days in advance of the date of the election or advisory vote. At least ten days before every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of the affected producers maintained by the board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

(e) Nonreceipt of a ballot by an affected producer will not invalidate the election or advisory vote of any board member.

**(7) Vacancies.**

(a) In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.



(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members is a quorum for the transaction of all business and to execute the duties of the board.

(9) **Board compensation.** No member of the board will receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and other officers as the board deems advisable.

(c) To employ and discharge at its discretion the personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to execute the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. The expenses and costs may be paid by check; draft or voucher in the form and the manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director to defray the costs of formulating the order.

(f) To establish a "turfgrass seed board marketing revolving fund" and to deposit the fund in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done under this order. The records, books and accounts must be audited at least once every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts must be closed as of the last day of each fiscal year of the commission. A copy of the audit shall be delivered within thirty days after completion to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board may deem necessary. The board must pay the premium for the bond or bonds from assessments collected. The bond may

not be necessary if any blanket bond covering officials or employees of the state of Washington covers any board member or employee.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least sixty days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution a headquarters, which shall continue unless, changed by the board. All records, books and minutes of board meetings must be kept at the headquarters.

(k) To adopt rules of a technical or administrative nature for the operation of the board, under chapter 34.05 RCW (Administrative Procedure Act).

(l) To execute RCW 15.65.510 covering the obtaining of information necessary to effectuate the order and the act, along with the necessary authority and procedure for obtaining the information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States to obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To execute any other grant of authority or duty provided designees and not specifically set forth in this section.

(p) To sue or be sued.

(q) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(r) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. (~~Personal service contracts must comply with chapter 39.29 RCW.~~)

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(t) To enter into contracts or agreements for research in the production, irrigation, and transportation of turfgrass seed.

(u) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of attorney general.

(v) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(w) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, and transportation of turfgrass seed including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(x) To maintain a list of the names and addresses of affected producers that may be compiled from information

used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(y) To maintain a list of the names and addresses of persons who handle turfgrass seed within the affected area and data on the amount and value of the turfgrass seed handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(z) To maintain a list of names and addresses of all affected persons who produce turfgrass seed and the amount, by unit, of turfgrass seed produced during the past three years pursuant to RCW 15.65.295.

(aa) To maintain a list of all persons who handle turfgrass seed and the amount of turfgrass seed handled by each person during the past three years pursuant to RCW 15.65.-295.

(bb) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

**(11) Procedures for board.**

(a) The board shall hold regular meetings, at least quarterly, with the time and date fixed by resolution of the board and held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget must be presented for discussion at the meeting. Notice of the annual meeting must be filed in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the annual meeting must be given at least ten days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution the time, place, and manner of calling special meetings of the board with twenty-four hours written notice to the members. A board member may waive in writing his or her notice of any special meeting. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

**WSR 16-12-113**

**PROPOSED RULES**

**GAMBLING COMMISSION**

[Filed June 1, 2016, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-122.

Title of Rule and Other Identifying Information: Amending WAC 230-15-025 Hours of play, 230-06-030 Restrictions and conditions for gambling promotions, and 230-06-031 Using wheels in promotional contests of chance, fundraising events, or gambling activities—Promotional contests of chance (PCOC).

Hearing Location(s): Red Lion, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 14 or 15, 2016, at 11:30 a.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 14 or 15, 2016.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by July 1, 2016.

Assistance for Persons with Disabilities: Contact Julie Anderson by July 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Hours of Play:** The proposed change would allow house-banked card rooms to be open twenty-four hours a day, seven days a week. Currently, house-banked card rooms can be open twenty-four hours a day, five days a week.

**Promotions:** The proposed change would allow a broader range of promotions; for example, these changes would:

- Allow licensed manufacturers, distributors, and service suppliers to give licensees cash or merchandise to offer as a prize; and
- Allow card rooms to use a physical drawing, spinning a wheel or selection from a group of concealed items to award a prize.

**Use of Wheels in Promotions:** The proposed change would allow card room licensees to use spinning wheels in conjunction with promotions they offer to customers.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0201.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tina Griffin, Assistant Director, Lacey, (360) 486-3546; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Josh Stueckle, Acting Agent-in-Charge, Spokane, (509) 325-7909.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule changes would not impose additional costs. The rule changes would allow operators more opportunities for hours of operation and for promotions.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 31, 2016

Susan Newer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-17-056, filed 8/15/14, effective 9/15/14)

**WAC 230-06-030 Restrictions and conditions for gambling promotions.** Licensees may conduct gambling promotions to encourage players to participate in the ~~((a))~~ gambling activity they are licensed to conduct without our review or approval under these restrictions and conditions:

(1) You must give all players an equal opportunity to participate; allowing entries based on criteria, for example, time played or promotions for groups, such as "Ladies' Night" are allowed; and

(2) You must establish rules and restrictions to determine how you will give promotional prizes and items to players. ~~((You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game)); and~~

(3) You must display all rules and restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

(4) Except for members-only progressive raffles conducted as authorized in WAC 230-11-091, you must not give another chance to participate in a gambling activity we regulate as a promotional item; and

(5) As part of a gambling promotion, you may add additional merchandise or cash prizes, including increasing payouts, for gambling activities you are licensed to conduct; and

(6) Licensed manufacturers, distributors, and service suppliers may give cash or merchandise items to licensed operators to be used as promotional prizes; and

(7) You must not give promotional prizes based on additional elements of chance, except:

(a) Licensed bingo operators may give items as part of a bingo game based on an element of chance, such as a drawing or spinning wheel;

(b) Licensed card rooms may only use physical drawings, spinning a wheel, or selecting from a group of concealed items; and

(8) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

**WAC 230-06-031 Using wheels in promotional contests of chance, fund-raising events, or gambling activities.**

Promotional contests of chance (PCOCs)

(1) Operators may use wheels specifically manufactured for a promotional contest of chance (PCOC), whether commercially made or home made.

(2) Operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in PCOCs unless they receive permission ahead of time from us.

Fund-raising events

(3) Operators may use commercially made wheels in gambling activities for fund-raising events.

Separation of PCOCs from gambling activities and promotions

(4) No wheel may be used in conjunction with their gambling activities by~~((=~~

~~(a) Card room licensees; or~~

~~(b))~~ pull-tab licensees.

Card rooms, pull-tabs, bingo, raffles

(5) Licensees and operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in:

(a) Bingo; or

(b) Card games; or

(c) Pull-tabs.

(6) Operators may use commercially made or home made wheels as part of drawings for prizes, good neighbor prizes, or second element of chance prizes as part of bingo games, as set out in WAC 230-10-280 or to award promotional prizes on card games as set out in WAC 230-06-030.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 14-11-021, filed 5/9/14, effective 7/1/14)

**WAC 230-15-025 Hours of play.** (1) Licensees may ~~((only))~~ allow the use of their premises for card playing ~~((between the hours of 2:00 a.m. and 6:00 a.m.))~~ twenty-four hours a day with written approval from us.

(2) After we have received a written request, we will consult with the local law enforcement agency with jurisdiction over the licensee's business and with other state agencies involved in regulation of the business.

(3) After you have received written approval to operate ~~((between the hours of 2:00 a.m. and 6:00 p.m.))~~ twenty-four hours a day you may change your hours of operation without further approval from us. Class F and house-banked card rooms must include their hours of operation in their internal controls.

(4) You must also meet the following requirements:

(a) Open the food and/or drink business being stimulated to the public for business any time licensees are conducting card games; and

(b) ~~((Observe a four-hour period of closure at the end of at least two business days a week before beginning the next period of operation; and~~

~~((e)))~~ Comply with any other terms and conditions we require.

(5) We may deny the request for extended hours or revoke hours already approved if:

(a) The local law enforcement agency or a state agency objects; or

(b) We determine that the licensee has violated any provisions of chapter 9.46 RCW, any other commission rule, or any of the terms of our approval.

(6) Licensees must submit all objections to revocations of operating hours in writing.

(7) If requested, we allow the licensee an opportunity for a brief adjudicative proceeding (BAP) before denying or revoking the licensee's authorization for extended card game hours. An administrative law judge hears the BAP, under the provisions of Title 230 WAC and chapter 34.05 RCW.