WSR 16-17-101
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed August 19, 2016, 9:06 a.m., effective September 19, 2016]

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

Purpose: The department is proposing new WAC 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 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.

Citation of Existing Rules Affected by this Order: Amending WAC 388-145-1305, 388-145-1335, 388-145-1390, 388-145-1440, 388-145-1445, 388-145-1455, 388-145-1535, 388-145-1540, 388-145-1585, 388-145-1605, 388-145-1610, 388-145-1625, 388-147-1305, 388-147-1335, 388-147-1410, 388-147-1455, 388-147-1465, 388-147-1540, 388-147-1545, 388-147-1635, 388-147-1695, 388-148-1305, 388-148-1365, 388-148-1420, 388-148-1425, 388-148-1445, 388-148-1470, 388-148-1475, 388-148-1500, 388-148-1520, 388-148-1525, 388-148-1540, 388-148-1605, and 388-148-1625.

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

Other Authority: Public Law 113-183 The Preventing Sex Trafficking and Strengthening Families Act required changes to WAC 388-145-1540, 388-147-1545, and 388-148-1425.

Adopted under notice filed as WSR 16-10-020 on April 25, 2016.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-145-1305, 388-147-1305, and 388-148-1305 had additional language added to clarify that individuals enrolled in services through the developmental disabilities administration the day prior to their eighteenth birthday and either a high school or equivalency course of study or vocational program would still meet the definition of "child," "children," or "youth" for chapters 388-145, 388-147, and 388-148 WAC.

WAC 388-145-1535, 388-147-1540, and 388-148-1420 all have similar language. Language was changed, so when an incident happens that must be reported the foster parent or private agency staff will also need to notify the child's tribal ICW case manager as applicable.

In WAC 388-148-1605 a clarification was made to require a negative tuberculosis test or X-ray when being approved to be a regular substitute care provider. This was also a requirement in the previous WAC revision (5/04).

A final cost-benefit analysis is available 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 34, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 34, Repealed 0.

Date Adopted: August 18, 2016.

Patricia K. Lashway
Acting Secretary

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"~~)) "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 enrolled in services through the developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

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

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

(5) 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~~)) twenty-four 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)~~)) 74.15.020 (1)(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.

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; ((~~or~~))

(b) Have not met the background check requirements; ((~~or~~))

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

(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; ((~~or~~))

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

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

(((~~(g)~~))) (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 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 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 after the incident to your local children's administration

intake staff and the child's DSHS worker or child placing agency (CPA) case manager and the child's tribal Indian child welfare (ICW) case manager as applicable:

(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 results in injury requiring off-site medical attention or hospitalization;

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

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

(j) Property damage that is a safety hazard and ((~~is~~)) not immediately corrected or may affect the children's 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 after the incident, to the child's DSHS worker (((~~if any~~))) or CPA case manager and the child's tribal ICW case manager as applicable:

(a) ((~~Suicidal/homicidal~~)) Suicidal or 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~~)) does not require professional medical treatment;

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

(((~~f~~))) (g) Drug ((~~and/or~~)) 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~~)) any report with the date, time, and staff person ((~~making~~)) who makes the report.

(4) Programs ((~~providing~~)) that provide care to medically fragile children who have nursing care staff on duty may document the incidents described in ((~~subsection~~)) subsections (2)(b) and (c) ((~~in~~)) of 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~~)) return.

(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.

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~~

~~(c) 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 overheat.

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

(1) Under eighteen years ((~~old~~)) of age;

(2) Up to twenty-one years of age and enrolled in services through the developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

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

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

(5) 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; ((~~or~~))

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

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

(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; ((~~or~~))

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

(((~~f~~))) (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.

(((~~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 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 after the incident to your local children's administration intake staff and the child's DSHS worker and tribal Indian child welfare (ICW) case manager as applicable:

(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 results in injury requiring off-site medical attention or hospitalization;

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

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

(j) Property damage that is a safety hazard and ((~~is~~)) not immediately corrected or may affect the children's 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 after the incident, to the child's DSHS worker and tribal ICW case manager as applicable:

(a) ((~~Suicidal/homicidal~~)) Suicidal or 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) Physical assault between two or more children that results in injury but ((~~did~~)) does not require professional medical treatment;

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

(((~~f~~))) (g) Drug ((~~and/or~~)) 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~~)) that provide 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"~~)) "Child," "children," or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years ((~~old~~)) or age;

(2) Up to twenty-one years of age and enrolled in services through developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

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

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

(5) 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.

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 388-148-1365 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 after the incident to your local children's administration intake staff and the child's DSHS worker or ((~~CPA~~)) child placing agency (CPA) case manager ((~~and/or~~)) and child's tribal ((~~ICW~~)) Indian child welfare (ICW) case manager as applicable:

(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~~)) 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;

(((~~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~~)) a child in care that results in injury requiring off-site medical attention or hospitalization;

(((~~h~~))) (i) Any medication ((~~that is~~)) given or consumed incorrectly ((~~and~~)) that 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 children's 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 after the incident, to the child's DSHS worker or CPA case manager and the child's tribal ICW case manager as applicable:

(a) ((~~Suicidal/homicidal~~)) Suicidal or 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~~)) does not require professional medical treatment;

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

(((~~f~~))) (g) Drug ((~~and/or~~)) 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) ((~~5~~))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~~

~~(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 overheat.

(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.

(2) ((~~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 DCFS 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 to watch your foster child when you are away from home.

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

(a) Be familiar and comfortable with the ((~~person~~)) substitute care provider 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~~)) Provide the substitute 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 DSHS worker. The ((~~person~~)) substitute care provider 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) and (4).

(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;

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

(((~~e~~))) (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 16-18-040
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed August 30, 2016, 9:57 a.m., effective September 30, 2016]

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

Purpose: The department is amending existing sections, repealing sections, and creating new sections in chapter 388-101 WAC, Certified community residential services and supports, to align them with new or changed legislation.

HB 1307 outlines enforcement changes regarding certified community residential services and supports (CCRSS) providers. Initiative 1163 modifies the law governing background checks, training, and home care aide certification for long-term care, requiring changes in WAC 388-101-3000 Definitions and creating new sections WAC 388-101-3259 Long-term care worker requirements and 388-101-3202 Background checks—National fingerprint background checks. SB 5600 modified certain definitions concerning vulnerable adults including the definitions of abuse and sexual abuse, and also amended RCW 74.34.020, which is reflected in WAC 388-101-3000 Definitions.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-101-4210, 388-101-4220 and 388-101-4230; and amending WAC 388-101-3000, 388-101-4190, 388-101-4200, 388-101-4240, and 388-101-4260.

Statutory Authority for Adoption: Chapters 71A.12, 74.34, 74.39A RCW.

Adopted under notice filed as WSR 16-13-007 (supplemental) on June 2, 2016; and WSR 15-20-113 (original CR-102) on October 6, 2015.

Changes Other than Editing from Proposed to Adopted Version:

- WAC 388-101-3000, changes made to text to include definitions of abuse, improper restraint, and chemical restraint to align with chapter 74.34 RCW definitions.
- WAC 388-101-3000, definition reworded for clarity.
- WAC 388-101-3202, section reworded for additional clarification.
- WAC 388-101-4205, section reworded to add clarity to rule.
- WAC 388-101-4215, section reworded to add clarity to rule.
- WAC 388-101-4225, correction made to wording.
- WAC 388-101-4230, repealed.
- WAC 388-101-4260, amended.
- WAC 388-101-4515, 388-101-4525, and 388-101-4535 renumbered to WAC 388-101-4215, 388-101-4225, and 388-101-4235.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 5, Repealed 3.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 5, Repealed 3.

Date Adopted: August 25, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-10-028, filed 4/28/14, effective 5/29/14)

WAC 388-101-3000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means((~~:~~

~~(1)~~)) the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult((~~;~~)).

(((~~(2)~~)) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish((~~; and~~)).

(((~~(3)~~)) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(((~~(a)~~)) (1) **"Sexual abuse"** means any form of nonconsensual sexual ((~~contact~~)) conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. ((~~Sexual contact may include interactions that do not involve touching, including but not limited to sending a client sexually explicit messages, or cuing or encouraging a client to perform sexual acts.~~)) Sexual abuse also includes any sexual ((~~contact~~)) conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(((~~(b)~~)) (2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving((~~,~~)) or prodding((~~, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately~~)).

(((~~(c)~~)) (3) **"Mental abuse"** means ((~~any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating,~~)) a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(((~~(d)~~)) (4) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(5) "**Improper use of restraint**" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

"Associated with the applicant" means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

"Case manager" means the division of developmental disabilities case resource manager or social worker assigned to a client.

"Certification" means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

"Chaperone agreement" means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

"Chemical restraint" ((~~means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms~~)) means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(4) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"Client services" means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

"Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Crisis diversion" means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

"Crisis diversion bed services" means crisis diversion that is provided in a residence maintained by the service provider.

"Crisis diversion support services" means crisis diversion that is provided in the client's own home.

"Department" means the Washington state department of social and health services.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other

than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Functional assessment" means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

"Group home" means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

"Group training home" means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

"Immediate" or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

"Immediate risk", **"immediate threat",** or **"imminent danger"** means serious physical harm to or death of a client or serious threat to a client's life, health, or safety.

"Individual financial plan" means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

"Individual instruction and support plan" means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

"Individual support plan" means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

"Instruction" means goal oriented teaching that is designed for acquiring and enhancing skills.

"Instruction and support services staff" means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff ((~~shall~~)) must also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients ((~~shall~~)) must be considered instruction and support services staff for the purposes of the applicable training requirements.

"Legal representative" means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"**Long-term care workers**" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

"Managing client funds" means that the service provider:

(1) Has signing authority for the client;

(2) Disperses the client's funds; or

(3) Limits the client's access to funds by not allowing funds to be spent.

"Mechanical restraint" means ((~~a~~)) any device ((~~or object, which the client cannot remove, applied to the client's body that restricts his/her free movement~~)) attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are medically authorized and used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

"Medication service" means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

"Minimal" means a violation that results in little or no negative outcome or little or no potential harm for a client.

"Moderate" means a violation that results in negative outcome or actual or potential harm for a client.

"**Negative outcome"** includes any negative effect on the client's physical, mental, or psychosocial well-being, including but limited to the client's safety, quality of life or quality of care.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, includ-

ing but not limited to conduct prohibited under RCW 9A.42.-100.

"Physical intervention" means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

"Physical restraint" means ((~~physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another~~)) the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force on a vulnerable adult in order to calm or comfort him or her, or holding a vulnerable adult's hand to safely escort him or her from one area to another.

"Psychoactive" means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

"Psychoactive medications" means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

"Qualified professional" means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

"Recurring" or **"repeated"** means that the department has cited the service provider for a violation of licensing laws or rules and one or more of the following is present:

(1) The department previously imposed an enforcement remedy for a violation of the same law, rule, or for substantially the same problem within the preceding twenty-four months; or

(2) The department cited a violation of the same law, rule, or for substantially the same problem on two occasions within the preceding twenty-four months.

"Restrictive procedure" means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

"Risk assessment" means an assessment done by a qualified professional and as required by RCW 71A.12.230.

"Serious" means a violation that results in one or more negative outcomes and significant actual harm to a client that does not constitute imminent danger. It also means there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a client.

"Severity" means the seriousness of a violation as determined by the actual or potential negative outcomes for clients and subsequent actual or potential for harm. Negative outcomes include any negative effect on the client's physical, mental, or psychosocial well-being (i.e., safety, quality of life, quality of care).

"Service provider" means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

"Support" means assistance a service provider gives a client based on needs identified in the individual support plan.

"Supported living" means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

"Uncorrected deficiency" means the department has cited a violation of WAC or RCW following any type of certification evaluation or complaint investigation and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

"Willful" means the deliberate, or nonaccidental, action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.

NEW SECTION

WAC 388-101-3202 Background checks—National fingerprint background checks. (1) Administrators and all caregivers who are hired on or after January 1, 2016, and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the service provider must not employ, directly or by contract, an administrator, employee, volunteer, student or subcontractor who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113, or that is a disqualifying negative action under WAC 388-78A-2470 or WAC 388-76-10180.

(3) The service provider may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously com-

pleted a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

NEW SECTION

WAC 388-101-3259 Long-term care worker requirements. Beginning January 1, 2016, all staff employed as long-term care workers as defined by RCW ((~~74.39A.009 (16)~~)) 74.39A.009 (17)(a) are required to meet all the training requirements in the following:

(1) Chapter 388-112 WAC, if the service provider is also licensed as an adult family home or assisted living facility.

(2) Chapter 388-829 WAC, if the service provider is certified only.

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

NEW SECTION

WAC 388-101-4175 Remedies—General. (1) The department may take one or more of the following actions in any case which the department finds that a service provider is noncompliant with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW or other relevant federal, state and local laws, requirements or ordinances:

(a) Require a service provider to implement a plan of correction approved by the department and to cooperate with subsequent monitoring of the service provider's progress;

(b) Impose reasonable conditions on a service provider's certification such as correction within a time specified in the statement of deficiency, training, and limits on the type of client the service provider may serve;

(c) Impose civil penalties;

(d) Suspend the service provider from accepting clients with specified needs by imposing a limited suspension of department referrals (stop placement);

(e) Suspend department referrals (stop placement);

(f) Refuse to certify a prospective service provider;

(g) Decertify or refuse to renew the certification of the service provider.

(2) The enforcement actions and penalties authorized in this section are not exclusive or exhaustive and nothing in this section prohibits the department from taking any action authorized in statue or rule or under the terms of a contract with the service provider.

NEW SECTION

WAC 388-101-4180 Remedies—Consideration for imposing remedies. (1) The department may select enforcement actions proportional to the seriousness of harm or threat of harm to clients served by service providers.

(2) The department may select a more severe enforcement action for violations that are:

(a) Uncorrected;

(b) Repeated;

(c) Pervasive; or

(d) Present a serious threat to the health, safety, or welfare of clients served by the service provider.

NEW SECTION

WAC 388-101-4185 Remedies—Circumstances resulting in enforcement remedies. The department may impose the enforcement remedies described in this chapter when the service provider:

(1) Failed or refused to comply with the health and safety related requirements of this chapter, chapter 74.34 RCW or the rules adopted under these chapters;

(2) Failed or refused to cooperate with the certification process;

(3) Prevented or interfered with a certification, inspection, or complaint investigation by the department;

(4) Failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW;

(5) Knowingly, or with reason to know, made a false statement of material fact related to certification or contracting with the department, or in any matter under investigation by the department;

(6) Failed to submit a plan of correction for approval by the department;

(7) Failed to implement the plan or plans of correction or failed to make a correction imposed under WAC; or

(8) Failed to cooperate with subsequent monitoring.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4190 Remedies—Specific provisional certification. (1) The department may impose a provisional certification, not to exceed one hundred eighty days, if any service provider does not comply with requirements of this chapter, other applicable laws and rules, or the residential services contract.

(2) At the end of provisional certification the department may:

(a) Approve the service provider for regular certification if the service provider has complied with certification requirements; or

(b) ((~~Revoke~~)) Decertify the service provider((~~'s certification~~)) and terminate the residential services contract if the service provider has not complied with all certification requirements.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4200 Remedies—Specific—Decertification. The department may ((~~revoke any~~)) decertify a service provider((~~'s certification~~)) at any time for noncompliance with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW, or other relevant federal, state and local laws, requirements or ordinances.

NEW SECTION

WAC 388-101-4205 Remedies—Specific—Suspend department referrals (stop placement). (1) The department may suspend referrals to the service provider for noncompliance with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW, or other relevant federal, state, and local laws.

(2) Once the department suspends referrals, the service provider may not admit new referrals until the department lifts its suspension.

(3) The department may lift its suspension if it finds the following:

(a) The service provider has corrected the deficiencies that necessitated the suspension of the department referrals; and

(b) The service provider has shown the capacity to maintain the corrective action addressed by the suspension of department referrals.

(4) After a department finding of a violation for which a suspension of department referrals has been imposed, the department must make an on-site revisit of the service provider within fifteen working days from the deficiency correction date documented on an acceptable plan of correction. If the deficiency correction date had occurred prior to the department being notified, the department must make an on-site revisit within fifteen working days from the date the department receives the acceptable plan of correction from the service provider.

(5) If during the service provider's suspension period, the department finds a new violation that it reasonably believes will result in a new suspension or limited suspension of department referrals, the service provider's current suspension will remain in effect until the department imposes the new suspension or limited suspension of department referrals.

NEW SECTION

WAC 388-101-4215 Remedies—Specific—Limited suspension of department referrals (stop placement) for clients with specified needs. (1) The department may order a limited suspension of department referrals and prohibit the accepting of clients with specified needs if the service provider is noncompliant with the requirements of this chapter, the department's residential services contract, chapter 74.34 RCW, or other relevant federal, state, and local laws.

(2) Once the department orders a limited suspension, the service provider may not accept any clients with specified needs, or at a specific site, until the department lifts its limited suspension.

(3) The department may lift the limited suspension of department referrals if it finds the following:

(a) The service provider has corrected the deficiencies that necessitated the limited suspension of department referrals; and

(b) The service provider has shown the capacity to maintain the corrective action addressed by the limited suspension of department referrals.

(4) After a department finding of a violation for which a limited suspension of department referrals has been imposed, the department must make an on-site revisit of the service provider within fifteen working days from the deficiency correction date documented on an acceptable plan of correction. If the deficiency correction date had occurred prior to the department being notified, the department must make an on-site revisit within fifteen working days from the date the department receives the acceptable plan of correction from the service provider.

(5) If during the service provider's suspension period, the department finds a new violation that it reasonably believes will result in a new suspension or limited suspension of department referrals, the service provider's current suspension will remain in effect until the department imposes the new suspension or limited suspension of department referrals.

NEW SECTION

WAC 388-101-4225 Remedies—Specific—Civil penalties. (1) The department may impose civil penalties if the service provider:

(a) Fails to implement the plan or plans of correction;

(b) Fails to make a correction when conditions have been placed on a service provider's certification; or

(c) Fails to cooperate with the department's subsequent monitoring.

(2) The department may impose civil penalties from the compliance date identified in the approved plan of correction or the statement of deficiencies of:

(a) Up to one hundred dollars per day per violation; and

(b) Up to three thousand dollars per violation.

(3) If the service provider fails to submit a plan of correction for approval by the department, the department may impose civil penalties starting ten days after the service provider received the statement of deficiencies.

NEW SECTION

WAC 388-101-4235 Remedies—Civil fine grid. The department will consider the tiered sanction grid below when imposing civil fine remedies:

NO HARM	MINIMAL or MODERATE HARM		SERIOUS HARM		IMMINENT DANGER and/or IMMEDIATE THREAT
Repeat/Uncorrected	Initial	Repeat/ Uncorrected	Initial	Repeat/ Uncorrected	Any Violation
Civil fine of up to $100 per violation	Civil fine up to $100 per day per violation not to exceed $500 per violation	Civil fine up to $100 per day per violation not to exceed $1000 per violation	Civil fine up to $100 per day per violation not to exceed $2000 per violation	Civil fine up to $100 per day per violation not to exceed $3000 per violation	Civil fine up to $100 per day per violation not to exceed $3000 per violation

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4240 Informal dispute resolution. (1) When a service provider disagrees with the department's finding of a violation or certification action under this chapter, the service provider may request an informal dispute resolution meeting with the department.

(2) The service provider must make a written request to the department for an informal dispute resolution meeting within ten working days of receipt of the written notice of the department's final report of findings and/or certification action.

(3) The service provider must submit a written statement identifying the challenged action, and include specifically the issues and regulations involved.

(4) Except for the imposition of civil penalties, the effective date of enforcement actions may not be delayed or suspended pending any hearing or informal dispute resolution process.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4260 Appeal rights. (1) A service provider:

(a) May contest a decision made by the department pursuant to chapter 71A.12 RCW and according to the provisions of chapters 34.05 RCW and 388-02 WAC;

(b) Must file any request for a hearing with the office of administrative hearings at the mailing address specified in the notice of imposition of an enforcement remedy; and

(c) Must make the request within twenty-eight days of receipt of the written notice of the department's certification action.

(2) Except for the imposition of civil penalties, certification actions are effective immediately upon notice and will continue pending any hearing.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-101-4210 Community protection program—Circumstances resulting in enforcement remedies.

WAC 388-101-4220 Community protection program—Authorized enforcement remedies.

WAC 388-101-4230 Community protection program—Considerations for imposing remedies.

WSR 16-19-002
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed September 7, 2016, 12:53 p.m., effective October 8, 2016]

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

Purpose: Amendments to WAC 314-55-089 to add provisions to require marijuana excise tax payments by electronic payment, check, cashier's check, or money order. The changes also provide provisions on when payments are deemed received. A waiver process is also established to allow those to apply for a waiver from the payment requirements based on good cause. If a licensee fails to apply for a waiver or is denied a waiver, they may be assessed a ten percent penalty should the licensee continue to tender marijuana excise tax payments in cash. If a licensee is denied a waiver, they have the right to appeal the decision under the Administrative Procedure Act, chapter 34.05 RCW. WAC 314-55-110 is amended to allow appeals of waiver denials to proceed as brief adjudicative proceedings as allowed under RCW 34.05.482 through 34.05.494. These rule changes were made to implement the budget proviso related electronic payment of the marijuana excise tax included by the legislature in the 2016 supplemental budget.

Citation of Existing Rules Affected by this Order: Amending WAC 314-42-110 and 314-55-089.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, 69.50.535, and chapter 36, Laws of 2016 (2ESHB 2376).

Adopted under notice filed as WSR 16-15-036 on July 13, 2016.

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

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

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

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

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

Date Adopted: September 7, 2016.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 14-12-102, filed 6/4/14, effective 7/5/14)

WAC 314-42-110 Brief adjudicative proceedings. The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The board will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the board to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(1) Liquor license suspensions due to nonpayment of spirits taxes per RCW 66.24.010;

(2) Liquor license denials per WAC 314-07-065(2);

(3) Liquor license denials per WAC 314-07-040;

(4) Special occasion license application denials per WAC 314-07-040;

(5) Special occasion license application denials per WAC 314-07-065(7);

(6) MAST provider or trainer denials for noncompliance with a support order in accordance with RCW 66.20.085;

(7) MAST provider denials or revocations per WAC 314-17-070;

(8) Liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015;

(9) One-time event denials for private clubs per WAC 314-40-080;

(10) Banquet permit denials per WAC 314-18-030;

(11) The restrictions recommended by the local authority on a nightclub license are denied per WAC 314-02-039 (a local authority may request a BAP);

(12) The restrictions recommended by a local authority are approved per WAC 314-02-039 (an applicant for a nightclub license may request a BAP);

(13) Liquor license suspensions due to noncompliance with a support order per RCW 66.24.010;

(14) Liquor license suspensions due to noncompliance with RCW 74.08.580(2), electronic benefits cards, per RCW 66.24.013;

(15) License suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630;

(16) License suspension due to nonpayment of spirits distributor license fees per RCW 66.24.055;

(17) Tobacco license denials per WAC 314-33-005;

(18) Marijuana license denials per WAC 314-55-050(2);

(19) Marijuana license denials per WAC 314-55-050(4);

(20) Marijuana license denials per WAC 314-55-050(8);

(21) Marijuana license denials per WAC 314-55-050 (10);

(22) Marijuana license suspensions per WAC 314-55-050(11);

(23) Marijuana license denials per WAC 314-55-050 (12); ((~~and~~))

(24) Marijuana license denials per WAC 314-55-050 (13); and

(25) Marijuana excise tax payment waiver denials per WAC 314-55-089.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana producer and marijuana processor licensees must submit monthly report(s) to the WSLCB. Marijuana retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be:

(a) On a form or electronic system designated by the WSLCB;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the WSLCB on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the WSLCB.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(4) **Marijuana retailer's licensees:**

(a) On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(b) A marijuana retailer licensee must collect from the buyer and remit to the WSLCB a marijuana excise tax of thirty-seven percent of the selling price on each retail sale of

usable marijuana, marijuana concentrates, and marijuana-infused products.

(5) **Payment methods:** Marijuana excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit marijuana excise tax payments to the board by one of the following means:

(a) By mail to WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504;

(b) By paying through online access through the WSLCB traceability system; or

(c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW.

(6) Payments transmitted to the board electronically under this section will be deemed received when received by the WSLCB's receiving account. All other payments transmitted to the WSLCB under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.

(7) The WSLCB may waive the means of payment requirements as provided in subsection (5) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (5) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.

(8) If a licensee tenders payment of the marijuana excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a ten percent penalty.

(9) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(10) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

WSR 16-19-009
PERMANENT RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed September 8, 2016, 12:15 p.m., effective October 9, 2016]

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

Purpose: SWCAA 400-020 Applicability. This is an existing section identifying the agency's geographic boundaries and source jurisdiction. The proposed rule changes revise existing language regarding implementation of department of ecology rules and decline adoption of WAC 173-400-930. The proposed changes are necessary to clarify the applicability of statewide rules.

SWCAA 400-030 Definitions. This an existing section containing the definitions of words and phrases used throughout SWCAA 400. The proposed rule changes revise existing definitions and add new definitions, and make administrative edits. The proposed changes are necessary to maintain consistency with state and federal programs.

SWCAA 400-036 Portable Sources from Other Washington Jurisdictions. This is a new section that allows for operation of portable sources with valid approvals from other jurisdictions without obtaining an agency approval. The proposed changes are being adopted in support of a statewide effort to ease permitting burden for portable sources.

SWCAA 400-040 General Standards for Maximum Emissions. This is an existing section containing a minimum set of air emission standards applicable to all sources. The proposed changes add exemptions, change odor nuisance provisions, and make administrative edits. The proposed changes are intended to maintain consistency with similar statewide rules and improve odor enforcement.

SWCAA 400-045 Permit Application for Nonroad Engines. This is an existing section identifying requirements for permit applications for nonroad engines. The proposed changes are intended to improve implementation of the agency's nonroad engine permitting program.

SWCAA 400-046 Application Review Process for Nonroad Engines. This is an existing section identifying requirements for the processing and approval of permit applications for nonroad engines. The proposed changes are intended to improve implementation of the agency's nonroad engine permitting program.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units. This is an existing section containing a minimum set of air emission standards for all combustion and incineration units. The proposed changes are necessary to reduce fuel oil emissions, improve program implementation, and maintain consistency with applicable federal standards.

SWCAA 400-060 Emission Standards for General Process Units. This is an existing section containing a particulate matter emission standard applicable to all general processes. The proposed changes are necessary to maintain consistency with applicable federal test methods.

SWCAA 400-070 Emission Standards for Certain Source Categories. This is an existing section containing minimum air emission standards and work practices for selected general source categories. The proposed changes are necessary to clarify category requirements, correct an exist-

ing error, and maintain consistency with state and federal standards.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. This is an existing section containing air emission standards, work practices, and monitoring/reporting requirements that may be used in lieu of New Source Review for selected small source categories. The proposed changes are necessary to improve implementation of the small unit notification program and make changes requested by United States Environmental Protection Agency (US EPA).

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants. This is an existing section that adopts by reference the federal standards relating to hazardous air pollutant standards contained in 40 C.F.R. Parts 61, 63, and 65. The proposed changes are necessary to support the agency's implementation of the affected federal standards.

SWCAA 400-076 Emission Standards for Stationary Sources Emitting Toxic Air Pollutants. This is an existing section identifying review and approval requirements for sources that emit toxic air pollutants. The proposed changes are necessary to support the agency's implementation of local toxic air pollutant standards.

SWCAA 400-081 Startup and Shutdown. This is an existing section containing provisions addressing sources that cannot comply with technology based emission standards during startup and shutdown. The proposed changes make changes requested by US EPA.

SWCAA 400-091 Voluntary Limits on Emissions. This is an existing section containing provisions by which a source may voluntarily limit its potential to emit. The proposed changes improve clarity and consistency with the remainder of the agency's rules.

SWCAA 400-099 Per Capita Fees. This is an existing section identifying the authority for, method of determination, and amount of the agency's per capita fee assessment for supplemental income. The proposed changes improve rule clarity.

SWCAA 400-100 Registration Requirements. This is an existing section identifying requirements for registration and inspection of air contaminant sources. The proposed changes support implementation of the registration program and improve clarity.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. This is an existing section identifying those sources that are exempt from the registration requirements of SWCAA 400-100. The proposed changes are necessary to ensure consistency with other proposed SWCAA 400 rule changes.

SWCAA 400-103 Operating Permit Fees. This is an existing section governing fee assessment and expenditure for the Operating Permit Program. The proposed changes improve program implementation.

SWCAA 400-105 Records, Monitoring and Reporting. This is an existing section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories. The proposed changes are necessary to improve the effectiveness of monitoring and reporting at affected sources and maintain consistency with state programs.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. This is an existing section that establishes a minimum set of standards for emission testing and monitoring at air contaminant sources. The proposed changes are necessary to ensure that test/monitoring reports submitted to SWCAA contain all of the information required to determine compliance and to respond to comments from US EPA.

SWCAA 400-107 Excess Emissions. This is an existing section identifying requirements for the reporting of excess emissions, and providing penalty relief for unavoidable excess emissions. The proposed changes are necessary to maintain consistency with state regulations and respond to comments from US EPA.

SWCAA 400-109 Air Discharge Permit Applications. This is an existing section that identifies requirements for the submission and content of Air Discharge Permit applications. The proposed changes are necessary to maintain consistency with other SWCAA rules, ensure that SEPA requirements are met, and respond to comments from US EPA.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). This is an existing section identifying requirements for the processing and approval of Air Discharge Permit applications. The proposed changes are necessary to maintain consistency with overlapping state/federal regulations and to formally incorporate agency permitting policy.

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area. This is an existing section identifying requirements specific to new sources located in a Maintenance Plan Area. The proposed changes are necessary to maintain consistency with state and federal regulations.

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas. This is an existing section identifying requirements specific to new sources located in Nonattainment Areas. The proposed changes are necessary to maintain consistency with state and federal regulations.

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas. This is an existing section identifying requirements specific to new sources located in Attainment or Nonclassifiable Areas. The proposed changes are necessary to maintain consistency with state and federal regulations.

SWCAA 400-115 Standards of Performance for New Sources. This is an existing section that adopts by reference the federal standards for new sources contained in 40 C.F.R. Part 60. The proposed changes are necessary for proper implementation and enforcement of the affected federal standards.

SWCAA 400-130 Use of Emission Reduction Credits. This is an existing section identifying requirements, and procedures of use, for emission reduction credits (ERC). The proposed changes are necessary for federal incorporation of the agency's ERC program.

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank. This is an existing section identifying requirements and procedures for depositing emission reduction credits into SWCAA's emission credit bank. The proposed

changes are necessary for federal incorporation of the agency's ERC program.

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank. This is an existing section identifying requirements for maintenance of SWCAA's emission credit bank, issuance of emission reduction credits, and management of expired credits. The proposed changes are necessary for federal incorporation of the agency's ERC program.

SWCAA 400-140 Protection of Ambient Air Increments. This is an existing section containing provisions for protection of ambient air increments. The section is being deleted to improve consistency with overlapping state regulations.

SWCAA 400-141 Prevention of Significant Deterioration (PSD). This is an existing section containing provisions for PSD applicable stationary sources. The section is being deleted to improve consistency with overlapping state regulations.

SWCAA 400-171 Public Involvement. This is an existing section identifying requirements for public notice of agency actions, and the process by which public involvement is to be administered. The proposed changes are intended to improve the public involvement process and ensure consistency with applicable federal regulations.

SWCAA 400-190 Requirements for Nonattainment Areas. This is an existing section addressing the development of requirements specific to nonattainment areas. The proposed changes improve internal consistency with regards to applicable major source permitting requirements.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. This is an existing section identifying presumptive requirements for new exhaust stack installations, and describes the procedure by which the maximum allowable stack height is to be determined. The proposed changes allow more flexibility for permitting new sources.

SWCAA 400-230 Regulatory Actions and Civil Penalties. This is an existing section identifying the agency's authority to take regulatory action and issue civil penalties. The proposed changes improve internal rule consistency and respond to comments made by US EPA.

SWCAA 400-800 Major Stationary Source and Major Modification in a Nonattainment Area. This is a new section identifying requirements for new major stationary sources located in a designated nonattainment area. The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-810 Major Stationary Source and Major Modification Definitions. This is a new section containing definitions applicable to the permitting program for new major stationary sources located in a designated nonattainment area. The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-820 Determining If a New Stationary Source of Modification to a Stationary Source is Subject to These Requirements. This is a new section containing the methodology for determining the applicability of the nonattainment area permitting program to major stationary sources. The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-830 Permitting Requirements. This is a new section identifying permit requirements for new major stationary sources located in a designated nonattainment area. The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-840 Emission Offset Requirements. This is a new section identifying emission offset requirements for major source permitting actions in a designated nonattainment area. The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-850 Actual Emissions - Plantwide Applicability Limitation (PAL). This is a new section adopting by reference the Actuals Plantwide Applicability limit program contained in Section IV.K of 40 C.F.R. 51, Appendix S. The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-860 Public Involvement Procedures. This is a new section identifying public involvement requirements for major source permitting actions in a designated nonattainment area. The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400 Appendix A SWCAA Method 9/Visual Opacity Determination Method. This is an existing section containing a protocol for determining visual opacity from stationary sources. The proposed change is necessary for proper implementation of the affected test method.

SWCAA 400 Appendix B Description of Vancouver Ozone and Carbon Monoxide Maintenance Plan Boundary. This is an existing section containing a map and legal description of the boundary of the Vancouver Ozone and Carbon Monoxide Maintenance Plan Area. The proposed change is intended to improve enforcement of various maintenance plan provisions by making the maintenance plan area easier to identify.

SWCAA 400 Appendix C Federal Standards Adopted by Reference. This is an existing section containing informational lists of all federal regulations adopted by reference pursuant to SWCAA 400-075 and 400-115. The proposed change is intended to improve implementation of the affected standards.

Citation of Existing Rules Affected by this Order: Repealing 400-140 and 400-141; and amending 400-020, 400-030, 400-040, 400-045, 400-046, 400-050, 400-060, 400-070, 400-072, 400-075, 400-076, 400-081, 400-091, 400-099, 400-100, 400-101, 400-103, 400-105, 400-106, 400-107, 400-109, 400-110, 400-111, 400-112, 400-113, 400-115, 400-130, 400-131, 400-136, 400-171, 400-190, 400-200, 400-230, 400-Appendix A, 400-Appendix B, and 400-Appendix C.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 16-13-147 on June 22, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 7, Amended 5, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 31, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 31, Repealed 2.

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

Date Adopted: September 1, 2016.

Uri Papish
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-21 issue of the Register.

WSR 16-19-010
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-239—Filed September 8, 2016, 1:46 p.m., effective October 9, 2016]

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

Purpose: Amends rules for commercial salmon fishing in Grays Harbor. These rules incorporate recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

Citation of Existing Rules Affected by this Order: Amending WAC 220-36-023.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 16-15-064 on July 18, 2016.

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

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

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

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

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

Date Adopted: September 6, 2016.

J. W. Unsworth
Director

AMENDATORY SECTION (Amending WSR 15-19-086, filed 9/16/15, effective 10/11/15)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon, and shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
7:00 a.m. through ((~~11:59 a.m.~~)) 7:00 p.m. October ((~~11~~)) 24;	Area 2A and Area 2D
((~~12:30 p.m.~~)) 7:00 a.m. through ((~~4:30~~)) 7:00 p.m. October ((~~14~~)) 25;	
AND	
((~~8:30~~)) 7:00 a.m. through ((~~5:30~~)) 7:00 p.m. October ((~~18;~~)) 26.	
((~~8:30 a.m. through 5:30 p.m. October 19;~~	
~~8:00 a.m. through 5:00 p.m. October 20;~~	
~~8:00 a.m. through 5:00 p.m. October 21;~~	
~~8:00 a.m. through 5:00 p.m. November 1;~~	
~~8:00 a.m. through 5:00 p.m. November 2;~~	
~~8:00 a.m. through 5:00 p.m. November 3;~~	
~~AND~~	
~~8:00 a.m. through 5:00 p.m. November 4.~~	
~~6:30 a.m. through 3:30 p.m. October 26;~~	~~Area 2C~~
~~AND~~)) 6:30 a.m. through 6:30 p.m. October 17;	Area 2C
6:30 a.m. through ((~~3:30~~)) 6:30 p.m. October ((~~27~~)) 18.	
7:00 a.m. through 7:00 p.m. October 30;	
AND	
7:00 a.m. through 7:00 p.m. October 31.	

Gear:

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(c) Area 2C from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead ((~~and wild (unmarked) coho~~)) must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A((~~, 2C,~~)) and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 1 through November 30.

(5) Retention of any species other than Chinook, chum, ((~~or hatchery~~)) coho ((~~marked by a healed scar at the site of the adipose fin,~~)) or shad, is prohibited in Area 2C from October 1 through November 30.

(6) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail.

Notice of intent must be given prior to 12:00 p.m. on October 1, for openings in Areas 2A, 2C, or 2D.

(10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

WSR 16-19-015
PERMANENT RULES
GAMBLING COMMISSION

[Filed September 8, 2016, 4:29 p.m., effective October 9, 2016]

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

Purpose: In July 2015, the commissioners authorized group 12 amusement games to be played by persons twenty-one and over. 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. 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 those who need a distributor license.

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 licensee if they:
  - Own and operate group 1 through 12 amusement games at their licensed premises; and
  - 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
  - Lease or rent group 1 through 11 amusement games to Class A amusement game licensees.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-185, 230-03-190 and 230-06-110; and new section WAC 230-06-112.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0201.

Adopted under notice filed as WSR 16-12-110 on June 1, 2016.

Changes Other than Editing from Proposed to Adopted Version: There were no variances other than editing from the proposed rules and the final adopted versions.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: August 11, 2016.

Michelle Rancour
Acting 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 games approved or modified after May 1, 2016. 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.

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 prelicensing 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;

(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; and

(c) Rent or lease group 1 through 11 amusement games to Class A amusement game licensees.

WSR 16-19-018
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 9, 2016, 11:06 a.m., effective October 10, 2016]

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

Purpose: Amends WAC 181-82A-202 to include computer science endorsement.

Citation of Existing Rules Affected by this Order: Amending WAC 181-82A-202.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 16-14-044 on June 28, 2016.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: September 9, 2016.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 08-08-027, filed 3/24/08, effective 4/24/08)

WAC 181-82A-202 Certificate endorsements. Teacher certificates shall be endorsed as follows:

(1) **All levels:**

(a) Bilingual education.

(b) Computer science.

(c) Designated arts: Dance.

(((~~c~~))) (d) Designated arts: Theatre arts.

(((~~d~~))) (e) Designated arts: Music: Choral, instrumental or general.

(((~~e~~))) (f) Designated arts, visual arts.

(((~~f~~))) (g) Designated world languages.

(((~~g~~))) (h) English language learner.

(((~~h~~))) (i) Health/fitness.

(((~~i~~))) (j) Library media.

(((~~j~~))) (k) Reading.

(((~~k~~))) (l) Special education.

(2) **Early childhood:**

(a) Early childhood education.

(b) Early childhood special education.

(3) **Elementary education.**
(4) **Middle level:**
(a) Middle level—Humanities.
(b) Middle level—Mathematics.
(c) Middle level—Science.
(5) **Secondary level:**
(a) Designated science: Biology.
(b) Designated science: Chemistry.
(c) Designated science: Earth and space science.
(d) Designated science: Physics.
(e) Designated career and technical education: Agriculture education, business and marketing education, family and consumer sciences education, and technology education.
(f) English language arts.
(g) History.
(h) Mathematics.
(i) Science.
(j) Social studies.
(k) Traffic safety.

WSR 16-19-026
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 13, 2016, 9:19 a.m., effective October 14, 2016]

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

Purpose: The department is amending WAC 388-468-0005 to comply with federal regulations for residency requirements for basic food, the Washington combined application program (WASHCAP), the food assistance program (FAP) for legal immigrants, and transitional food assistance. The amendments also clarify residency requirements for cash and medical programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-468-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 7 C.F.R. 273.2 and 273.3.

Adopted under notice filed as WSR 16-13-113 on June 21, 2016.

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

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

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

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

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

Date Adopted: September 1, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-05-010, filed 2/5/15, effective 3/8/15)

WAC 388-468-0005 ((~~Residency.~~)) What are the residency requirements for cash and food programs? ((~~Subsections (1) through (4) applies to cash, the Basic Food program, and medical programs.~~))

(1) ((~~A resident is a person who~~)) For both cash and food programs, you:

(a) ((~~Currently lives in Washington and intends to continue living here permanently or for an indefinite period of time; or~~)) Must live in Washington state, but not for any specific period of time to be a resident;

(b) ((~~Entered the state looking for a job; or~~)) Must not receive comparable benefits from another state or tribe during the same month;

(c) ((~~Entered the state with a job commitment~~)) Are a resident of the state where you are physically located when there is a residency dispute between states; and

(d) Are not required to live in a permanent dwelling or have a fixed address.

(2) ((~~A person does not need to live in the state for a specific period of time to be considered a resident~~)) Subsections (3) through (8) of this section apply to cash programs only.

(3) You are a resident if you currently live in Washington state voluntarily and:

(a) Intend to remain in the state not for a temporary purpose; or

(b) Entered the state looking for a job or with a job commitment.

(((~~3~~))) (4) A child under age eighteen is a resident of the state where ((~~the child's~~)) his or her primary custodian ((~~lives~~)) is a resident.

(((~~(4) A client can temporarily be out of the state for more than one month. If so, the client must supply the department with adequate information to demonstrate the intent to continue to reside in the state of Washington.~~)) (5) You may temporarily leave Washington state for more than one month and continue to receive benefits if you give the department proof of your intent to continue to reside in Washington state.

(((~~(5) A client may not receive comparable benefits from another state for the cash and Basic Food programs.~~))

(6) ((~~A~~)) If you are a former resident of ((~~the~~)) Washington state, you can apply for the ((~~ABD~~)) aged, blind, or disabled (ABD) cash program while living in another state if:

(a) ((~~The person~~)) Your absence was:

(i) ((~~Plans to return to this state;~~)) Enforced and beyond your control; or

(ii) ((~~Intends to maintain a residence in this state; and~~)) Essential to your welfare and due to your physical or social needs;

(((~~(iii) Lives in the United States at the time of the application.~~)))

(b) ((~~In addition to the conditions in subsection (6)(a)(i), (ii), and (iii) being met, the absence must be:~~

~~(i) Enforced and beyond the person's control; or~~)) You plan to return to Washington state;

(((~~(ii) Essential to the person's welfare and is due to physical or social needs.~~))

(c) ((~~See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.~~

~~(7) Residency is not a requirement for detoxification services.~~)) You intend to maintain a residence in Washington state; and

(d) You live in the United States of America at the time you applied for the ABD cash program.

(((~~(8) A person is~~)) (7) You are not a resident ((~~when the person enters~~)) if you entered Washington state only for medical care. ((~~This person is not eligible for any medical program. The only exception is described in subsection (9) of this section.~~

~~(9) It is not necessary for a person moving~~)) (8) If you move from another state directly to a nursing facility in Washington state, you do not need to establish residency before entering the facility. ((~~The person is considered a resident if they intend to remain permanently or for an indefinite period unless~~)) You are not considered a resident if you are placed in the nursing facility by another state.

(9) Subsections (10) and (11) of this section apply to basic food programs only.

(10) ((~~For purposes of medical programs, a client's residence is the state:~~

~~(a) Paying a state supplemental security income (SSI) payment; or~~

~~(b) Paying federal payments for foster or adoption assistance; or~~

~~(c) Where the noninstitutionalized individual lives when medicaid eligibility is based on blindness or disability; or~~

~~(d) Where the parent or legal guardian, if appointed, for an institutionalized:~~

~~(i) Minor child; or~~

~~(ii) Client twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one.~~

~~(e) Where a client is residing if the person becomes incapable of determining residential intent after reaching twenty-one years of age; or~~

~~(f) Making a placement in an out-of-state institution; or~~

~~(g) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period~~)) You are a resident for purposes of the basic food program if you live in Washington state.

(11) ((~~In a dispute between states as to which is a person's state of residence, the state of residence is the state in which the person is physically located.~~)) You are not required to intend to live permanently in Washington state.

WSR 16-19-031

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 13, 2016, 1:46 p.m., effective October 14, 2016]

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

Purpose: The Centers for Medicare and Medicaid Services (CMS) approved the addition of wellness education to the 1915(c) individual and family services waiver. This change allows DSHS to receive federal matching funds for these waivered services. This addition allows the developmental disabilities administration to provide wellness information to waiver participants to assist them in achieving goals identified during their person-centered planning process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-2280 and 388-845-2285.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: CMS.

Adopted under notice filed as WSR 16-15-060 on July 18, 2016.

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

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

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

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

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

Date Adopted: September 13, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

WAC 388-845-2280 What is wellness education? Wellness education provides you with monthly individualized printed educational materials designed to assist you in managing health related issues and achieving wellness goals identified in your person-centered service plan that address your health and safety issues. Individualized educational materials are developed by the state, other content providers, and the contracted wellness education provider. This service is available on the basic plus, individual and family services, and core waivers.

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

WAC 388-845-2285 Are there limits to wellness education? Wellness education is a once a month service. In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210. The dollar amount for your individual and family services (IFS) waiver annual allocation defined in WAC 388-845-0230 limits the amount of service you may receive.

WSR 16-19-040
PERMANENT RULES
CRIMINAL JUSTICE TRAINING COMMISSION

[Filed September 14, 2016, 12:49 p.m., effective October 15, 2016]

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

Purpose: WAC 139-05-300 Requirement for in-service training, these changes establish clarification to the extension provision and gives the Washington state criminal justice training commission auditor the authority to make decisions regarding exceptions under extenuating circumstances when the employing agency has made every reasonable effort to meet compliance. Therefore, aiding the stakeholder agencies in obtaining compliance with the rule.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 16-15-091 on July 20, 2016.

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

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

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

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

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

Date Adopted: September 14, 20016 [2016].

Sonja Peterson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-042, filed 9/10/15, effective 10/11/15)

WAC 139-05-300 Requirement for in-service training. The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) Effective January 1, 2006, every peace officer certified under RCW 43.101.095 or 43.101.157 will complete a minimum of twenty-four hours of in-service training annually.

(a) This requirement is effective January 1, 2006, for incumbent officers.

(b) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

(c) Training may be developed and provided by the employer or other training resources.

(d) The commission will publish guidelines for approved in-service training.

(2) Effective January 1, 2016, every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of twenty-four hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve peace officer/tribal peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic reserve law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a record-keeping template for use by agencies to track training.

(4) The sheriff or chief of an agency may ((~~approve~~)) request an extension of three months for peace officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

(c) The three month extension under this provision provides the individuals named until March 31st to complete the mandated twenty-four hours.

(d) Any training obtained during this three month extension only counts towards the previous year being audited.

(5) The commission auditor may, on a case-by-case basis, grant exceptions for individuals with extenuating circumstances where the employing agency has made every reasonable effort to obtain training for the officer.

WSR 16-19-046
PERMANENT RULES
DEPARTMENT OF AGRICULTURE
[Filed September 15, 2016, 7:10 a.m., effective October 16, 2016]

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

Purpose: This rule-making order amends chapter 16-545 WAC, Turfgrass seed commission, to allow the Washington turfgrass seed commission to develop programs to market and promote turfgrass seed produced in Washington; to remove the requirement that all research be carried out [by] the Washington State University experiment stations; and to provide for an at-large board position should no nominations be made or when there are fewer than three affected producers within a district.

Citation of Existing Rules Affected by this Order: Amending WAC 16-545-006, 16-545-015, and 16-545-020.

Statutory Authority for Adoption: RCW 15.65.047 and 15.65.050.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 16-12-112 on June 1, 2016.

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

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

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

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

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

Date Adopted: September 15, 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-products, 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 ((~~Orielle~~)) 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.

(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" for that term of office 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.

(((~~(e) 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 16-19-047
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 15-10—Filed September 15, 2016, 8:23 a.m., effective October 16, 2016]

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

Purpose: The purpose of this rule making is to establish greenhouse gas (GHG) emission standards for certain large emitters and reduce GHG emissions to protect human health and the environment.

Ecology is adopting a new rule, chapter 173-442 WAC, Clean air rule and amending chapter 173-441 WAC, Reporting of emissions of greenhouse gases.

- Chapter 173-442 WAC establishes emission standards for GHG emissions from certain stationary sources located in Washington state, petroleum product producers and importers, and natural gas distributors. Parties covered under this program will reduce their GHG emissions over time. The rule provides a variety of options to reduce emissions.
- Chapter 173-441 WAC changes the emissions covered by the reporting program, modifies reporting requirements, and updates administrative procedures to align with chapter 173-442 WAC, Clean air rule.

Citation of Existing Rules Affected by this Order: Amending chapter 173-441 WAC, Reporting of emissions of greenhouse gases.

Statutory Authority for Adoption: Chapters 70.94, 70.235 RCW.

Adopted under notice filed as WSR 16-12-098 on May 31, 2016.

Changes Other than Editing from Proposed to Adopted Version: RCW 34.05.325 (6)(a)(ii) requires ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes. We must also state the reasons for the differences between the proposal and the adopted rule.

There are differences between the proposed rule filed on May 31, 2016, and the adopted rule filed on September 15, 2016. Ecology made these changes for the following reasons:

- *In response to comments we received.*
- *To ensure clarity and consistency.*

Ecology did not make any changes to the proposed rule that are substantially different from the original proposal. In making this determination, ecology considered the following factors:

- *The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests.*
- *The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule.*
- *The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.*

Ecology did not make any revisions to the proposed rule that change who is covered or otherwise affected by the rule. We believe a reasonable person affected by the proposed rule would also be affected by the adopted rule. A reasonable person not affected by the proposed rule would not be affected by the adopted rule. Ecology believes this supports our conclusion that we did not make any substantive changes to the proposed rule.

Ecology did not make any changes to the subject of the adopted rule or issues determined in it. We believe the subject matter of the adopted rule is identical to the subject matter of the proposed rule: Establishing GHG emission reduction standards. The issues involved in this subject matter are identical between the proposed and adopted versions of the rule and include:

- *Scope*
- *Definitions*
- *Applicability*
- *Baselines*
- *Energy intense trade exposed (EITE)*
- *General compliance issues (timelines, reduction requirements, regulatory orders, etc.)*
- *Compliance options*
- *Emission reduction units*
- *Limitations on generating emission reductions*
- *Third-party verification*
- *Registry*
- *Reserve*
- *Other requirements*
- *Enforcement*
- *Confidentiality*
- *Severability*
- *Amendments to chapter 173-441 WAC*

Ecology believes this supports our conclusion that we did not make any substantive changes to the proposed rule.

Finally, ecology considered the extent to which the effects of the adopted rule differ from the effects of the published proposed rule. Most of the changes made to the adopted version of the rule simply clarify ecology's original intent. The effects of these changes are consistent between the proposed and adopted versions of the rule. Ecology made many of these changes at the suggestion of stakeholders and other public commenters. We evaluated those changes to determine if they were a "substantial" change. We determined they were not. These changes are:

- *Instead of requiring all EITEs to use the production-based efficiency metric, the adopted rule now allows EITEs to choose to be treated as non-EITEs. We made this change at the request of multiple commenters. As this provision merely provides an option, we do not think it rises to the level of a "substantial" change to the rule. See WAC 173-442-020 (1)(m)(ii).*
- *The adopted rule adds an exemption for natural gas distributors selling product that is used as a feedstock to produce another product, such as methanol. We made this change at the request of a commenter and believe it is consistent with the other exemptions listed in the proposed rule. We do not think this change rises to the level of a "substantial" change to the rule. See WAC 173-442-040 (3)(a).*
- *The adopted rule adds clarifying instructions on how to adjust a natural gas distributor's baseline when other covered parties enter or exit the program. We made this change in response to comments. It clarifies our original intent and does not change requirements. We do not think this change rises to the level of a "substantial" change to the rule. See WAC 173-442-050 (3)(c).*
- *The adopted rule added bounds on the required emission reductions for EITEs. These bounds were not included in the proposed rule. The most stringent reduction requirement for the least efficient EITE facilities will be no more than 2.7 percent per year. The least stringent reduction requirement for the most efficient EITE facilities will be no less than 0.7 percent per year. We made this change at the request of multiple commenters. We believe this clarifies ecology's original intent and does not rise to the level of a "substantial" change to the rule. See WAC 173-442-070 (3)(b)(i) and (ii).*
- *The adopted rule added two new protocols that will be accepted for generation of emission reduction units (ERU). These protocols were not listed in the proposed rule. These new protocols are "Landfill Methane Collection and Combustion" and "Nitric Acid Production Project Protocol." These provisions were added at the request of commenters. As these provisions merely provide additional options, we do not think they rise to the level of a "substantial" change to the rule. See WAC 173-442-160 (7)(d) and (8)(e).*
- *The adopted rule added another type of accreditation for third party verifiers. This accreditation was not listed in the proposed rule but was requested by a commenter. As this provision merely provides an option, we do not think it rises to the level of a "substantial" change to the rule. See WAC 173-442-220 (6)(a)(iii)(E) and 173-441-085 (7)(a)(iii)(E).*

The following describes the exact changes made to the final adopted rule and explains ecology's reasons for making them. Where a change was made solely for typographical or editing purposes (including subsequent renumbering), we did not include it in this section. We did include clarifications made in response to comments.

Table 1: Changes Made to Adopted Rule

Section in Final Rule	Change Made	Reason for Change
173-442-020 (1)(b)	Adds new definition for "allowance."	Stakeholders expressed confusion about the meaning and requested the definition be added.

Section in Final Rule	Change Made	Reason for Change
173-442-020 (1)(m)(ii)	Adds new option for EITEs to choose to not be treated as EITEs.	EITE stakeholders requested the ability to opt out of EITE provisions.
173-442-020 (1)(n)	Clarifies definition of "ERU" is an emission reduction for accounting purposes.	Clarifies meaning.
173-442-020 (1)(s)	Rewords "aggregate emission reduction limit" as "aggregate emission cap."	Clarifies meaning.
173-442-020 (1)(t)	Rewords "external program" as "GHG emission reduction program."	Clarifies meaning.
173-442-030(1)	Clarifies applicability is triggered by three-year rolling average.	Clarifies meaning.
173-442-030(3)	Clarifies to indicate emission reduction requirements apply when the average emissions exceed the compliance thresholds listed in Table 1.	Stakeholders asked for clarification about when the requirements applied to covered parties.
173-442-030(3) Table 1	Adds notation clarifying 2017-2019 compliance year applies for three-year rolling average starting in 2012.	Stakeholders asked for clarification about when the requirements applied to covered parties.
173-442-040 (2)(b)(ii)	Changed wording from final "distribution" to "destination."	Commenters asked for clarification to address concerns about meaning.
173-442-040 (3)(a)	Adds exclusion for natural gas used to make a product and clarifies that natural gas supplied to voluntary parties is treated the same as other covered parties.	Commenters requested additional exclusion applicable to natural gas feedstocks and clarification that voluntary parties are treated the same as other covered parties.
173-442-040 (4)(a)	Clarifies the referenced "implementation plan" is for the federal Clean Power Plan.	Clarifies original intent.
173-442-050 (3)(c)	Adds clarifying language allowing for baseline adjustments for natural gas distributors due to entrance or exit of covered parties.	Commenters requested change to prevent double counting emissions.
173-442-060 (1)(b)	Adds language clarifying when "annual decrease" becomes applicable.	Commenter requested clarification.
173-442-060(2)	Clarifies the contents of a regulatory order.	Commenters requested clarification.
173-442-070(1)	Clarifies that EITEs must only report their own production data, not production data from other companies in their industry sector.	Commenters were confused about whether they were required to produce data for other companies - new wording clarifies original intent.
173-442-070(2)	Removes applicability section, now clarified in WAC 173-442-030(3).	Commenters found original wording confusing - removes wording to clarify original intent.
173-442-070(2)(c)	Removes obsolete reference.	Removed 173-442-070(2) as noted above.
173-442-070(3)	Changes terminology from "efficiency reduction rate" to "efficiency improvement rate."	Commenters found the original wording counterintuitive - new wording clarifies original intent.
173-442-070 (3)(a)(i)(A)	Clarifies that GHG emissions data must be comparable to that reported under chapter 173-441 WAC or WAC 173-442-070(1).	Clarifies that production data submitted by the facility can be used to calculate the efficiency intensity distribution.

Section in Final Rule	Change Made	Reason for Change
173-442-070 (3)(b)(i)	Clarifies wording regarding "greater," places upper bound on required emissions reductions of 2.7 percent for least efficient facilities, and corrects regulatory reference.	Commenters found the original wording confusing or counterintuitive - new wording clarifies original intent and responds to commenter requests to add upper limit.
173-442-070 (3)(b)(ii)	Clarifies wording regarding "less," places lower bound on required emissions reductions of 0.7 percent for most efficient facilities, and corrects regulatory reference.	Commenters found the original wording confusing or counterintuitive - new wording clarifies original intent and responds to commenter requests to add lower limit.
173-442-070 (3)(b)(iii)	Adds clarifying wording and corrects regulatory reference.	New wording clarifies original intent.
173-442-070 (3)(b)(iv)	Clarifies wording regarding "greater," places upper bound on required emissions reductions of 2.7 percent for least efficient facilities, and corrects regulatory reference.	Commenters found the original wording confusing or counterintuitive - new wording clarifies original intent and responds to commenter request to add upper limit.
173-442-070 (3)(b)(v)	Clarifies wording and corrects regulatory reference.	Commenters found the original wording confusing or counterintuitive - new wording clarifies original intent.
173-442-070 (4)(b)	Clarifies terminology in Equation 1.	Commenters found the original wording confusing or counterintuitive - new wording clarifies original intent.
173-442-110(2)	Clarifies that an "activity" may generate ERUs, just like a "project" or "program."	Clarifies original intent.
173-442-110(3)	Rewords description of external markets.	Clarifies original intent.
173-442-140 (3)(b)	Rewords nature of ERU possession.	Clarifies original intent.
173-442-150 (1)(e)	Clarifies that ERUs must be in addition to existing reduction requirements and must also meet additionality requirements of applicable protocol.	Clarifies original intent that ERUs from projects must meet requirement of listed protocols where applicable.
173-442-150 (1)(e)(ii)(C)	Adds language referring to carbon dioxide mitigation standards from an energy facility site evaluation council (EFSEC) site certificate.	Clarifies original intent to account for both ways EFSEC standard has been applied.
173-442-160 (2)(c)	Clarifies that emission reduction projects at a stationary source must not be used to generate ERUs that are already counted.	Clarifies original intent to avoid double counting emission reductions for on-site projects.
173-442-160 (3)(a)(i) 173-442-160 (3)(a)(ii) 173-442-160 (6)(a) 173-442-160 (6)(b) 173-442-160 (6)(c) 173-442-160 (7)(a) 173-442-160 (7)(b) 173-442-160 (7)(c)	Clarifies that all protocols must use a version approved no later than September 1, 2016.	Clarifies to avoid confusion about which protocols are acceptable.

Section in Final Rule	Change Made	Reason for Change
173-442-160 (7)(d) 173-442-160 (8)(a) 173-442-160 (8)(b) 173-442-160 (8)(c) 173-442-160 (8)(d)		
173-442-160 (3)(b)	Rephrase terms for commute trip reduction.	Clarifies original intent.
173-442-160 (5)(a)(iv)	Deletes provision.	Commenters requested removal of provision requiring use of megawatt hours.
173-442-160 (5)(c)	Corrects regulatory references.	Clarifies original intent.
173-442-160 (5)(c)(i)(A)	Clarifies applicability to electrical conservation projects.	Clarifies original intent.
173-442-160 (5)(c)(ii)	Adds natural gas efficiency units may remain in therms.	Commenters requested use of therms instead of megawatt hours.
173-442-160 (7)(d)	Adds "Landfill Methane Collection and Combustion" protocol to acceptable list.	Commenters requested adding this protocol - consistent with original intent.
173-442-160 (8)(e)	Adds "Nitric Acid Production Project Protocol" to acceptable list.	Commenters requested adding this protocol - consistent with original intent.
173-442-170(2)	Clarifies use of allowances to generate ERUs.	Commenters found the original wording confusing - new wording clarifies original intent.
173-442-170 (2)(a)	Clarifies use of allowances cannot exceed limits on percentages in Table 3.	Commenters found the original wording confusing - new wording clarifies original intent.
173-442-170 (2)(a) Table 3	Changes title to add clarity.	Commenters found the original wording confusing - new wording clarifies original intent.
173-442-170 (2)(b)	Clarifies use of allowances by vintage year cannot exceed the percentage limits in Table 4.	Commenters found the original wording confusing - new wording clarifies original intent.
173-442-170 (2)(b) Table 4	Changes title to add clarity.	Commenters found the original wording confusing - new wording clarifies original intent.
173-442-170(3)	Clarifies requirement to invalidate allowances.	Commenters found the original wording confusing - new wording clarifies original intent.
173-442-200(3)	Clarifies requirement is for each MT CO_2e.	Clarifies original intent.
173-442-200 (6)(d)(ii)	Adds missing cross reference for EITEs.	Clarifies original intent.
173-442-220(1)	Removes reference to WAC 173-442-150(2).	Reference obsolete.
173-442-220(1)(b)	Removes reference to WAC 173-442-150(2).	Reference obsolete.
173-442-220 (6)(a)(iii)(E)	Adds additional acceptable accreditation.	Commenters asked for expanded accreditation to include omitted program - extends original intent.
173-442-240 (1)(a)(ii)(C)	Changes terminology in Equation 2.	Clarifies original intent.
173-442-240(2)	Clarifies terminology regarding aggregate emissions cap.	Clarifies original intent.

Section in Final Rule	Change Made	Reason for Change
173-442-240 (2)(b)	Clarifies retirement options for ERUs.	Commenters asked for clarification.
173-442-240 (2)(c)(i)	Expands data collection requirement.	Broadened to offer flexibility to meet original intent.
173-442-240 (2)(c)(ii)	Removes requirement that purchases apply only to Washington customers.	Broadened to offer flexibility to meet original intent.
173-442-240 (3)(b)(iii)	Adds "activities" to "projects" and "programs."	Clarifies original intent.
173-442-240 (3)(b)(iv)	Clarifies ERU awards from committee are subject to ecology approval.	Clarifies original intent.
173-442-330(1)	Adds provision for whether permit is required.	Stakeholders requested clarification to avoid unintended consequence and meet original intent.
173-442-340(3)	Deletes provision that violation is for each day.	Removed unnecessary reference to daily violations - covered by statutory provisions.
173-441-020 (1)(f) 173-441-020 (1)(h)(i) 173-441-020 (1)(j)(ii) 173-441-020(3) 173-441-050(9) 173-441-080(1) 173-441-120 Table 120-1 173-441-120 (2)(e) 173-441-120 (2)(e)(vii) 173-441-120 (2)(h)	Updates 40 C.F.R. Part 98 adoption by reference dates to September 1, 2016, throughout.	Provides consistency with statutory requirement.
173-441-020(1)	Clarifies distinction between "facility" and "supplier."	Clarifies original intent in response to comments.
173-441-050	Clarifies all applicable MT CO_2e must be included in the report.	Clarifies existing requirement.
173-441-085 (7)(a)(iii)(E)	Adds additional acceptable accreditation.	Requested by commenters.
173-441-120 Table 120-1	Adds clarifying language about facility definition.	Clarifies in response to comments.
173-441-120 (2)(h)(ii)	Changes wording from final "distribution" to "destination."	Commenters found the original wording confusing - new wording clarifies original intent.

A final cost-benefit analysis is available by contacting Kasia Patora, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail kpat461@ecy.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 29, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, Repealed 0.

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

Date Adopted: September 15, 2016.

Maia D. Bellon
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_2e" 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~~)) September 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. All source categories in WAC 173-441-120 are considered facilities even if the source category name includes the word "supplier."

(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~~)) September 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" or "transportation fuel supplier" means:

(i) Any person who is:

((~~(i)~~)) (A) 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;~~

~~(ii) A special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; or~~

~~(iii)~~)) 82.38.020; or

(B) A distributor of aircraft fuel, as the term is defined in RCW 82.42.010.

(ii) Any use of the term "supplier" in a source category in WAC 173-441-120 or incorporated from 40 C.F.R. Part 98, as adopted by September 1, 2016, is not a "supplier" under this definition. Those uses are instead types of "facilities."

(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~~)) September 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. Every metric ton of CO_2e emitted by a facility or supplier required to report under this chapter and covered under any applicable source category listed in WAC 173-441-120 or 173-441-130 must be included in the report.

(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_2) aggregated for all GHGs from all applicable source categories in WAC 173-441-120 and expressed in metric tons of CO_2e calculated using Equation A-1 of WAC 173-441-030 (1)(b)(iii).

(ii) Annual emissions of biogenic CO_2 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_2.

(B) CO_2 (including biogenic CO_2).

(C) CH_4.

(D) N_2O.

(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_2e 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_2, expressed in metric tons of CO_2, 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_2.

(B) Aggregate CO_2 (including nonbiogenic and biogenic CO_2).

(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 procedures, 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, 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_2 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^3/min). The calibration error at each measurement point must not exceed 5.0 percent of the reference value.

$$CE = \frac{|R-A|}{R} \times 100 \qquad (Eq.\ A-2)$$

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.

$$CE = \frac{|R-A|}{FS} \times 100 \qquad (Eq.\ A-3)$$

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~~)) September 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~~)) September 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	4.53592×10^{-4}
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^3)	Cubic feet (ft^3)	35.31467
Cubic feet (ft^3)	Cubic meters (m^3)	0.028317
Gallons (liquid, US)	Liters (l)	3.78541
Liters (l)	Gallons (liquid, US)	0.26417
Barrels of liquid fuel (bbl)	Cubic meters (m^3)	0.15891
Cubic meters (m^3)	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^3)	0.0037854
Liters (l)	Cubic meters (m^3)	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^2)	Acres	2.29568×10^{-5}
Square meters (m^2)	Acres	2.47105×10^{-4}
Square miles (mi^2)	Square kilometers (km^2)	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	9.47817×10^{-4}
Btu	MMBtu	1×10^{-6}
Pascals (Pa)	Inches of Mercury (in Hg)	2.95334×10^{-4}
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_2e) or the verification will result in an adverse verifica-

tion 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 submittals 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);

(E) Accredited ISO 14064 registrars; or

(F) 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_2e). 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_2e 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_2 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_2 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

Note: All source categories in Table 120-1 are considered facilities even if the source category name includes the word "supplier."

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
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_2e 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_2e 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	
Magnesium Production	T	
Miscellaneous Uses of Carbonate	U	
Nitric Acid Production	V	

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
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_2 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_2 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.
Suppliers of Coal-Based Liquid Fuels	LL	§ 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."
Suppliers of Petroleum Products	MM	§ 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.
Suppliers of Natural Gas and Natural Gas Liquids	NN	§ 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."
Suppliers of Industrial Greenhouse Gases	OO	§ 98.411 should include: "Reporting of exports is voluntary."
Suppliers of Carbon Dioxide	PP	((~~Owners or operators are only required to calculate and report emissions specified in WAC 173-441-030 (1)(b)(iv).~~)) § 98.421 should read: "Any supplier of CO_2 who meets the requirements of WAC 173-441-030(1) must report the mass of CO_2 captured, extracted, or imported. The mass of CO_2 exported may be reported using the methods established in this subpart."

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams	QQ	§ 98.431 should read: "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."
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_2 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_2 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_2 emissions in WAC 173-441-030 means CO_2 received."

* Unless otherwise noted, all calculation methods are from 40 C.F.R. Part 98, as adopted by ((~~January 1, 2015~~)) September 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 reference 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~~)) September 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 lit-

ter), 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~~)) September 1, 2016, remain unchanged unless otherwise modified in this chapter.

(viii) CO_2 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 population 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 September 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 destination 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 destination 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 Washington 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
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 hun-

dred 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_2 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_2 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_2 emissions separately for each fuel type. CO_2 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.

$$CO_{2i} = Fuel\ Type_i \times EF_i \qquad (Eq.\ 130-1)$$

Where:

CO_{2i}	=	Annual CO_2 emissions that would result from the complete combustion or oxidation of each fuel type "i" (metric tons)
Fuel $Type_i$	=	Annual volume of fuel type "i" supplied by the supplier (gallons).
EF_i	=	Fuel type-specific CO_2 emission factor (metric tons CO_2 per gallon) found in Table 130-1 of this section.

$$Fuel\ Type_i = Fuel_i \times \%Vol_i \qquad (Eq.\ 130-2)$$

Where:

Fuel $Type_i$	=	Annual volume of fuel type "i" supplied by the supplier (gallons).
$Fuel_i$	=	Annual volume of blended fuel "i" supplied by the supplier (gallons).
$\%Vol_i$	=	Percent volume of product "i" that is fuel $type_i$.

(3) **Calculating total CO_2 emissions.** A supplier must calculate total annual CO_2 emissions from all fuels using Equation 130-3 of this section.

$$CO_{2x} = \sum(CO_{2i}) \qquad (Eq.\ 130-3)$$

Where:

CO_{2x}	=	Annual CO_2 emissions that would result from the complete combustion or oxidation of all fuels (metric tons).
CO_{2i}	=	Annual CO_2 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_2 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_2 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_2 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_2 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_2 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) **"Allowance"** means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent that is issued or otherwise distributed by a GHG emission reduction program established by a jurisdiction other than the state of Washington. Offset credits from the same program are not considered allowances.

(c) **"Baseline GHG emissions value"** means a value defined by WAC 173-442-050.

(d) **"Calendar year"** means January 1 through December 31.

(e) **"Carbon dioxide equivalent"** or **"CO_2 equivalent"** or **"CO_2e"** 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_2 equivalent of emissions.

(f) **"Compliance obligation"** means the value calculated using WAC 173-442-200(3).

(g) **"Compliance period"** means a consecutive three-year period beginning in 2017 (2017 through 2019), and continuing forward (2020 through 2022; 2023 through 2025; etc.).

(h) **"Compliance report"** means the report required by WAC 173-442-210.

(i) **"Compliance threshold"** means the emission levels in WAC 173-442-030(3).

(j) **"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_2 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_2 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.

(k) **"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.

(l) **"Curtailment"** means the cessation of production at a stationary source greater than four consecutive months in a calendar year. Curtailment 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.

(m) **"EITE covered party"** means a covered party that:

(i) Has a primary North American Industry Classification System (NAICS) code included in the following list:

(A) 311411: Frozen fruit, juice, and vegetable manufacturing;

(B) 311423: Dried and dehydrated food manufacturing;

(C) 311611: Animal (except poultry) slaughtering;

(D) 322110: Pulp mills;

(E) 322121: Paper (except newsprint) mills;

(F) 322122: Newsprint mills;

(G) 322130: Paperboard mills;

(H) 325188: All other basic inorganic chemical manufacturing;

(I) 325199: All other basic organic chemical manufacturing;

(J) 325311: Nitrogenous fertilizer manufacturing;

(K) 327211: Flat glass manufacturing;

(L) 327213: Glass container manufacturing;

(M) 327310: Cement manufacturing;

(N) 327410: Lime manufacturing;

(O) 327420: Gypsum product manufacturing;

(P) 327992: Ultra high purity silicon manufacturing;

(Q) 331111: Iron and steel mills;

(R) 331312: Primary aluminum production;

(S) 331315: Aluminum sheet, plate, and foil manufacturing;

(T) 331419: Primary smelting and refining of nonferrous metal (except copper and aluminum);

(U) 334413: Semiconductor and related device manufacturing;

(V) 336411: Aircraft manufacturing;

(W) 336413: Other aircraft parts and auxiliary equipment manufacturing.

(ii) A covered party with a primary NAICS code in (m)(i) of this subsection can choose not to be treated as an EITE covered party under this rule. This decision cannot be reversed, even if there is a change in the operational control of the covered party. A covered party choosing not to be treated as an EITE covered party must notify ecology of the decision no later than:

(A) A covered party with covered GHG emissions averaging greater than or equal to 70,000 MT CO_2e per year during calendar years 2012 through 2016 must notify ecology by January 1, 2017.

(B) All other covered parties must notify ecology by January 1 of the first year in their baseline period as established under WAC 173-442-050(4).

(n) **"Emission reduction unit"** or **"ERU"** is an accounting unit representing the emission reduction of one metric ton of CO_2e. 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.

(o) **"Emission reduction pathway"** means the annual reduction requirement established in WAC 173-442-060 and 173-442-070.

(p) **"Emission reduction requirement"** means a covered party's limit in MT CO_2e for a compliance period based on the sum of the GHG emission reduction pathways for that period.

(q) **"Independent qualified organization"** means an organization identified by the energy facility site evaluation council as meeting the requirements of RCW 80.70.050.

(r) **"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.

(s) **"Reserve"** means an account established by ecology to ensure consistency with an aggregate emission cap for the program and for purposes consistent with this chapter.

(t) **"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 GHG emission reduction 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_2 means carbon dioxide.

CO_2e 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_2e 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 three calendar year rolling average, beginning with calendar year 2012, covered GHG emissions are greater than or equal to the compliance threshold in the corresponding compliance period in Table 1 of this section.

(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 have a three calendar year rolling average, beginning with calendar year 2012, 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

Compliance Threshold (MT CO_2e/Year)	First Compliance Period (Calendar Year)
100,000	2017-19*
95,000	2020-22

Compliance Threshold (MT CO_2e/Year)	First Compliance Period (Calendar Year)
90,000	2023-25
85,000	2026-28
80,000	2029-31
75,000	2032-34
70,000	2035 and beyond

* The 100,000 MT CO_2e/Year threshold is used for the three calendar year rolling average applicability determination beginning in 2012.

(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_2e; 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_2 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_2 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_2 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_2 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 destination of the product is 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, oxidation, or other use of products supplied to a covered party or voluntary 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 for the Clean Power 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_2e 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_2e 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

Covered Party	**Operated 2012 - 2016** (at least 3 calendar years)	**Average GHG Emissions** (MT CO_2e/year)	**Ecology Action**
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_2e, 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_2e 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.

(c) Ecology may adjust the baseline GHG emissions value of a natural gas distributor to account for increases or decreases in the natural gas distributor's covered GHG emissions due to changes related to other covered parties' covered GHG emissions as specified in WAC 173-442-040(3). Any adjustment to the baseline GHG emissions value should be designed to maintain a consistent aggregate GHG emission reduction pathway for both the natural gas distributor and the other covered party.

(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_2e, 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_2e/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_2e/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_2e, 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 subsequent to the first calendar year a covered party meets or exceeds the compliance threshold in WAC 173-442-030(3).

(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.

(2) Ecology will issue a regulatory order as provided in WAC 173-442-200(6) to each covered party which contains:

(a) The GHG emission reduction pathway in units of MT CO_2e for each calendar year in the compliance period; and

(b) The total reduction pathway for each compliance period.

(3) 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 its report annual 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_2e 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_2e 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) Ecology may adjust the output-based baseline 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 improvement rate.** Ecology must calculate the efficiency improvement rate for each EITE covered party. The efficiency improvement 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 or subsection (1) of this section 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 improvement rate.

(i) If the EITE covered party's output-based baseline is less efficient 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 improvement rate at a level that would reduce emissions at a rate faster than required to meet the GHG emission reduction pathway that

would have been required by WAC 173-442-060 (1)(b)(i). The efficiency improvement rate must not be more than one percent per year of the EITE covered party's baseline GHG emissions value faster than would have been required by WAC 173-442-060 (1)(b)(i).

(ii) If the EITE covered party's output-based baseline is more efficient 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 improvement rate at a level that would reduce emissions at a rate slower than required to meet the GHG emission reduction pathway that would have been required by WAC 173-442-060 (1)(b)(i). The efficiency improvement rate must not be less than one percent per year of the EITE covered party's baseline GHG emissions value slower than would have been required by WAC 173-442-060 (1)(b)(i).

(iii) If the EITE covered party's output-based baseline is between the twenty-fifth and seventy-fifth percentile values of the sector's efficiency intensity distribution, then ecology must set the EITE covered party's efficiency improvement 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)(b)(i).

(iv) If ecology determines an EITE covered party has not supplied sufficient information to complete this assessment, then the EITE covered party's efficiency improvement rate must be set at a level that would reduce emissions at a rate faster than required to meet the GHG emission reduction pathway that would have been required by WAC 173-442-060 (1)(b)(i). The efficiency improvement rate must not be more than one percent per year of the EITE covered party's baseline GHG emissions value faster than would have been required by WAC 173-442-060 (1)(b)(i).

(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 improvement 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)(b)(i).

(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_2e 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

$$RP_x = (AP \times OB) - (AP \times OB \times ER \times (Y_x - 1))$$

Where:

RP_x = GHG emission reduction pathway for year "x" (MT CO_2e 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_2e/units of production)

ER = Efficiency improvement rate as specified in subsection (3) of this section (% as a decimal)

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.

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, programs, or activities. A project, program, or activity allowed under WAC 173-442-160 may generate ERUs consistent with WAC 173-442-150.

(3) GHG emission markets external to the state of Washington. 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 in transactions.

(a) Entities other than covered parties may facilitate, broker, or assist covered parties to transfer ERUs recorded in accounts in the registry, but they may not hold ERUs.

(b) Only covered parties, ecology, and voluntary participants may hold 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, and any supplementary requirements necessary to meet the conditions of WAC 173-442-160 (2)(a).

(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_2 mitigation standard for fossil-fueled thermal electric generation facilities (through an energy facility site evaluation council site certificate or by 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_2 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_2 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) Emission reduction projects implemented consistent with this section and that are physically located at a stationary source facility must not be project types included in the methodologies used in the emission calculations that generate the

covered GHG emissions for the covered party with the facility 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) *Emission Reductions through Improved Efficiency of Vehicle Fleets* methodology from the American Carbon Registry (using a version approved by that program no later than September 1, 2016); or

(ii) *Methodology for GHG Emission Reductions through Truck Stop Electrification* from the American Carbon Registry (using a version approved by that program no later than September 1, 2016).

(b) Exceed workplace targets for a commute trip reduction program established under the authority of 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.

(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 (a) of this subsection or from retiring renewable energy credits as per (b) of this subsection is computed by assuming either:

(i) For electrical energy efficiency, conservation, and alternative energy measures:

(A) The marginal resource for which an electrical conservation project or the renewable energy generation is avoiding is a new combined-cycle natural gas thermal electric generation turbine sited in Washington.

(B) 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.

(C) 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.

(ii) For natural gas energy efficiency and conservation the applicable GHG emissions are to be derived from the appropriate conversion process from therms (100,000 British Thermal Units) to CO_2e as directed in WAC 173-441-120.

(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) *Methodology for Quantifying Nitrous Oxide (N_2O) Emissions Reductions from Reduced Use of Nitrogen Fertilizer on Agricultural Crops* from the American Carbon Registry (using a version approved by that program no later than September 1, 2016).

(b) The enteric methane, manure methane, and nitrous oxide from fertilizer use modules from the *Grazing Land and Livestock Management* methodology from the American Carbon Registry (using a version approved by that program no later than September 1, 2016). The biotic sequestration and fossil fuel modules of this protocol may not generate ERUs.

(c) The *U.S. Livestock Project* protocol from the Climate Action Reserve (using a version approved by that program no later than September 1, 2016).

(7) **Waste and wastewater activities.** GHG management activities addressing waste and wastewater infrastructure and activities using:

(a) *U.S. Landfill Project* protocol from the Climate Action Reserve (using a version approved by that program no later than September 1, 2016);

(b) *Organic Waste Composting Project* protocol from the Climate Action Reserve (using a version approved by that program no later than September 1, 2016); or

(c) *Organic Waste Digestion Project* protocol from the Climate Action Reserve (using a version approved by that program no later than September 1, 2016).

(d) *Landfill Methane Collection and Combustion* methodology from the American Carbon Registry (using a version approved by that pro-gram no later than September 1, 2016).

(8) **Industrial sector activities.** GHG process and equipment management, operations, and changes affecting industry and manufacturing using:

(a) *Replacement of SF_6 with Alternate Cover Gas in the Magnesium Industry* methodology from the American Carbon Registry (using a version approved by that program no later than September 1, 2016);

(b) *Emission Reduction Measurement and Monitoring Methodology for Use of Certified Reclaimed HFC Refrigerants and Advanced Refrigeration Systems* from the American Carbon Registry (using a version approved by that program no later than September 1, 2016);

(c) *Conversion of High-Bleed Pneumatic Controllers in Oil and Natural Gas Systems* methodology from the American Carbon Registry (using a version approved by that program no later than September 1, 2016); or

(d) *Emission Reduction Measurement and Monitoring Methodology for the Transition to Advanced Formulation Blowing Agents in Foam Manufacturing and Use* from the American Carbon Registry (using a version approved by that program no later than September 1, 2016).

(e) *Nitric Acid Production Project Protocol* from the Climate Action Reserve (using a version approved by that program no later than September 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 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 to generate ERUs based on the limitations in this subsection.

(a) A covered party may use a quantity of allowances to generate ERUs for a compliance period that does not exceed the applicable percentage in Table 3 of the covered party's compliance obligation:

Table 3
Percentage Limits on Use of Allowances for a Compliance Period

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 quantity of allowances intended for use consistent with (a) of this subsection must be divided so that the proportion of those allowances from a single vintage year does not exceed the percentages in Table 4. The originating GHG emission reduction program assigns the vintage year for each allowance.

Table 4
Vintage Year Requirements for a Quantity of Allowances Used 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

Year within the compliance period	Vintage year of allowance	Percentage not to exceed (%)
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 to generate an ERU has been invalidated from use or placed into a permanent holding account in its originating GHG emission reduction program.

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.

Compliance obligation = (Sum of covered GHG emissions for the compliance period) - (Emission reduction requirement for the compliance period) (in MT CO_2e)

If difference > 1, then must acquire ERUs for each metric ton of CO_2e that exceeds the compliance obligation.

If difference < 0, then have excess ERUs for each metric ton of CO_2e below the compliance obligation.

(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_2e 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 or 173-442-070; 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 entities who facilitated, brokered, or provided liaison services between the covered 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_2e/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_2e/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 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

(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);

(E) Accredited ISO 14064 registrars; or

(F) 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 a covered party's emission reduction pathway annual decrease in WAC 173-442-060 (1)(b); and

(ii) EITE covered party's contribution as follows:

(A) If the EITE covered party's RA_x is greater than zero, then the difference in MT CO_2e of GHG emissions results in ERUs allocated to the reserve.

(B) If the EITE covered party's RA_x is less than zero, then the difference in MT CO_2e of GHG emissions results in ERUs retired from the reserve.

(C) Calculate MT CO_2e of GHG emissions of ERUs allocated to or retired from the reserve using Equation 2.

Equation 2

$$RA_x = ((BP \times OB) - (BP \times OB \times ER \times (Y_x - 1))) - RP_x$$

Where:

RA_x = Reserve adjustment for given EITE covered party for calendar year "x" (MT CO_2e 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_2e 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_2e/units of production)

ER = Efficiency improvement 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.

(iii) Any calendar year containing curtailment recognized by Ecology does not count toward the total years in Y_x.

(iv) Beginning in calendar year 2036, Y_x remains constant at the number of years determined for calendar year 2035.

(v) ERUs generated as a result of facility curtailment.

(b) Ecology must transfer into the reserve the ERUs specified in (a)(v) 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 cap 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 that may arise when ERUs result from reduced GHG emissions from programs or activities that occur in sectors contributing to covered GHG emissions.

(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 affecting Washington customers and renewable energy producers.

(ii) Ecology may allocate a portion of the reserve ERUs for retirement as voluntary renewable energy purchases 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, programs or activities consistent with the priorities and environmental justice criteria determined by the committee.

(iv) Subject to approval by ecology, the committee may award reserve ERUs on a one-for-one or a two-for-one matching basis with ERUs from emission reduction projects, programs or activities that are 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

Compliance Period (Calendar year)	Report to EPA Due December 31	Report to Ecology Due July 28
2017 through 2019	2020	2021
2020 through 2022	2023	2024
2023 through 2025	2026	2027
2026 through 2028	2029	2030

Compliance Period (Calendar year)	Report to EPA Due December 31	Report to Ecology Due July 28
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, if this permit is 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) Ecology is solely responsible for enforcing the requirements of this chapter. Nothing in this chapter otherwise alters a local air authority's ability to regulate covered parties in their jurisdiction.

(4) 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 16-19-055
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed September 16, 2016, 11:06 a.m., effective October 17, 2016]

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

Purpose: The department is amending WAC 388-105-0045, 388-106-0336 and 388-106-0338, and creating new WAC 388-106-0337 as a result of the 2013-2015 biennium budget to develop enhanced services facilities. The DSHS home and community services division developed the 1915 (c) residential support waiver (RSW) to provide medicaid funding for supports and services in certain residential settings. These rules are amended to add retainer payments to RSW and to add two new waiver services, adult day health and expanded community services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0045, 388-106-0336, and 388-106-0338.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 16-15-062 on July 18, 2016.

Changes Other than Editing from Proposed to Adopted Version: The department corrected an error in the adult family home rate.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: September 14, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-20-011, filed 9/25/09, effective 10/26/09)

WAC 388-105-0045 Bed or unit hold—medicaid ((resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL))) residents at an ESF, AFH, ARC, EARC, or AL who need short-term care at a nursing home or hospital. (1) ((When an AFH, ARC, EARC, or AL contracts to provide services under chapter 74.39A RCW, the AFH, ARC, EARC, and AL contractor must hold a medicaid eligible resident's bed or unit when)) An enhanced services facility (ESF) that contracts to provide services under chapter 70.97 RCW and an adult family home (AFH) or assisted living facilities contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL) under chapter 74.39A RCW, must hold a medicaid eligible resident's bed or unit if:

(a) The medicaid resident needs short-term care ((is needed)) in a nursing home or hospital;

(b) The medicaid resident is likely to return to the ESF, AFH, ARC, EARC, or AL; and

(c) ((Payment is made)) The department pays the ESF, AFH, ARC, EARC, or AL as set forth under subsection (3), (4), or (5) of this section.

(2)(((a) When the department pays the contractor to hold the medicaid resident's bed or unit during the resident's short-term nursing home or hospital stay, the contractor must hold the bed or unit for up to twenty days. If during the twenty day bed hold period, a department case manager determines that the medicaid resident's hospital or nursing home stay is not short term and the medicaid resident is unlikely to return to the AFH, ARC, EARC or AL facility, the department will cease paying for the bed hold the day the case manager notifies the contractor of his/her decision.

(b) A medicaid resident's discharge from an AFH, ARC, EARC, or an AL facility for a short term stay in a nursing home or hospital must be longer than twenty-four hours before subsection (3) of WAC 388-105-0045 applies.

(c) When a medicaid resident on bed hold leave returns to an AFH, ARC, EARC, or an AL facility but remains less than twenty-four hours, the bed hold leave on which the resident returned applies after the resident's discharge. A new bed hold leave will begin only when the returned resident has resided in the facility for more than twenty-four hours before the resident's next discharge.

(d) When an AFH, ARC, EARC, or AL facility discharges a resident to a nursing home or hospital and the resident is out of the facility for more than twenty-four hours, then by using e-mail, fax or telephone, the facility must notify the department of the resident's discharge within twenty-four hours after the initial twenty-four hours has passed. When the end of the initial twenty-four hours falls on a weekend or state holiday, then the facility must notify the department of the discharge within twenty-four hours after the weekend or holiday)) The ESF, AFH, ARC, EARC, or AL must hold a medicaid resident's bed or unit for up to twenty days when the department pays the ESF, AFH, ARC, EARC, or AL under subsections (3), (4), or (5) of this section.

(3) The department will ((compensate the contractor for holding the bed or unit for the:

(a) First through seventh day at seventy percent of the medicaid daily rate paid for care of the resident before the hospital or nursing home stay; and

(b) Eighth through the twentieth day, at eleven dollars a day)) pay an ESF seventy percent of the resident's medicaid daily rate set at the time he or she left the ESF for the first through twentieth day of the resident's hospital or nursing home stay.

(4) The ((AFH,)) department will pay an ARC, EARC, or AL ((facility may seek third party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed the medicaid daily rate paid to the facility for the resident. If third-party payment is not available and the returning medicaid resident continues to meet the admission criteria under chapter 388-71 and/or 388-106 WAC, then the medicaid resident may return to the first available and appropriate bed or unit)) seventy percent of the resident's medicaid daily rate set at the time he or she left the ARC, EARC, or AL for the first through seventh day of the resident's hospital or nursing home stay and eleven dollars a day for the eighth through twentieth day.

(5) The ((department's social worker or case manager determines whether the:

(a) Stay in a nursing home or hospital will be short-term; and

(b) Resident is likely to return to the AFH, ARC, EARC, or AL facility)) department will pay an AFH seventy percent of the resident's medicaid daily rate set at the time he or she left the AFH for the first through seventh day of the resident's hospital or nursing home stay and fifteen dollars per day for the eighth through twentieth day.

(6) A medicaid resident's short-term stay in a nursing home or hospital must be longer than twenty-four hours for subsection (3) or (4) of this section to apply.

(7) If a medicaid resident stays at a hospital or nursing home for more than twenty-four hours, the ESF, AFH, ARC, EARC, or AL must notify the department by e-mail, fax, or telephone within twenty-four hours after the initial twenty-four hour period. If the end of the initial twenty-four hour period falls on a weekend or state holiday, the ESF, AFH, ARC, EARC, or AL must notify the department within twenty-four hours after the weekend or holiday.

(8) If a medicaid resident returns to the ESF, AFH, ARC, EARC, or AL from the hospital or nursing home and stays there for less than twenty-four hours before returning to the hospital or nursing home, the existing bed hold period continues to run. If the medicaid resident stays at the ESF, AFH, ARC, EARC, or AL for more than twenty-four hours before returning to the hospital or nursing home, a new bed hold period begins.

(9) The department's social service worker or case manager may determine that the medicaid resident's hospital or nursing home stay is not short term and he or she is unlikely to return to the ESF, AFH, ARC, EARC, or AL. If the social service worker or case manager makes such a determination, the department may cease payment the day it notifies the contractor of its decision.

(10) An ESF, AFH, ARC, EARC, or AL may seek third-party payment for a bed or unit hold that lasts for twenty-one days or longer or if the department determines that the medicaid resident's hospital or nursing home stay is not short-term and he or she is unlikely to return. The third-party payment must not exceed the resident's medicaid daily rate paid to the ESF, AFH, ARC, EARC, or AL.

(11) If third-party payment is not available for a bed or unit hold that lasts for twenty-one days or longer, the medicaid resident may return to the first available and appropriate bed or unit at the ESF, AFH, ARC, EARC, or AL if he or she continues to meet the admission criteria under chapter 388-106 WAC.

(12) When the medicaid resident's stay in the hospital or nursing home exceeds twenty days or the department's social service worker or case manager determines that the medicaid resident's stay in the nursing home or hospital is not short-term and ((~~the resident~~)) he or she is unlikely to return to the ESF, AFH, ARC, EARC, or AL, ((~~facility, then~~)) only subsection ((~~(4)~~)) (10) and (11) of this section ((~~applies to any~~)) apply to a private ((~~contractual arrangements that~~)) contract between the contractor ((~~may make with~~)) and a third party ((~~in regard to the discharged~~)) regarding the medicaid resident's unit or bed.

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0336 What services may I receive under the residential support waiver? You may receive the following services under the residential support waiver:

(1) Adult family homes and assisted living facilities with an expanded community services contract that will provide:

(a) Personal care;

(b) Supportive services;

(c) Supervision in the home and community;

(d) Twenty-four hour on-site response staff;

(e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;

(f) Medication management; and

(g) Coordination and collaboration with a contracted behavior support provider;

(2) Adult family homes with a specialized behavior support contract that will provide:

(a) Personal care((~~,~~));

(b) Supportive services((~~,~~));

(c) Supervision in the home and community((~~, and 24~~));

(d) Twenty-four-hour on-site response staff;

(e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;

(f) Medication management;

(g) Coordination and collaboration with a contracted behavior support provider; and

(h) Specialized behavior support that provides you with six to eight hours a day of individualized staff time;

(((~~(2)~~))) (3) Enhanced services facilities that will provide:

(a) Personal care((~~,~~));

(b) Supportive services((~~,~~));

(c) Supervision in the home and community((~~, and~~));

(d) Twenty-four hour on-site response staff;

(e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;

(f) Medication management; and

(g) On-site staffing ratios and professional staffing as described in WAC 388-107-0230 through WAC 388-107-0270;

(((~~(3)~~))) (4) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000((~~, when the items are~~)) when:

(a) Medically necessary under WAC 182-500-0005; ((~~and~~))

(b) Necessary:

(i) For life support;

(ii) To increase your ability to perform activities of daily living; or

(iii) To perceive, control, or communicate with the environment in which you live; ((~~and~~))

(c) Directly medically or remedially beneficial to you; ((~~and~~))

(d) ((~~In addition to~~)) They are additional and do not replace any medical equipment ((~~and/~~))or supplies otherwise provided under medicaid ((~~and/or~~)), or medicare, or both; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility((~~.~~));

(((~~(4)~~))) (5) Client support training to address your needs identified in your CARE assessment or ((~~in a~~)) other professional evaluation((~~,~~)) that are ((~~in addition to~~)) additional and do not replace the services required by the department's contract with the residential facility and ((~~that~~)) meet a therapeutic goal, such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers((~~.~~));

(((~~(5)~~))) (6) Nurse delegation((~~, as allowed in~~)) under RCW 18.79.260((~~,~~)) when:

(a) You ((~~are receiving~~)) receive personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) The delegating nurse considers your medical condition ((~~is considered~~)) stable and predictable ((~~by the delegating nurse~~));

(c) The services ((~~are provided in compliance~~)) comply with WAC 246-840-930; and

(d) ((~~It is in addition to, and does~~)) The services are additional and do not replace((~~,~~)) the services required by the department's contract with the residential facility((~~.~~));

(((~~(6)~~))) (7) Skilled nursing((~~,~~)) when((~~the service is~~)):

(a) Provided by a registered nurse or licensed practical nurse under ((~~the supervision of~~)) a registered nurse's supervision;

(b) Beyond the amount, duration, or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) ((~~In addition to~~)) Additional and ((~~does~~)) do not replace the services required by the department's contract with the residential facility((~~.~~));

(((~~(7)~~))) (8) Nursing services((~~, when you are~~)) not already ((~~receiving this type of service~~)) received from another resource((~~. A registered nurse may perform any of the following activities. The frequency and scope of the nursing services is~~)), based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager((~~.~~)), including any one or more of the following activities performed by a registered nurse:

(a) Nursing assessment/reassessment;

(b) Instruction to you, your providers, and your caregivers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency((~~. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement.~~)) as in nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider or other appropriate resource((~~.~~));

(e) File review; ((~~and/~~))or

(f) Evaluation of health-related care needs affecting service plan and delivery((~~.~~));

(9) Adult day health services as described in WAC 388-71-0706 when:

(a) Your CARE assessment shows an unmet need for personal care or other core services, whether or not those needs are otherwise met; and

(b) Your CARE assessment shows an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that the services will improve, restore, or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain and suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; or

(iii) You have a chronic acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

NEW SECTION

WAC 388-106-0337 When are you not eligible for adult day health services? You are not eligible for adult day health if you:

(1) Can independently perform or obtain the services provided in an adult day health center; or

(2) Have referred care needs that:

(a) Exceed the scope of authorized services that the adult day health center is able to provide;

(b) Do not need to be provided or supervised by a licensed nurse or therapist;

(c) Can be met in a less structured care setting;

(d) In the case of skilled care needs, are being met by paid or unpaid providers;

(e) Live in a nursing home or other institutional facility; or

(f) Are not capable of participating safely in a group care setting.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0338 Am I eligible for services funded by the residential support waiver? (1) You are eligible for services funded by the residential support waiver if ((~~you meet all of the following criteria. The department must assess~~)) the department, based on its assessment of your needs in CARE ((~~and determine that~~)), determines you meet all of the following criteria:

(((~~(1)~~))) (a) You are at least eighteen years ((~~or older~~)) old and blind or have a disability((~~,~~)) as defined in WAC 182-512-0050, or are age sixty-five or older;

(((~~(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if~~)) (b) Your income and resources fall within the limits set in WAC 182-515-1505((~~,~~)) and meet the income and resource criteria for home and community based waiver programs and hospice clients((~~.~~));

(((~~(3)~~))) (c) Your CARE assessment shows you need the level of care provided in a nursing facility ((~~(~~))or that you will likely need ((~~the~~)) this level of care within thirty days unless you receive residential support waiver services ((~~are provided) which is~~)) as defined in WAC 388-106-0355(1)((~~.~~));

(d) You have been assessed as medically and psychiatrically stable and one ore more of the following applies:

(((~~(4)~~))) (i) You currently reside at a state mental hospital or the psychiatric unit of a hospital ((~~past the time you~~)) and the hospital has found you are ready for discharge to the community; ((~~and~~

~~(5) You have been assessed as stable and ready for discharge by the hospital; and~~

~~(6)~~)) (ii) You have a history of frequent or protracted psychiatric hospitalizations; ((~~and~~)) or

(iii) You have a history of an inability to remain medically or behaviorally stable for more than six months and you;

(A) Have exhibited serious challenging behaviors within the last year; or

(B) Have had problems managing your medication which has affected your ability to live in the community;

(((~~(7) Due to~~)) (e) Because of the protracted nature of your behavior and clinical complexity, you have no other placement options ((~~as evidenced by you being unsuccessful in finding~~)) and have found no community placement with ((~~otherwise~~)) a qualified community ((~~providers; and~~)) provider;

(((~~(8)~~))) (f) You have behavioral or clinical complexity that requires ((~~the level of supplementary~~)) staffing supports available only in the qualified community settings provided through the residential support waiver; and

(((~~(9)~~))) (g) You require caregiving staff with specific training in providing personal care, supervision, and behavioral supports to adults with challenging behaviors.

(2) Under this section, "challenging behaviors" means a persistent pattern of behaviors or uncontrolled symptoms of a cognitive or mental condition that inhibit the individual's functioning in public places, ((~~in~~)) the facility, or integration within the community((~~. These behaviors~~)) that have been present for long periods of time or have manifested as an acute onset.

WSR 16-19-058
PERMANENT RULES
PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Filed September 19, 2016, 7:59 a.m., effective October 20, 2016]

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

Purpose: The agency's case docketing rule, WAC 391-08-650, creates a system that sets forth four components that the agency must recognize when assigning a case number to a case. The fourth component indicates the sequential number of the case within the type of dispute identified since the agency started operation. The fourth component is unnecessary and confusing. The agency is proposing to eliminate the fourth case numbering component.

WAC 391-08-800 identifies a specific employee within the agency who is the agency's public records officer. Due to turnover, this individual has changed. The agency is proposing to amend the rule to make the identity of the public records officer generic.

Citation of Existing Rules Affected by this Order: Amending 2 [WAC 391-08-650 and 391-08-800].

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060.

Adopted under notice filed as WSR 16-14-076 on July 1, 2016.

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

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

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

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

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

Date Adopted: September 13, 2016.

Dario de la Rosa
Representation Coordinator

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-650 Case docketing and numbering. The agency maintains a computerized case docketing system which is used to track and manage all requests for the dispute resolution service provided by the agency.

(1) Each case processed by the agency is identified by a unique number consisting of ((~~four~~)) three components.

(a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.

(b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:

"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.

"C" indicates a unit clarification proceeding under chapter 391-35 WAC.

"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.

"E" indicates a representation proceeding under chapter 391-25 WAC.

"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.

"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.

"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.

"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.

"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of

nonassociation by employees subject to union security obligations.

"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.

"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 WAC.

"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.

(c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed.

(((~~(d) The fourth component, consisting of a five-digit number, indicates the sequential number of the case within the type of dispute identified in the second component, since the agency commenced operations on January 1, 1976.~~))

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization or labor organization are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-08-800 Agency records—Public records officer—Contact information. (1) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request should contact the public records officer of the agency:

((~~David I. Gedrose~~))

Public Records Officer, Public Employment Relations Commission

P.O. Box 40919

((~~360-570-7322~~

~~David.Gedrose@perc.wa.gov~~))

360-570-7300

info@perc.wa.gov

Information is also available at the agency's web site at www.perc.wa.gov.

(2) The public records officer will oversee compliance with the act but another staff member may process the request. Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, 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 agency.

WSR 16-19-072
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed September 20, 2016, 9:14 a.m., effective November 1, 2016]

Effective Date of Rule: November 1, 2016.

Purpose: WAC 296-127-01324 Electrician-motor shop, this rule making will adopt a new rule as a prevailing wage scope of work description for motor shop electricians. This trade and occupation classification has not previously had any scope of work description but does have published prevailing rates of wage. Prior to 2000, the prevailing wage scope of work descriptions (if any) were promulgated by the industrial statistician on an as needed basis (and not adopted as administrative rule). No scope was promulgated for motor shop electricians.

Clearly identifying the extent of this trade and occupation will assist in better identifying the exact universe to survey in order to establish the prevailing rate of wage for this trade and occupation classification as well as having a defensible description of the trade for any wage compliance matters.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Adopted under notice filed as WSR 16-14-094 on July 5, 2016.

Changes Other than Editing from Proposed to Adopted Version: The only change between the rule as adopted and the proposed rule is the capitalization of two letters.

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

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

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

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

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

Date Adopted: September 20, 2016.

Joel Sacks
Director

NEW SECTION

WAC 296-127-01324 Electrician-motor shop. For the purpose of the Washington state public works law, chapter 39.12 RCW, electrician-motor shop performs in-shop repair and maintenance on A.C. and D.C. electric motors and controllers. This work includes, but is not limited to:

Assembles and tests electric motor and generator stators, armatures, or rotors. Inspects cores for defects and aligns laminations, using hammer and drift. Files burrs from core slots, using hand file, portable power file, and scraper. Lines

slots with sheet insulation and inserts coils into slots. Cuts, strips, and bends wire leads at ends of coils, using pliers and wire scrapers. Twists leads together to connect coils. Taps coil and end windings to shape, using hammer and fiber block. Tests windings for motor-housing clearance, grounds, and short circuits, using clearance gauge, growler, spring-steel blade, telephone receiver, insulation tester, and resistance bridge. Winds new coils on armatures, stators, or rotors of used motors and generators. May rewind defective coils. Turns armatures. Tests circuits, connections, controllers, and transformers. May be designated according to motor part wound as armature winder (electrical equipment); rotor winder (electrical equipment); stator winder (electrical equipment).

The work of the motor shop electrician is limited to in-shop work.

WSR 16-19-073
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed September 20, 2016, 9:15 a.m., effective November 1, 2016]

Effective Date of Rule: November 1, 2016.

Purpose: WAC 296-127-01366 Ready mix truck drivers, this rule making will adopt a new rule as a prevailing wage scope of work description for ready mix truck drivers. This trade and occupation classification has not previously had any scope of work description but does have published prevailing rates of wage. Prior to 2000, the prevailing wage scope of work descriptions (if any) were promulgated by the industrial statistician on an as needed basis (and not adopted as administrative rule). No scope was promulgated for ready mix truck drivers.

Clearly identifying the extent of this trade and occupation will assist in better identifying the exact universe to survey in order to establish the prevailing rate of wage for this trade and occupation classification as well as having a defensible description of the trade for any wage compliance matters.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Adopted under notice filed as WSR 16-14-095 on July 5, 2016.

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

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

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

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

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

Date Adopted: September 20, 2016.

Joel Sacks
Director

NEW SECTION

WAC 296-127-01366 Ready mix truck drivers. For the purpose of the Washington state public works law, chapter 39.12 RCW, ready mix truck drivers drive transit mixer and volumetric type trucks used for the transportation of wet concrete products to, from, and on construction projects, consistent with the provisions in WAC 296-127-018.

The work includes, but is not limited to, the use of any transit mixer or volumetric type truck used to deliver wet concrete.

WSR 16-19-074
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed September 20, 2016, 9:18 a.m., effective November 1, 2016]

Effective Date of Rule: November 1, 2016.

Purpose: WAC 296-127-01398 Truck drivers, this rule making will adopt a new rule as a prevailing wage scope of work description for truck drivers. This trade and occupation classification has not previously had any scope of work description but does have published prevailing rates of wage. Prior to 2000, the prevailing wage scope of work descriptions (if any) were promulgated by the industrial statistician on an as needed basis (and not adopted as administrative rule). No scope was promulgated for truck drivers.

Clearly identifying the extent of this trade and occupation will assist in better identifying the exact universe to survey in order to establish the prevailing rate of wage for this trade and occupation classification as well as having a defensible description of the trade for any wage compliance matters.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Adopted under notice filed as WSR 16-14-096 on July 5, 2016.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2016.

Joel Sacks
Director

NEW SECTION

WAC 296-127-01398 Truck drivers. For the purpose of the Washington state public works law, chapter 39.12 RCW, truck drivers drive various types of trucks, other than transit mixer and volumetric type trucks hauling concrete, used for the hauling of materials and equipment related to work covered under chapter 39.12 RCW.

The work of truck drivers includes, but is not limited to, truck driving to do the following:

(1) Delivery, discharge of materials, travel time, and other work according to the provisions of WAC 296-127-018;

(2) Delivery of project specific (nonstandard) items to the job site;

(3) Mobilization of contractors' equipment;

(4) Driving and operating various types of trucks at, on or for the project; and

(5) Removing any materials from a public works construction site pursuant to contract requirements or specifications (e.g., excavated materials, materials from demolished structures, clean-up materials, etc.).

WSR 16-19-078
PERMANENT RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)

[Filed September 20, 2016, 10:26 a.m., effective October 21, 2016]

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

Purpose: WAC 246-817-340 Recording requirement for all prescription drugs, the dental quality assurance commission (commission) decided to repeal the rule as it is redundant to WAC 246-817-305 (3)(i)(i) through (iv). The commission adopted new rule WAC 246-817-305 on April 17, 2016. WAC 246-817-305 (3)(i)(i) through (iv) duplicates all requirements listed in current WAC 246-817-340.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-817-340.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.32.655.

Adopted under notice filed as WSR 16-14-102 on July 5, 2016.

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

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

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

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

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

Date Adopted: September 20, 2016.

C. Madden, Chairperson
Dental Quality Assurance Commission

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-817-340	Recording requirements for all prescription drugs.

WSR 16-19-083
PERMANENT RULES
OFFICE OF ADMINISTRATIVE HEARINGS

[Filed September 20, 2016, 12:32 p.m., effective October 21, 2016]

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

Purpose: Amend WAC 10-08-150 to ensure that the office of administrative hearings (OAH) and other state agencies can effectively and efficiently engage interpreters for use before, during, and after administrative hearings. The amendment allows for the use of properly qualified interpreters by OAH and other state agencies under both state and agency master contracts consistent with the technology and processes now available. The amendment will replace OAH's emergency rule making, which was effective June 8, 2016. See WSR 16-13-047.

Citation of Existing Rules Affected by this Order: Amending WAC 10-08-150.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.250, 34.12.030, and 34.12.080.

Other Authority: RCW 2.42.010 and 2.43.010.

Adopted under notice filed as WSR 16-15-059 on September 20, 2016.

A final cost-benefit analysis is available by contacting Edward F. Pesik, Jr., P.O. Box 42488, Olympia, WA 98504-2488, phone (360) 407-2700, fax (360) 664-8721, e-mail ed.pesik@oah.wa.gov.

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

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

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

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

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

Date Adopted: September 20, 2016.

Lorraine Lee
Chief ALJ

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-150 Adjudicative proceedings—Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the ((~~presiding officer~~)) appointing authority shall appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(2) An adjudicative proceeding under chapter 34.05 RCW includes a legal proceeding which occurs on the record, and also includes oral and written communications of a party to an agency proceeding, and the filing, issuance and entry of notices, motions, orders, decisions, petitions, and other documents. When a party or witness appears in a legal proceeding on the record, the appointing authority is the presiding officer, and otherwise the appointing authority is the agency head or designee.

(3)(a) The agency head or designee may make a predetermination that an interpreter is qualified to provide parties with a:

(i) Visual translation or sight translation of forms, notices, proposed exhibits, briefs and orders, either before or following the hearing; or

(ii) Visual or spoken-language interpretation of oral communication with the agency that is not on the record.

(b) The agency head or designee may maintain a list of interpreters who have been determined to be qualified to interpret before the agency.

(4) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose ((~~sole~~)) function is to interpret at ((~~administrative hearings~~)) adjudicative proceedings on the record and as otherwise needed by impaired and non-English-speaking persons.

(5) The appointing authority shall appoint a qualified spoken language interpreter who is on the list of certified interpreters maintained by the administrative office of the courts (AOC), except as provided in this subsection. The appointing authority may find there is good cause to appoint a qualified spoken language interpreter who is not on the list of certified interpreters maintained by the AOC. "Good cause" includes, but is not limited to, consideration of the totality of circumstances and a determination by the appointing authority that:

(a) The current list of certified interpreters maintained by the AOC does not include an interpreter certified in the language spoken by the non-English-speaking person;

(b) The parties agree to the issue or motion;

(c) The motion or hearing is expedited or emergent;

(d) The matter involves general or procedural information;

(e) The matter involves sight translation of case-related documents including forms, notices, proposed exhibits, briefs, and orders, either before or following the hearing;

(f) The rescheduling of a hearing to appoint a certified interpreter would cause prejudicial delay;

(g) The certified interpreter qualified by the appointing authority becomes unavailable unexpectedly before completion of the adjudicative proceeding; or

(h) An interpreter who is certified to interpret in the courts of another state or the federal courts is available.

(((~~(3) The presiding officer~~))) (6) The appointing authority shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(((~~(4) If at any time during the proceeding,~~))) (7) If in the opinion of the impaired or non-English-speaking person, the ((~~presiding officer~~)) appointing authority or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the ((~~presiding officer~~)) appointing authority shall appoint another interpreter.

(((~~(5)~~))) (8) Mode of interpretation.

(a) The AOC recognizes three spoken language interpreting modes: Consecutive, simultaneous, and sight translation. Sight translation means the act of reading a written text out loud.

(b) Interpreters for non-English-speaking persons shall use the simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(((~~(b)~~))) (c) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(((~~(c)~~))) (d) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall ((~~translate~~)) interpret all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra

time is provided to permit ((~~translation~~)) interpretation and the presiding officer shall ensure that the interpreter ((~~translates~~)) interprets the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(((~~(6)~~))) (9) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(((~~(7)~~))) (10) The presiding officer shall explain to the impaired or non-English-speaking party that a written decision or order will be issued in English, and that ((~~the party may contact the interpreter for an oral translation~~)) a visual translation or sight translation of the decision ((~~and that the translation itself~~)) is available at no cost to the party. ((~~The interpreter shall provide to the presiding officer and the party the interpreter's telephone number. The telephone number shall be attached to the decision or order mailed to the party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.~~

~~(8)~~))) The presiding officer shall attach to or include in the decision or order a telephone number to request a visual translation or sight translation.

(11) If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(((~~(9)~~))) (12) The agency involved in the hearing shall pay interpreter fees and expenses.

WSR 16-19-085
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-18—Filed September 20, 2016, 3:01 p.m., effective October 21, 2016]

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

Purpose: This rule implements a requirement that the federal government issued in October 2015 requiring health insurance companies to cover "intensive, multicomponent behavioral interventions for weight management" as part of the essential health benefits.

Reasons supporting: This change is necessary to bring the office of insurance commissioner's essential health benefits rule into alignment with recent federal guidance.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-5642 (1)(b)(viii) and (9)(c).

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Adopted under notice filed as WSR 16-10-050 on April 29, 2016.

A final cost-benefit analysis is available by contacting Bianca Stoner, P.O. Box 40260, Olympia, WA 98504-0260, phone (360) 725-7041, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

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

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

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

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

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

Date Adopted: September 20, 2016.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-5642 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and outpatient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes

these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screening tests that are required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

(viii) Obesity or weight reduction or control other than:

(A) Covered nutritional counseling; and

(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as emergency medical services the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations; and

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;

(ii) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or

related to breast reconstruction following a medically necessary mastectomy;

(iii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

(iv) Reversal of sterilizations; and

(v) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans:

(i) The base-benchmark plan allows a waiting period for transplant services; and

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services. Health plans must cover such services consistent with 42 U.S.C. 18116, Section 1557, RCW 48.30.300 and 49.60.040.

(d) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, but nothing in this section requires an issuer to offer the benefit, consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes

these services. If an issuer includes these benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment:

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, bereavement for children five years of age or younger, and gender dysphoria consistent with 42 U.S.C. 18116, Section 1557, RCW 48.30.300 and 49.60.040, unless this exclusion is preempted by federal law; and

(iii) Court-ordered mental health treatment which is not medically necessary.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.-292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures for women with reproductive capacity;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of medically necessary health care services and health care devices designed to assist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer

must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base- benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multidisciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii)(A) Screening and tests for which the U.S. Preventive Services Task Force for Prevention and Chronic Care have issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in a recommendation or guideline, a plan may rely on the relevant evidence base and reasonable medical management techniques, based on necessity or appropriateness, to determine the frequency, method, treatment, or setting for the provision of a recommended preventive health service;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of nineteen, or covers dependent children age nineteen or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.-320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for a recommended preventive service, including providing multiple prevention and screening services at a single visit or across multiple visits.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan ((~~does not specifically exclude any services that could reasonably be classified to this category~~)) establishes specific limitations on services classified to the preventive services category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans.

Specifically, the base-benchmark plan excludes coverage for obesity or weight control other than covered nutritional counseling. Health plans must cover certain obesity-related services that are listed as A or B recommendations by the U.S. Preventive Services Task Force, consistent with 42 U.S.C. 300gg-13 (a)(1) and 45 C.F.R. 147.130 (a)(1)(i).

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Section 2713 of the Public Health Service Act (PHS Act) and

its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) This section applies to health plans that have an effective date of January 1, 2017, or later.

WSR 16-19-086
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-08—Filed September 20, 2016, 3:15 p.m., effective October 21, 2016]

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

Purpose: The rules clarify that carriers are required to disclose their emergency fill policies to consumers, including any cost-sharing requirements, if any. The rules clarify that an emergency fill is a covered benefit. Finally, the rules clarify that only pharmacy provider agreements need to reflect changes made in previous rule making (R 2014-13).

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-5110, 284-43-5170, and 284-170-470.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.510.

Adopted under notice filed as WSR 16-16-090 on July 29, 2016.

A final cost-benefit analysis is available by contacting Jim Freeburg, P.O. Box 40260, Olympia, WA 98504-0260, phone (360) 725-7170, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: September 20, 2016.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081 [16-14-106], filed 12/14/15 [7/6/16], effective 12/14/15 [8/6/16])

WAC 284-43-5110 Cost-sharing for prescription drugs. (1) A carrier and health plan unreasonably restrict the treatment of patients if an ancillary charge, in addition to the plan's normal copayment or coinsurance requirements, is imposed for a drug that is covered because of one of the circumstances set forth in either WAC 284-43-817 or 284-43-818. An ancillary charge means any payment required by a carrier that is in addition to or excess of cost-sharing explained in the policy or contract form as approved by the commissioner. Cost-sharing means amounts paid directly to a provider or pharmacy by an enrollee for services received under the health benefit plan, and includes copayment, coinsurance, or deductible amounts.

(2) When an enrollee requests a brand name drug from the formulary in lieu of a therapeutically equivalent generic drug or a drug from a higher tier within a tiered formulary, and there is not a documented clinical basis for the substitution, a carrier may require the enrollee to pay for the difference in price between the drug that the formulary would have required, and the covered drug, in addition to the copayment. This charge must reflect the actual cost difference.

(3) When a carrier approves a substitution drug, whether or not the drug is in the carrier's formulary, the enrollee's cost-sharing for the substitution drug must be adjusted to reflect any discount agreements or other pricing adjustments for the drug that are available to a carrier. Any charge to the enrollee for a substitution drug must not increase the carrier's underwriting gain for the plan beyond the gain contribution calculated for the original formulary drug that is replaced by the substitution.

(4) If a carrier uses a tiered formulary in its prescription drug benefit design, and a substitute drug that is in the formulary is required based on one of the circumstances in either WAC 284-43-817 or 284-43-818, the enrollee's cost sharing may be based on the tier in which the carrier has placed the substitute drug.

(5) If a carrier requires cost-sharing for enrollees receiving an emergency fill as defined in WAC 284-170-470, then issuers must disclose that information to enrollees within their policy forms.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 16-01-081 [16-14-106], filed 12/14/15 [7/6/16], effective 12/14/15 [8/6/16])

WAC 284-43-5170 Prescription drug benefit disclosures. (1) A carrier must include the following information in the certificate of coverage issued for a health benefit plan, policy or agreement that includes a prescription drug benefit:

(a) A clear statement explaining that the health benefit plan, policy or agreement may cover brand name drugs or medication under the circumstances set forth in WAC 284-43-817 or 284-43-818, including, if a formulary is part of the benefit design, brand name drugs or other medication not in the formulary.

(b) A clear explanation of the substitution process that the enrollee or their provider must use to seek coverage of a prescription drug or medication that is not in the formulary or is not the carrier's preferred drug or medication for the covered medical condition.

(c) A clear statement explaining that consumers may be eligible to receive an emergency fill for prescription drugs under the circumstances described in WAC 284-170-470. The disclosure must include the process for consumers to obtain an emergency fill, and cost-sharing requirements, if any, for an emergency fill.

(2) When a carrier eliminates a previously covered drug from its formulary, or establishes new limitations on coverage of the drug or medication, at a minimum a carrier must ensure that prior notice of the change will be provided as soon as is practicable, to enrollees who filled a prescription for the drug within the prior three months.

(a) Provided the enrollee agrees to receive electronic notice and such agreement has not been withdrawn, either electronic mail notice, or written notice by first class mail at the last known address of the enrollee, are acceptable methods of notice.

(b) If neither of these notice methods is available because the carrier lacks contact information for enrollees, a carrier may post notice on its web site or at another location that may be appropriate, so long as the posting is done in a manner that is reasonably calculated to reach and be noticed by affected enrollees.

(3) A carrier and health plan may use provider and enrollee education to promote the use of therapeutically equivalent generic drugs. The materials must not mislead an enrollee about the difference between biosimilar or bioequivalent, and therapeutically equivalent, generic medications.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 16-07-144, filed 3/23/16, effective 4/23/16)

WAC 284-170-470 Pharmacy claims—Rejections, notifications and disclosures. Issuers must provide to billing pharmacies sufficient information about transactions initiated by the pharmacy so that pharmacy claims can be processed in a timely manner.

(1) For purposes of this section "claim rejection" is an administrative step in the claim process where a claim is neither paid nor denied, but is held awaiting a defined action from the pharmacist, prescriber, or member.

(2) An issuer must notify the billing pharmacy of a claim rejection electronically and make available to the pharmacy, utilizing the National Council for Prescription Drug Programs (NCPDP) Telecommunications Standard transaction, all required data elements, as well as the following information, to the extent supported by the transaction:

(a) Rejection reasons such as prior authorization, quantity level limit, and exclusion;

(b) Other medications to consider that would not require a preauthorization (if applicable);

(c) Other medications to consider that would require a preauthorization (if applicable);

(d) Instructions for further processing of claim or for more specific contact information which may include a reference to a specific location on a web site;

(e) Contact phone number of a person or department to contact who can provide additional information.

(3) Every issuer must notify its participating pharmacies of its claim process in its contracts.

(4) Every issuer must be responsible for ensuring that any person acting on behalf of or at the direction of the issuer or acting pursuant to carrier standards or requirements complies with these transaction standards.

(5) In every pharmacy provider agreement, the issuer must:

(a) Disclose if the provider or pharmacy has the right to make a prior authorization request; and

(b) Provide that if the issuer requires the authorization number to be transmitted on a pharmaceutical claim, the issuer will provide the authorization number to the billing pharmacy. The authorization number will be communicated to the billing pharmacy after approval of a prior authorization request and upon receipt of a claim for that authorized medication.

(6) The prior authorization determination must be transmitted to the requesting party and must include the following:

(a) Information about whether a request was approved.

(b) If the request was made by the pharmacy, notification will additionally be made to the prescriber.

(7) In every pharmacy provider agreement, every issuer will state that an issuer will authorize an emergency fill by the dispensing pharmacist and approve the claim payment. An emergency fill is only applicable when:

(a) The dispensing pharmacy cannot reach the issuer's prior authorization department by phone as it is outside of that department's business hours; or

(b) An issuer is available to respond to phone calls from a dispensing pharmacy regarding a covered benefit, but the issuer cannot reach the prescriber for full consultation.

(8) The issuer's emergency fill policy must include the following:

(a) The inclusionary and exclusionary list of medications provided for emergency fill by issuers. This list must be posted online on the issuer's web site; this can be accomplished by linking to a common web site dedicated to administrative simplification and available to the public, such as OneHealthPort.

(b) The authorized amount of the emergency fill will be no more than the prescribed amount up to a seven day supply or the minimum packaging size available at the time the emergency fill is dispensed.

(c) An emergency fill ((~~medication does not necessarily constitute~~)) is a covered ((~~health service.~~)) benefit. However, determination as to whether ((~~this~~)) the subsequent fill is a covered health service under the patient benefit will be made as part of the prior authorization processing.

(9) Pharmacies and issuers are not required to comply with these contract provisions if the failure to comply is occasioned by any act of God, bankruptcy, act of a governmental authority responding to an act of God or other emergency, or the result of a strike, lockout, or other labor dispute.

WSR 16-19-093

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 21, 2016, 8:11 a.m., effective October 22, 2016]

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

Purpose: This rule-making order amends chapter 16-662 WAC, Weights and measures—National handbooks and retail sale of motor fuel by adopting:

(1) The 2016 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices);

(2) The 2016 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality) with modifications; and

(3) The 2016 edition of NIST Handbook 133 (Checking the Net Contents of Packaged Goods).

The department is also establishing in rule a civil penalty matrix for violations of the Motor Fuel Quality Act (chapter 19.112 RCW) and chapter 19.94 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 16-662-100, 16-662-105, and 16-662-115.

Statutory Authority for Adoption: RCW 19.94.190, 19.94.195, 19.112.020, and 19.112.140.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 16-16-103 on August 2, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 3, Repealed 0.

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

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

Date Adopted: September 21, 2016.

Derek I. Sandison
Director

Chapter 16-662 WAC

WEIGHTS AND MEASURES—NATIONAL HANDBOOKS ((~~AND RETAIL~~)), SALE OF MOTOR FUEL, AND PENALTIES FOR VIOLATIONS

AMENDATORY SECTION (Amending WSR 14-19-033, filed 9/9/14, effective 10/10/14)

WAC 16-662-100 Purpose. (1) This chapter establishes, under the authority of the Washington state department of agriculture (WSDA), requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures (NCWM) and published by the National Institute of Standards and Technology (NIST). This chapter also establishes requirements for the retail sale and advertising of motor fuel, and establishes a matrix for determining civil penalties under RCW 19.112.060 (1)(b) for motor fuel quality violations.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in *NIST Handbook 44*;

(b) Uniform regulation for weighing and measuring devices under the national type evaluation program (NTEP) addressed in *NIST Handbook 130*;

(c) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

(d) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

(e) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*;

(f) Uniform examination procedure for price verification addressed in *NIST Handbook 130*;

(g) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*;

(h) Specifications and tolerances for reference standards and field standard weights and measures addressed in the *NIST Handbook 105* series; ((~~and~~))

(i) Requirements for the retail sale and advertising of motor fuel; and

(j) Civil penalties for motor fuel quality violations as provided for under RCW 19.112.060 (1)(b).

(3)(a) *NIST Handbook 44, NIST Handbook 130*, *NIST Handbook 133*, and *NIST Handbooks 105* are available on the NIST web site at http://www.nist.gov/pml/wmd/pubs/handbooks.cfm or may be purchased on the NCWM web site at http://www.ncwm.net/publications or by mail from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, Nebraska 68508. Copies of the NIST handbooks and ASTM standards are available for viewing at the Washington State Department of Agriculture, 2nd Floor, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504-2560.

(b) You may search the NTEP data base for certificates of conformance (CC) on the NCWM web site at http://www.ncwm.net/ntep/cert_search.

(c) For information regarding the contents and application of these publications and data base, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail wts&measures@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 14-19-033, filed 9/9/14, effective 10/10/14)

WAC 16-662-105 Standards adopted by the Washington state department of agriculture (WSDA). Except as otherwise modified in this chapter, WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((~~2014~~)) 2016 Edition of *NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*
(2) The procedures for checking the accuracy of the net contents of packaged goods	((~~2014~~)) 2016 Edition of *NIST Handbook 133 - Checking the Net Contents of Packaged Goods*
(3) The requirements for packaging and labeling, method of sale of commodities, national type evaluation, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((~~2014~~)) 2016 Edition of *NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality.* Specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	*Uniform Packaging and Labeling Regulation* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2014~~)) 2016 Edition.
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	*Uniform Regulation for the Method of Sale of Commodities* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2014~~)) 2016 Edition.
(c) Weights and measures requirements for price verification	*Examination Procedure for Price Verification* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2014~~)) 2016 Edition.
(d) Definitions; standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	*Uniform Engine Fuels and Automotive Lubricants Regulation* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2014~~)) 2016 Edition.
(e) Weights and measures requirements for national type evaluation	*Uniform Regulation for National Type Evaluation* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2014~~)) 2016 Edition.

National standard for:	Contained in the:
(4) Specifications and tolerances for reference standards and field standard weights and measures	*NIST Handbook 105-1, Specifications and Tolerances for Field Standard Weights (NIST Class F) - 1990*;
	NIST Handbook 105-2, Specifications and Tolerances for Field Standard Measuring Flasks - 1996;
	NIST Handbook 105-3, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards - 2010;
	NIST Handbook 105-4, Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers - 2010;
	NIST Handbook 105-5, Specifications and Tolerances for Field Standard Stopwatches - 1997;
	NIST Handbook 105-6, Specifications and Tolerances for Thermometers - 1997;
	NIST Handbook 105-7, Specifications and Tolerances for Dynamic Small Volume Provers - 1997;
	NIST Handbook 105-8, Specifications and Tolerances for Field Standard Weight Carts - 2003.

AMENDATORY SECTION (Amending WSR 14-19-033, filed 9/9/14, effective 10/10/14)

WAC 16-662-115 Modifications to NIST Handbook 130. (1) WSDA adopts the following modifications to the listed sections of the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
Section 2.20.1. Method of Retail Sale	Modify the existing text in section 2.20.1 with the following: "Type of Oxygenate must be Disclosed.
	(a) All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. (b) Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. (c) Gasoline-ethanol blend fuels containing not more than ten percent((,)) ethanol by volume, must be labeled "Contains up to 10% Ethanol." (d) ((~~Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "Ethanol" (example: E40 Ethanol). E85 fuel ethanol shall be identified and labeled in accordance with section 3.8. E85 Fuel Ethanol.~~ ~~(e)~~)) This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."

Modified Section:	Modification:
((~~Section 2.20.2. Documentation for Dispenser Labeling Purposes~~	~~Replace the existing text in section 2.20.2. Documentation for Dispenser Labeling Purposes, with: "At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."~~))
Section ((~~2.23~~)) 2.23.2. Animal Bedding	Modify the existing text to add: "2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof."
Section 2.30.2. Labeling Requirements	Modify the existing text to add: Ethanol flex fuel identification and labeling must be done in accordance with 16 C.F.R. Part 306.
Section 2.31.2. Labeling of Retail Dispensers	Modify the existing text to add the following: "2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. (a) Each retail dispenser of biodiesel or biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel." (b) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)." Modify the existing text to add the following: "2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. (a) Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend). (b) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."
Section 2.31.4. Exemption	Modify the existing text to delete section 2.31.4.
Section 2.34. Retail Sales of Electricity Sold as a Vehicle Fuel	Modify the existing text to delete section 2.34.

(2) WSDA adopts the following modifications to the listed sections of the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
Section 2.1.2. Gasoline-Ethanol Blends	Replace the existing text in section 2.1.2 with the following: "When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and either: (a) The base gasoline used for blending with ethanol shall meet the requirements of ASTM D4814; except that the base gasoline shall meet the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class as follows: (1) Class 1 shall be 60°C (140°F) (2) Class 2 shall be 56°C (133˚F) (3) Class 3 shall be 51°C (124°F) (4) Class 4 shall be 47°C (116°F) (5) Class 5 shall be 41°C (105°F) or (b) The blend shall meet the requirements of ASTM D4814." Modify the existing text to add the following: "2.1.2.1. Maximum Vapor Pressure. The maximum vapor pressure of a gasoline-ethanol blend shall not exceed ASTM D4814 limits by more than 1.0 psi for: (a) Only 9 to 10 volume percent ethanol blends from June 1 through September 15. (b) All blends of 1 to 10 volume percent ethanol from September 16 through May 31."
Section 3.2.6. Method of Retail Sale	Modify the existing text in section 3.2.6 with the following: "Type of Oxygenate must be Disclosed.

Modified Section:	Modification:
	(a) All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. (b) Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. (c) Gasoline-ethanol blend fuels containing not more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." (d) ((~~Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E40 Ethanol). E85 fuel ethanol shall be identified and labeled in accordance with section 3.8. E85 Fuel Ethanol.~~ ~~(e)~~)) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."

Modified Section:	Modification:
((~~Section 3.2.7. Documentation for Dispenser Labeling Purposes~~	~~Modify the existing text in section 3.2.7 with the following: "The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."~~))
Section 3.8.2. Labeling Requirements	Modify the existing text to add: Ethanol flex fuel identification and labeling shall be in accordance with 16 C.F.R. Part 306.
Section 3.9.2. Retail Dispenser Labeling	Modify the existing text in section 3.9.2 to add: "(c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "Methanol." (Example: M85 Methanol.) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."
Section 3.15.2. Labeling of Retail Dispensers	Modify the existing text in subsection 3.15.2 to add: "3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel."" Modify the existing text in subsection 3.15.2 to add: "3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "Biodiesel" or "Biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend)." Modify the existing text in subsection 3.15.2 to add: "3.15.2.7. Placement of label. Labels shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."
Section 3.15.4. Exemption	Delete section 3.15.4.

(3) WSDA adopts the following modifications to the listed sections of the Uniform Regulation for National Type Evaluation requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(e):

Modified Section:	Modification:
Section 2.3. Director	Modify the existing text in section 2.3 with the following: "Director - Means the director of the Washington state department of agriculture."
Section 4. Prohibited Acts and Exemptions	Modify the existing text in ((~~section~~)) subsection (c) with the following: "A device in service in this state prior to July 5, 1997, that meets the specifications, tolerances, and other technical requirements of the *National Institute of Standards and Technology Handbook 44* shall not be required to be traceable to an active CC."

Modified Section:	Modification:
	Modify the existing text in ((~~section~~)) subsection (d) with the following: "A device in service in this state prior to July 5, 1997, removed from service by the owner or on which the department has issued a removal order after July 5, 1997, and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 effective on the date of the return to service. Such a device shall not be required to be traceable to an active CC." ((~~Modify the existing text in section (e) with the following: "A device in service in this state prior to July 5, 1997, which is repaired after such date shall meet the specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 and shall not be required to be traceable to an active CC."~~))
	Modify the existing text in ((~~section~~)) subsection (e) with the following: "A device in service in this state prior to July 5, 1997, which is repaired after such date shall meet the specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 and shall not be required to be traceable to an active CC."
	Modify the existing text in ((~~section~~)) subsection (f) with the following: "A device in service in this state prior to July 5, 1997, that is still in use may be installed at another location in this state provided the device meets requirements in effect as of the date of installation in the new location; however, the device shall not be required to be traceable to an active CC."
	Modify the existing text in ((~~section~~)) subsection (g) with the following: "A device in service in ((~~this~~)) another state prior to July 5, 1997, may be installed in this state; however, the device shall meet the specifications, tolerances, and other technical requirements for weighing and measuring devices in the National Institute of Standards and Technology Handbook 44 and be traceable to an active CC."
Section 5. Participating Laboratory and Agreements	Modify the existing text to delete section 5.
Section 6. Revocation of Conflicting Regulations	Modify the existing text to delete section 6.
Section 7. Effective Date	Modify the existing text to delete section 7.

NEW SECTION

WAC 16-662-160 Definitions for civil penalties and enforcement—Motor fuel quality. The following definitions apply to WAC 16-662-165 and 16-662-170:

"Violation" means commission of an act or acts prohibited by chapter 19.112 RCW, Motor Fuel Quality Act, and this chapter or the failure to act in compliance with the requirements of chapter 19.112 RCW and this chapter. Violations include the following: Marketing motor fuels in any manner that may deceive or tend to deceive the purchaser as to the nature, price, quantity and quality of a motor fuel; hindering or obstructing the director or the director's authorized agent in the performance of their duties; marketing a motor fuel that is contrary to the provisions of chapter 19.112 RCW and the regulations adopted under the authority of the Motor Fuel Quality Act.

"First violation" means an act or omission unlawful under RCW 19.112.050 that has resulted in a notice of violation or a notice of correction.

"Second violation" means one same or similar violation as a first violation that occurs within two years of the first violation.

"Third violation" means one same or similar violation as a second violation that occurs within two years of the second violation.

"Fourth violation" means one same or similar violation as a third violation that occurs within two years or the third violation.

"Subsequent violation" means one same or similar violation as a fourth violation that occurs within two years of the fourth or any subsequent violation.

"Similar violation" means a violation of a comparable but not identical standard or requirement. For example: A violation of an ASTM fuel standard would be a violation similar to a violation of a different ASTM fuel standard. A violation of an ASTM fuel standard would not be similar to a violation of fuel pricing violation. When determining the level of violation, prior incidents will be based on the date that a final order or stipulated order resolved the prior violation and not from the date that the incident occurred.

"Notice of correction" means a document issued by the department in accordance with RCW 43.05.100. A notice of correction will identify any condition that is a violation. Any violation identified in a notice of correction is a violation even though that violation is not subject to a civil penalty when the notice of correction is issued.

"Notice of intent" means a document issued by the department in accordance with RCW 43.05.110. A notice of intent assesses a civil penalty under RCW 19.112.060 (1)(b) for violations of chapter 19.112 RCW as provided under WAC 16-662-165 and 16-662-170.

NEW SECTION

WAC 16-662-165 Civil penalties and enforcement—Motor fuel quality. (1) Enforcement actions and civil penalties will be assessed as described below. The department considers each violation to be a separate and distinct occurrence.

(a) Penalties for ASTM specifications violations include a gasoline or diesel sample not meeting one or more ASTM quality specifications as indicated by the department's contract laboratory certificate of analysis. The applicable standards include: D4814 gasoline and gasoline - oxygenate blends, ASTM D7467 biodiesel blends greater than five percent and equal to or less than twenty percent, ASTM 6751 B100 and D975 diesel and biodiesel blends equal to or less than five percent, gasoline - ethanol blends exceeding legal limits, ASTM D5798 ethanol flex fuel, also referred to as E85 fuel ethanol or E85 motor fuel.

	Gasoline	Diesel	Biodiesel and biodiesel blends	Other fuels
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	$1,500.00	$1,500.00	$1,500.00	$1,500.00
3rd Violation	$3,000.00	$3,000.00	$3,000.00	$3,000.00
4th and subsequent violations	$10,000.00	$10,000.00	$10,000.00	$10,000.00

(b) Penalties for biodiesel and biodiesel blend ratio violations, including biodiesel and biodiesel blends above or below what is labeled on the dispenser.

	Blends between 0 and 5 percent	Blends between 6 and 20 percent	Blends between 21 and 99 percent	100% Biodiesel
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	$1,200.00	$1,400.00	$1,400.00	$1,400.00
3rd Violation	$1,700.00	$1,900.00	$1,900.00	$1,900.00
4th and subsequent violations	$2,700.00	$2,900.00	$2,900.00	$2,900.00

(c) Penalties for water in retail fuel storage tanks violations, including failed field tests to determine water in fuel storage tanks exceeding NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Retail Storage Tanks and Dispenser Filters, Subsections 4.1 and 4.2.

	Water phase exceeding 1 inch in storage tanks used for gasoline or diesel Water phase exceeding 1/4 inch in storage tanks used for biodiesel blends up to 20%	Water phase exceeding 1/4 inch in storage tanks used for gasoline ethanol blends or biodiesel blends above 20%	Any fuel storage tank with a water phase exceeding 6 inches
1st Violation	NOC	Stop-Sale and $200.00	Stop-Sale and $1,500.00
2nd Violation	$1,000.00	Stop-Sale and $1,000.00	Stop-Sale and $3,000.00
3rd Violation	$2,500.00	Stop-Sale and $2,500.00	Stop-Sale and $6,000.00
4th and subsequent violation	$5,000.00	Stop-Sale and $5,000.00	Stop-Sale and $10,000.00

(d) Penalties for fuel dispenser labeling and retail storage tank fill connection marking violations, including biodiesel, ethanol blended and other fuels offered for sale without dispenser labeling required by WAC 16-662-105 and NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Section 3 Classification and Method of Sale of Petroleum Prod-

ucts as modified by WAC 16-662-115; and retail storage tanks missing fill connection markings as required by NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Retail Storage Tanks and Dispenser Filters, Subsection 4.4 Product Storage Identification.

	Biodiesel blends	Gasoline and gasoline-ethanol blends up to 10 percent	Ethanol flex fuel	Other fuels
1st Violation	Notice of Correction			
2nd Violation	$200.00			
3rd Violation	$500.00			
4th and subsequent violations	$1,000.00			

(e) Penalties for octane labeling violations, including octane levels in gasoline lower than posted on the fuel dispenser.

	Between .7 and .9 octane lower	Between 1 and 1.9 octane lower	Between 2 and 2.9 octane lower	Greater than 3 octane lower
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	$1,000.00	$1,500.00	$2,500.00	$3,000.00
3rd Violation	$2,500.00	$3,000.00	$5,000.00	$6,000.00
4th and subsequent violations	$10,000.00	$10,000.00	$10,000.00	$10,000.00

(2) Penalties for other violations. Penalties for violations not covered under subsection (1) of this section will be determined by applying one of the above sections that is most similar to the violation and by applying aggravating and mitigating factors under WAC 16-662-170.

NEW SECTION

WAC 16-662-170 Civil penalties and enforcement—Aggravating and mitigating factors. (1) As provided under RCW 19.112.060 (1)(b), the department has discretion to determine the civil penalty based on circumstances such as the gravity of violations and the history of violations. Criteria for determining whether and how to adjust the civil penalties specified in WAC 16-662-165 are considered aggravating and mitigating factors.

(2) When assessing a penalty using aggravating or mitigating factors, the department will provide a written summary to include the base penalty amount provided in the civil penalty section and any aggravating and/or mitigating factors it considered when arriving at a final civil penalty amount that differs from the base penalty amount.

(3) The department may increase a civil penalty based on the penalties found in WAC 16-662-165 because of aggravating factors including, but not limited to, the following:

(a) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation.

(b) The number of separate violations contained within a single notice of intent.

(c) The magnitude of the harm or potential harm caused by the violation, including the degree of harm to any affected vehicles, property, people, or to the environment.

(d) The sameness or similarity of the current violation to previous violations committed within the previous two years.

(e) The extent to which the violation is part of a pattern of the same or substantially similar violations including violations at other locations operated by the same business or person.

(f) The department may assess up to the maximum penalty of ten thousand dollars as authorized under RCW 19.112.060 (1)(b) when the department determines one or more aggravating factors are associated with violations presenting grave risks to persons, property, or the environment or that represent a pattern of repeated violations presenting moderate risks to persons, property, or the environment.

(4) The department may reduce a civil penalty based on the civil penalty identified in WAC 16-662-165 because of mitigating factors including, but not limited to, the following:

(a) Voluntary disclosure of a violation.

(b) Promptly taking voluntary corrective actions to stop further harm and/or minimize the likelihood that the violation will be repeated.

(c) Promptly making appropriate restitution to any identified customers who were affected or may have been affected by the violation.

(d) Proof that the violations occurred due to structural failures or unintentional errors on the part of the business owner or operator when such failures or errors were outside the control or responsibility of the owner or operator. However, the owner or operator is responsible for the quality of fuel offered for sale at that location.

NEW SECTION

WAC 16-662-175 Other actions not precluded. When appropriate, the department may decide: Not to pursue a civil penalty; to issue a notice of correction in lieu of pursuing a civil penalty or issuing a stop sale order; to negotiate settlements of cases; and to refer violations or alleged violations to any federal, state, or county authority with jurisdiction.

WSR 16-19-102
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed September 21, 2016, 10:57 a.m., effective October 22, 2016]

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

Purpose: Rule changes are needed to implement changes to marijuana laws passed during the 2016 legislative session. Specifically, the Washington state liquor and cannabis board is amending rules relating to the following measures passed by the legislature:

- HB 2520, Concerning the sale of marijuana to regulated cooperatives (SL 2016 c 170).

- HB 2521, Allowing for the proper disposal of unsellable marijuana by a licensed marijuana retail outlet (SL 2016 c 171).

Changes to rules include adjustments to accommodate and provide requirements and direction for cooperative members purchasing plants from licensed producers and to allow licensed retailers to dispose of marijuana products so long as retailers follow the disposal requirements for other marijuana licensees.

Citation of Existing Rules Affected by this Order: Amending WAC 314-55-075, 314-55-079, and 314-55-410.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, SL 2016 c 170, SL 2016 c 171, and SL 2016 c 17.

Adopted under notice filed as WSR 16-16-051 on July 27, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: September 21, 2016.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1)(a) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell:

(i) Marijuana plants, seed, and plant tissue culture to other marijuana producer licensees((.)); and

(ii) Marijuana plants to members of a registered cooperative under the conditions provided in WAC 314-55-410.

(b) Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083. An outdoor grow must be physically separated at least twenty feet from another licensed outdoor grow. Outdoor grows cannot share common walls or fences.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The WSLCB will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the WSLCB. The WSLCB may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production will be imposed at a later date. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 - Less than two thousand square feet;

(b) Tier 2 - Two thousand square feet to ten thousand square feet; and

(c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

(7) The WSLCB may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum square feet the WSLCB will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the WSLCB may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds the maximum square feet, the WSLCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana-infused products listed in WAC 314-55-077(6) are prohibited for sale by a marijuana retail licensee.

(3) Internet sales and delivery of product to customers is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(10) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097. Marijuana retailers must give seventy-two hours' notice to WSLCB enforcement prior to disposing of marijuana products.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-410 Cooperatives. (1) A cooperative may be formed by qualifying patients and/or designated providers to share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative. A cooperative must meet the following criteria:

(a) All cooperative members must be at least twenty-one years of age. The designated provider of a qualifying patient under twenty-one years of age may be a member of a cooperative on the qualifying patient's behalf;

(b) All cooperative members must hold valid recognition cards as defined by RCW 69.51A.010;

(c) No more than four ((~~members are allowed in~~)) qualifying patients or designated providers may become members of a cooperative;

(d) ((~~A member can only belong to~~)) Qualifying patients or designated providers may only participate in one cooperative;

(e) A cooperative member may only grow plants in the cooperative and may not grow plants elsewhere;

(f) Cooperative members must participate in growing plants. ((~~A monetary contribution or donation is not considered assistance.~~)) Cooperative members must provide nonmonetary resources and assistance in order to participate. A monetary contribution or donation is not considered assistance;

(g) Cooperative members may grow up to the total amount of plants for which each cooperative member is authorized on ((~~their~~)) his or her recognition card((~~s~~)). At the location, the qualifying patients or designated providers may possess the amount of usable marijuana that can be produced with the number of plants permitted, but no more than seventy-two ounces;

(h) Cooperative members may not sell, donate, or otherwise provide marijuana, marijuana concentrates, usable marijuana, or other marijuana-infused products to a person who is not a member of the cooperative;

(i) A cooperative may not be located within a one mile radius of a marijuana retailer;

(j) A cooperative must be located in the domicile of one of the cooperative members. Only one cooperative may be located per property tax parcel; and

(k) To obscure public view of the premises, outdoor marijuana production must be enclosed by a sight obscure wall or fence at least eight feet high.

(2) People who wish to form a cooperative must register the location with the WSLCB. The location registered is the only location where cooperative members may grow or process marijuana. The following is required to register a cooperative ((~~a registered member must~~)):

(a) Submit a completed Marijuana Cooperative Registration Form;

(b) Submit copies of each ((~~member's~~)) person's recognition card who is seeking to be part of the registered cooperative;

(c) Submit a deed, lease, rental agreement, or other document establishing ownership or control to the property where the cooperative is to be located. If the property is leased or rented, a sworn statement ((~~of~~)) from the property owner granting permission to engage in a cooperative must also be submitted ((~~and must~~)) that includes a telephone number and address where the owner can be contacted for verification;

(d) Submit a sketch outlining the location where the ((~~medical~~)) marijuana is planned to be grown.

(3) WSLCB may inspect a cooperative between the hours of 8:00 a.m. and 8:00 p.m. unless otherwise agreed upon by cooperative members and WSLCB staff.

(4) If a person or persons seeking to register the cooperative fails to meet the requirements of a registered cooperative as provided in this section, the WSLCB will deny the cooperative registration.

(5) If the WSLCB finds a registered cooperative violated the requirements of this section, the WSLCB will revoke the cooperative's registration.

(6) A person may request an administrative hearing to contest a denial of registration or a revocation of a cooperative's registration under subsections (4) and (5) of this section as provided in chapter 34.05 RCW.

(7) Cooperative members purchasing plants from licensed producers.

(a) Members of a cooperative registered by the WSLCB may purchase marijuana plants to be grown in the cooperative from a licensed marijuana producer.

(b) Members of a cooperative who wish to purchase plants from a licensed producer must:

(i) Provide proof of identification in the form of a state-issued identification card or other valid government-issued identification, a valid recognition card, and a copy of the letter from the WSLCB confirming the person is a member of a registered cooperative;

(ii) Contact a licensed producer they wish to purchase from at least twenty-four hours in advance of arriving at the licensed producer's place of business to ensure the producer has plants available for sale and to allow for the required waiting period under WAC 314-55-083 to pass prior to physically taking possession of marijuana plants; and

(iii) Personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased.

(c) The physical transfer of marijuana plants between licensed producers and members of a cooperative must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative are prohibited.

WSR 16-19-104
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed September 21, 2016, 11:07 a.m., effective October 22, 2016]

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

Purpose: The purpose of the proposed rules is to create an exception, on a case-by-case basis to the outside service requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 314-02-130.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 16-15-033 on July 13, 2016.

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

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

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

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

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

Date Adopted: September 21, 2016.

Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 15-07-035, filed 3/11/15, effective 4/11/15)

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
(1) • Excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant or a spirits, beer, and wine nightclub; • Excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; • Reclassifying a lounge as open to persons under twenty-one years of age; • Extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height); • Initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel;	(a) The board's licensing and regulation division will make initial contact on the request for alteration within five business days. (b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received. (c) Board approval will be based on the alteration meeting the requirements outlined in this title.

Type of alteration	Approval process and timeline
(2) • Any alteration that affects the size of a premises' customer service area.	(a) The board's licensing and regulation division will make an initial response on the licensee's request for alteration within five business days. (b) The licensee must contact their local liquor control agent when the alteration is completed. (c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent. (d) Board approval will be based on the alteration meeting the requirements outlined in this title.

(3) For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a forty-two inch barrier or permanent demarcation of the designated alcohol serving areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed at a minimum of ten feet apart.

(4) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(5) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point.

(6) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) The board may grant limited exceptions to the required forty-two inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.

WSR 16-19-105
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed September 21, 2016, 11:08 a.m., effective October 22, 2016]

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

Purpose: This rule making is needed to clarify what discounts are and are not allowed between distributors and retailers.

Citation of Existing Rules Affected by this Order: Amending WAC 314-23-085.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 16-15-034 on July 13, 2016.

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

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

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

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

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

Date Adopted: September 21, 2016.

Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 15-19-130, filed 9/21/15, effective 10/22/15)

WAC 314-23-085 What type of discounts are not allowed? The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

(1) **Volume discounts that violate local, state, or federal laws.**

(2) **Discounts on purchases over time.** Prices must be based on the spirits or wine delivered in a single shipment ((~~or single invoice~~)).

(3) **Discounts on a combined order that is delivered to multiple licensed sites.** Volume discounts may only be provided based on combined orders by one or more licensees to the "central warehouse" or a single location to which the order is delivered. ((~~The delivery of product to multiple sites cannot be used in determining the volume discount for a combined order unless the order is delivered to multiple liquor licensed locations owned and operated by the same liquor licensed entity.~~))

WSR 16-19-106
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed September 21, 2016, 11:09 a.m., effective October 22, 2016]

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

Purpose: This rule making is part of the board's ongoing chapter review of all of our WAC chapters. Also included in this rule making is a new section to address sports entertainment facility licenses.

Citation of Existing Rules Affected by this Order: Amending WAC 314-29-010 and 314-29-020.

Statutory Authority for Adoption: RCW 66.08.030.

Other Authority: Chapter 66.44 RCW.

Adopted under notice filed as WSR 16-16-055 on July 27, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

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

Date Adopted: September 21, 2016.

Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 09-13-037, filed 6/10/09, effective 7/11/09)

WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation? (1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

(a) Accept the recommended penalty; or

(b) Request a settlement conference in writing; or

(c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) **What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?**

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

(3) **What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-020 Group 1 violations against public safety. (1) Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015 (4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Violations involving minors: **Sale or service to minor:** Sale or service of alcohol to a person under 21 years of age. **Minor frequenting** a tavern, lounge, or other restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	5 day suspension or $500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Sale or service to apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	5 day suspension or $500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Conduct violations: **Disorderly conduct** by licensee or employee, or permitting on premises. **Licensee and/or employee** intoxicated on the licensed premises and/or drinking on duty. **Criminal conduct:** Permitting or engaging in criminal conduct. WAC 314-11-015	5 day suspension or $500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or $500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or $500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Condition of suspension violation: Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

NEW SECTION

WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses. Sports entertainment facility licenses are unique and different from other on-premises licenses since they are not open on a daily basis, but rather for specific events. Public safety violations are considered the most serious because they present a direct threat to public safety. All other violations and penalties are the same for sports entertainment facility licensees as other liquor licenses.

(1) General public safety violation penalties.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
Violations involving minors: **Sale or service to minors outside of WAC 314-29-038(c):** Sale or service of alcohol to a person under 21 years of age. **Minor frequenting** a restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	Monetary penalty will be based on ticket sales to the event, and calculated at $0.10 per ticket sold, with a mandatory minimum of $2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $0.50 per ticket sold, with a mandatory minimum of $7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $1.25 per ticket sold, with a mandatory minimum of $45,000 fine	Penalty to be determined by the board, including possible cancellation of license
Sale or service to an apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	Monetary penalty will be based on ticket sales to the event, and calculated at $0.10 per ticket sold, with a mandatory minimum of $2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $0.50 per ticket sold, with a mandatory minimum of $7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $1.25 per ticket sold, with a mandatory minimum of $45,000 fine	Penalty to be determined by the board, including possible cancellation of license
Conduct violations: **Disorderly conduct** by licensee or employee, or permitting on premises. **Licensee and/or employee** intoxicated on the licensed premises and/or drinking on duty. **Criminal conduct:** Permitting or engaging in criminal conduct. WAC 314-11-015	Monetary penalty will be based on ticket sales to the event, and calculated at $0.10 per ticket sold, with a mandatory minimum of $2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $0.50 per ticket sold, with a mandatory minimum of $7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $1.25 per ticket sold, with a mandatory minimum of $45,000 fine	Penalty to be determined by the board, including possible cancellation of license
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	Monetary penalty will be based on ticket sales to the event, and calculated at $0.10 per ticket sold, with a mandatory minimum of $2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $0.50 per ticket sold, with a mandatory minimum of $7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $1.25 per ticket sold, with a mandatory minimum of $45,000 fine	Penalty to be determined by the board, including possible cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	Monetary penalty will be based on ticket sales to the event, and calculated at $0.10 per ticket sold, with a mandatory minimum of $2,500 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $0.50 per ticket sold, with a mandatory minimum of $7,000 fine	Monetary penalty will be based on ticket sales to the event, and calculated at $1.25 per ticket sold, with a mandatory minimum of $45,000 fine	Penalty to be determined by the board, including possible cancellation of license

(2) If documented ticket sales for an event are unavailable, in order to assess penalties set forth in this section, the facility maximum occupancy will be used for the penalty assessment.

(3) WSLCB youth access compliance checks, in accordance with chapter 314-31 WAC.

License Class	Compliance Threshold	1st Violation	2nd Violation	3rd Violation	4th Violation
Sports and entertainment facility	Events: 1 to 20 points of sale (1st incident/sale to minor to be a violation/ compliance failure)	$1000 x I*	$10,000 x I*	$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
Sports and entertainment facility	Events: 21 to 45 points of sale (2nd incident/sale to minor to be a violation/ compliance failure)	$1000 x I*	$10,000 x I*	$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
Sports and entertainment facility	Events: 45 or more points of sale (3rd incident/sale to minor to be a violation/ compliance failure)	$1000 x I*	$10,000 x I*	$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
* "I" signifies the total cumulative incidents of sales to underage person during an alcohol compliance check.					

A point of sale is defined as each different concession stand, or service area (such as a lounge), not each individual cash register.

WSR 16-19-107
PERMANENT RULES
DEPARTMENT OF EARLY LEARNING

[Filed September 21, 2016, 11:11 a.m., effective October 22, 2016]

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

Purpose: To implement the Early Start Act of 2015 by establishing twelve month eligibility with limited reporting requirements in the working connections child care (WCCC) and seasonal child care (SCC) programs. The rule revisions also make previously existing rules compatible with the legislation and require new and existing WCCC and SCC providers to participate in early achievers and demonstrate quality within statutory time frames in order to be eligible to receive subsidy payments. The rule making implements the WCCC and SCC base rate increases negotiated in the state's collective bargaining agreement with SEIU 925, and it implements a graduated phase out of families receiving WCCC and SCC benefits when their income exceeds program limits within a specified window of time as required by Reauthorization of the Child Care Development Block Grant Act. The revisions align with statutory changes made to RCW 43.215.135 and 43.215.1352 by the Early Start Act.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0003, 170-290-0005, 170-290-0012, 170-290-0014, 170-290-0020, 170-290-0031, 170-290-0032, 170-290-0034, 170-290-0035, 170-290-0050, 170-290-0055, 170-290-0082, 170-290-0085, 170-290-0090, 170-290-0095, 170-290-0109, 170-290-0110, 170-290-0125, 170-290-0130, 170-290-0138, 170-290-0190, 170-290-0200, 170-290-0205, 170-290-0210, 170-290-0240, 170-290-0271, 170-290-3520, 170-290-3550, 170-290-3555, 170-290-3565, 170-290-3570, 170-290-3580, 170-290-3590, 170-290-3640, 170-290-3650, 170-290-3660, 170-290-3665, 170-290-3720, 170-290-3750, 170-290-3770, 170-290-3790, 170-290-3840 and 170-290-3855; and new section WAC 170-290-0022.

Statutory Authority for Adoption: RCW 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 16-14-101 on July 5, 2016.

Changes Other than Editing from Proposed to Adopted Version: Based on comments received during the public comment period, the department of early learning made a change to WAC 170-290-0109 clarifying the income level requirement for the income phase out, and changes to WAC 170-290-0210 specifying additional types of subsidy programs that can meet the five percent requirement to be eligible for quality improvement awards.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 7, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 37, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2016.

Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Able" means being physically and mentally capable of caring for a child in a responsible manner.

"Authorization" means the transaction created by DSHS which allows the provider the ability to claim ((~~a~~)) payment ((~~for child care provided during a family's approved activities~~)) during ((~~the current~~)) a certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.

"Benefit" means a regular payment made by a government agency to a person qualified to receive it.

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Collective bargaining agreement" or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person receiving:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care, whether provided under a voucher or contract, each month.

"Days" means calendar days unless otherwise specified.

"DEL" means the department of early learning.

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

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Eligibility" means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by DSHS, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"In-home/relative provider" or **"license-exempt provider,"** referred to in the collective bargaining agreement as **"family, friends and neighbors provider"** or **"FFN provider,"** means a provider who meets the requirements in WAC 170-290-0130 through 170-290-0167.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"New child care provider" means a licensed or certified provider who did not receive a state subsidy payment between July 1, 2015, and June 30, 2016.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Phase out period" means a three-month eligibility period a consumer may be eligible for at reapplication when the consumer's household income is greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child ((~~not less than~~)) who is between five years of age through twelve years of age and who is attending ((~~kindergarten or elementary school~~)) public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

"Self-employment" means engaging in any legal income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits but funding is not available.

"WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining subsidy for child care ((~~subsidies for approvable activities outside the consumer's home~~)).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0005 Eligibility. (1) At application and reapplication, to be eligible for WCCC, the ((~~person applying for benefits~~)) applicant or reapplicant must:

(a) Have parental control of one or more eligible children;

(b) Live in the state of Washington;

(c) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Nephew or niece;

(vi) Aunt;

(vii) Uncle;

(viii) Grandparent;

(ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or

(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;

(d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;

(f) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than ((~~two hundred percent of the FPG;~~

~~(g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;~~

~~(h)~~)) eighty-five percent of the state median income or if resources exceed one million dollars;

(g) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

(((~~i~~))) (h) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) **Children.** To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(b) Live in Washington state, and be:

(i) Less than thirteen years of age; or

(ii) Less than nineteen years of age, and:

(A) Have a verified special need, according WAC 170-290-0220; or

(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0012 Verifying consumers' information. (1) A consumer must provide all required information to DSHS to determine eligibility when the consumer initially applies or reapplies for benefits.

(2) ((~~A consumer must provide verification to DSHS to determine continued eligibility for benefits when there is a change of circumstances under WAC 170-290-0031 during the eligibility period.~~

~~(3)~~)) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(((~~4~~))) (3) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to

the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(((~~(5)~~))) (4) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) A current WorkFirst individual responsibility plan (IRP) for consumers receiving TANF;

(b) Employer name, address, and phone number;

(c) State business registration and license, if self-employed;

(d) Hourly wage or salary;

(e) Either the:

(i) Gross income for the last three months;

(ii) Self-attestation of anticipated wages for new employment and third-party verification of the wages within sixty days of the date DSHS approved the consumer's application or reapplication for WCCC benefits;

(iii) Federal income tax return for the preceding calendar year; or

(((~~(iii)~~))) (iv) DSHS employment verification form;

(f) Monthly unearned income the household receives, such as supplemental security income (SSI) benefits or child support. Child support payment amounts are verified as follows:

(i) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order;

(ii) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(iii) For applicants or consumers who have an informal verbal or written child support agreement, the amount as verified by the written agreement signed by the noncustodial parent (NCP);

(iv) For applicants or consumers who cannot provide a written agreement signed by the NCP, the amount received for child support verified by a written statement from the consumer that documents why they cannot provide the statement from the NCP.

(g) If the other parent is in the household, the same information for them;

(h) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.

(((~~(6)~~))) (5) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

(((~~(7)~~))) (6) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

(((~~(8)~~))) (7) If a consumer does not provide all of the verification requested within thirty days from the application date, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0014 Verifying information for a provider's payment. (1) A consumer must provide all required information (((~~to DSHS to determine eligibility~~))) for payment to be authorized to their provider.

(2) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(3) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting, or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(4) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) Name and phone number of the licensed child care provider; and

(b) For the in-home/relative child care provider, a:

(i) Completed and signed criminal background check form;

(ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(iii) Legible copy of the proposed provider's valid Social Security card; ((~~and~~))

(iv) All other information required by WAC 170-290-0135;

(c) Self-attestation of work, school or training schedule when the consumer requests child care for non-TANF activities. An authorization based on a self-attested schedule is subject to change if DSHS subsequently receives more accurate, complete, or consistent third-party information.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0020 Eligibility—Special circumstances. (1) **((~~Child care provided at the consumer's place of work.~~)) At application, reapplication and change reporting:**

(a) A consumer is not eligible for WCCC benefits for the consumer's children when child care is provided at the same location where the consumer works.

(b) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for approved activities without the spouse or live-in partner's availability to provide care being considered unless the spouse or live-in partner is also named on the permanent custody order.

(i) Eligibility for WCCC benefits is based on:

(A) The consumer's work or approved activities schedule;

(B) The child's need for care;

(C) The child's income eligibility; and

(D) Family size based on number of children under guardianship and needing care.

(ii) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(c) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or stepparents.

(i) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she:

(A) Has a written, signed agreement between the parent and the caregiver assuming custodial responsibility; or

(B) Receives a TANF grant on behalf of the eligible child.

(ii) Eligibility for WCCC benefits is based on:

(A) The consumer's work schedule;

(B) The child's need for care;

(C) The child's income eligibility; and

(D) Family size based on number of children under in loco parentis and needing care.

(iii) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(2) **((~~Consumer's child care employment.~~))** **At application and reapplication:**

(a) A consumer may be eligible for WCCC benefits while working in a child care center if the consumer does not provide direct care in the same classroom to the consumer's children during work hours.

(b) A consumer is not eligible for WCCC benefits while working in a family home child care where the consumer's children are also receiving subsidized child care.

(c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

(d) ((~~A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.~~

~~(3) **Two-parent family.**~~

~~(a)~~)) A consumer may be eligible for WCCC if the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.

(((~~(b)~~))) (e) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from an acceptable medical source (see WAC 388-449-0010) that states the:

(i) Reason the parent is not able to care for the children;

(ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and

(iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.

(((~~(4) **Single-parent family.**~~))) (f) A consumer is not eligible for WCCC benefits when the consumer is the only parent in the family and will be away from the home for more than thirty days in a row.

(((~~(5) **Legal guardians.**~~

~~(a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for approved activities without the spouse or live-in partner's availability to provide care being considered unless the spouse or live-in partner is also named on the permanent custody order.~~

~~(b) Eligibility for WCCC benefits is based on the consumer's:~~

~~(i) Work or approved activities schedule;~~

~~(ii) The child's need for care;~~

~~(iii) The child's income eligibility; and~~

~~(iv) Family size based on number of children under guardianship and needing care.~~

~~(c) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.~~

~~(6) **In loco parentis custodians.**~~

~~(a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step-parents.~~

~~(b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:~~

~~(i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or~~

~~(ii) Receives a TANF grant on behalf of the eligible child.~~

~~(c) Eligibility for WCCC benefits is based on the consumer's:~~

~~(i) Work schedule;~~

~~(ii) The child's need for care;~~

~~(iii) The child's income eligibility; and~~

~~(iv) Family size based on number of children under in loco parentis and needing care.~~

~~(d) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.~~

~~(7) **WorkFirst sanction.**~~

~~(a)~~)) (3) A consumer may be eligible for WCCC if the consumer is participating in an approved activity needed to remove a sanction penalty or to reopen the consumer's WorkFirst case.

(((~~(b) A WorkFirst participant who loses a TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.~~))) (4) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(5) When a consumer's monthly copayment is higher than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005:

(a) The consumer's eligibility period may continue; and

(b) DSHS will not authorize payment to the provider until the copayment becomes lower than the state maximum

rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005.

NEW SECTION

WAC 170-290-0022 Eligibility—Resources. (1) Effective October 1, 2016, to be eligible for WCCC, the consumer applying or receiving benefits must have countable resources less than one million dollars. The resources count if:

(a) The consumer has control over the resource;

(b) The consumer could legally sell the resource or convert it into cash;

(c) The resource belongs to the consumer or dependents that are part of the household and applying for or receiving WCCC.

(2) Resources that count include both liquid and nonliquid resources:

(a) Liquid resources easily convert into cash. Some examples of liquid resources include:

(i) Value of all bank accounts;

(ii) Cash on hand;

(iii) Money market accounts, IRAs, certificate of deposits (CDs), stocks, bonds, annuities, mutual funds less early withdrawal penalties including taxes;

(iv) Available trust accounts;

(v) If a consumer owns a resource with someone not part of his or her household, we count the portion of the resource that the consumer owns.

(b) Nonliquid resources do not easily convert to cash. Some examples of nonliquid resources include:

(i) Value of any additional vehicles not excluded. Vehicle value determined by applying WAC 388-470-0075;

(ii) A house the consumer does not live in or intend to return to;

(iii) Property the consumer does not live on.

(3) Excluded resources include:

(a) Legal guardians resources;

(b) In loco parentis custodians resources;

(c) Resources with a legal barrier, which include:

(i) Resources tied up in a divorce proceeding;

(ii) Jointly owned resources that the consumer has no clear access to obtain the resource;

(iii) If the consumer cannot overcome the barrier to obtain the resource;

(iv) The consumer must petition the courts for access of the resource;

(v) Making the resource available would place the consumer at risk of harm.

(d) For a one-parent household, one vehicle, defined as a motorized device the consumer can use as a regular means of transportation. For a two-parent household, two vehicles, defined as a motorized device the consumers can use as a regular means of transportation;

(e) One home and the surrounding property the consumer and consumer's dependents live in;

(f) Personal effects;

(g) Household goods;

(h) Life insurance policies, including a policy with cash surrender value;

(i) Federal law resources:

(i) Child nutrition act for Women, Infants, and Children (WIC) including day care and school lunch programs (P.L. 89-642);

(ii) Reimbursement from the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646);

(iii) Payments from the Domestic Volunteer Services Act of 1973 (P.L. 93-113);

(iv) Disaster or emergency payments under the Disaster Relief Act of 1974 (P.L. 93-288) from:

(A) Federal Emergency Management Agency (FEMA);

(B) States or local governments; or

(C) Disaster assistance organizations.

(v) Disaster assistance payments to farmers under the Disaster Relief Act of 1974 (P.L. 93-288 as amended by 100-387);

(vi) Home energy assistance payments under the Low-Income Home Energy Assistance Act (P.L. 99-425);

(vii) Housing and Urban Development (HUD) community development block grant funds;

(viii) Title IV financial assistance other than room, board, and dependent care provided by the Higher Education Act (P.L. 99-498 as amended by 100-50);

(ix) Restitution payments under the Civil Liberties Act of 1988 to certain Asian Americans and Aleuts interned during World War II (P.L. 100-383);

(x) Yearly disability payments to veterans or lump sum payments to survivors of a deceased veteran retroactive to January 1, 1989, from the Agent Orange Settlement Fund (P.L. 101-201). These are different funds than those from the Agent Orange Act of 1991, which are not excluded (P.L. 102-4);

(xi) Payments received by an injured person, the surviving spouse, children, grandchildren, or grandparents under the Radiation Exposure Compensation Act (P.L. 101-426);

(xii) Payments to victims of Nazi persecution (P.L. 103-286); and

(xiii) Payments to crime victims from a federal or federally funded state or local program including Washington state crime victims compensation program (P.L. 103-322, section 23022).

(j) Native American resources:

(i) II compensation including cash, stock, partnership interest, land, and interest in land under the Alaska Native Claims Settlement Act (P.L. 92-203 & 100-241);

(ii) Funds held in trust, restricted lands and the first two thousand dollars of each per capita judgment award (P.L. 93-134 as amended by 97-458, 98-64 & 103-66);

(iii) Relocation assistance payments to members of the Navajo and Hopi tribes (P.L. 93-531, section 22);

(iv) Payments to certain Indian tribal members, regarding submarginal land held in trust by the U.S. (P.L. 94-114). Call state office for a list of affected tribes;

(v) Funds distributed per capita or held in trust under the Sac and Fox Indian Claims Agreement (P.L. 94-189);

(vi) Payments from the disposition of funds to the Grand River Band of Ottowa Indians (P.L. 94-540);

(vii) Payments to the Confederate Tribe of the Yakama Indian Nation and the Apache Tribe from the Indian Claims Commission (P.L. 95-433);

(viii) Payments under the Maine Indian Claims Settlement Act of 1980 (P.L. 96-420);

(ix) Payments and certain funds held in trust for Chippewa Indians (P.L. 97-403, 98-102, 99-146, 99-264, 99-346, & 99-377);

(x) Payments under the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41) as follows:

(A) Annuity fund established by P.L. 101-41 made to a Puyallup Tribal member upon reaching age twenty-one; and

(B) Payments made to a Puyallup tribe member from the trust fund established by P.L. 101-41;

(xi) Payments to the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103-436) including:

(A) Real or personal property purchased directly with such funds; and

(B) Appreciation in value of the initial investment.

(xii) Payments to the Blackfeet, Gros Ventre, and Assiniboine tribes, Montana; and the Papag, Arizona (P.L. 97-408 & 98-124);

(xiii) Per capita shares to heirs of two thousand dollars or less under the Old Age Assistance Claims Settlement Act (P.L. 98-500);

(xiv) Financial assistance provided by the Bureau of Indian Affairs under the Higher Education Act (P.L. 99-498 as amended by 100-50);

(xv) Loans provided under the Tribal Development Student Assistance Revolving Loan Program of the Higher Education Act (P.L. 99-498 as amended by 102-325). These payments are counted for SSI-related medical; and

(xvi) Payments under the Seneca Nation Settlement Act (P.L. 101-503).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0031 Notification of changes. (1) When a consumer applies for or receives WCCC benefits, he or she must:

(((~~(1) Notify DSHS, within five days, of any change in providers;~~

~~(2)~~))) (a) Report to DSHS, within twenty-for hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider;

(b) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age or older who lives with the provider when care occurs outside of the child's home;

(c) Notify DSHS, within five days, of any change in providers;

(d) Notify DSHS, within ten days, of changes of the address and telephone number of the consumer's in-home/relative provider;

(e) Notify DSHS, within ten days, when the consumer's countable income increases and exceeds eighty-five percent of state median income as provided in WAC 170-290-0005;

(f) Notify DSHS, within ten days, when the consumer's countable resources exceed one million dollars as provided in WAC 170-290-0005;

(g) Notify the consumer's provider, within ten days, when DSHS changes the consumer's child care authorization; and

(((~~(3)~~))) (h) Notify DSHS, within ten days, when the consumer's home address or telephone number changes.

(2) When a consumer receives WCCC benefits, he or she may notify DSHS ((~~within ten days of any significant change related to the consumer's copayment or eligibility, including~~)) when:

(a) The number of child care hours the consumer needs (((~~more or less hours~~))) increases;

(b) ((~~The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;~~)) The household income changes, which may lower the consumer's copayment under WAC 170-290-0085;

(c) The ((~~consumer's~~)) household size ((~~such as any family member moving in or out of the home;~~

~~(d) Employment, school or approved TANF activity (starting, stopping or changing);~~

~~(e) The address and telephone number of the consumer's in-home/relative provider;~~

~~(f) The consumer's home address and telephone number; and~~

~~(g)~~))) increases, which may lower the copayment; or

(d) The consumer's legal obligation to pay child support((~~;~~

~~(4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about the consumer's in-home/relative provider; and~~

~~(5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home~~)) increases, which may lower the copayment.

(3) Effective dates of changes are as follows:

(a) Copayment changes are effective as provided in WAC 170-290-0085;

(b) Changes under subsection (1)(c) and (d) of this section are effective:

(i) The date of change, if reported within five days; or

(ii) The date the change was reported, if not reported within five days.

(c) Changes to consumer information described in WAC 170-290-0012 are effective:

(i) The date the change was reported, if reported within ten days from the date of change or if received within ten days from the date of request for verification; or

(ii) The date verification is received, if verification is not received within ten days from the date the change is reported or if not received within ten days from the request of verification.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0032 Failure to report changes. (1) A consumer's failure to report changes as required in WAC 170-290-0031 within the stated time frames may cause:

((~~(1)~~)) (a) A copayment error. The consumer may be required to pay a higher copayment as stated in WAC 170-290-0085; or

((~~(2)~~)) (b) A WCCC payment error. If an overpayment occurs, the consumer may receive an overpayment for what the provider has correctly billed, including absent days (see publications "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*," "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*" and "*Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers*").

(2) If a consumer receives an overpayment for failure to report changes or failure to provide required verification, they will be required to repay any overpayment as provided in WAC 170-29-0271.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Comply with:

(a) All of the DEL child care licensing or certification requirements as provided in chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified; or

(b) All of the requirements in WAC 170-290-0130 through 170-290-0167, 170-290-0250, and 170-290-0268, for child care providers who provide in-home/relative care;

(2) Report pending charges or convictions to DSHS as provided in:

(a) Chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified; or

(b) WAC 170-290-0138 (2) and (3), for child care providers who provide in-home/relative care;

(3) Keep complete and accurate daily attendance records for children in their care, and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records (including records from the previous twelve months) must be available immediately for review upon request by DEL.

(b) Attendance records older than twelve months to five years must be provided to DSHS or DEL within two weeks of the date of a written request from either department.

(c) Failure to make available attendance records as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment as provided in WAC 170-290-0268;

(4) Keep receipts for billed field trip/quality enhancement fees as follows:

(a) Receipts from the previous twelve months must be available immediately for review upon request by DEL;

(b) Receipts from one to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department;

(5) Allow consumers access to their child at all times while the child is in care;

(6) Collect copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment to the provider within the previous sixty days;

(7) Follow billing procedures:

(a) As described in the most current version of "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*,"; or

(b) As described in the most current version of "*Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers*"; or

(c) As described in the most current version of "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*."

(8) Not claim a payment in any month((~~:~~

~~(a)~~)) a child has not attended at least one day within the authorization period in that month((~~; and~~

~~(b) The day attended is within the authorization period~~)).

(9) Invoice the state no later than one calendar year after the actual date of service;

(10) For both licensed and certified providers and in-home/relative providers, not charge subsidized families the difference between the provider's customary rate and the maximum allowed state rate; and

(11) For licensed and certified providers, not charge subsidized families for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Absent days on days in which the child is scheduled to attend and authorized for care;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0035 DSHS's responsibilities to consumers. DSHS is responsible to:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Determine a consumer's eligibility within thirty days from the date the consumer applied (application date as described in WAC 170-290-0095). Under WAC 170-290-0012 (5)(e)(ii), a determination made within thirty days of application using self-attestation of new employment wages is compliant with this subsection even if third-party verification is provided more than thirty days after the date of application;

(3) Allow a consumer to choose his or her provider as long as the provider meets the requirements in WAC 170-290-0125;

(4) Review a consumer's chosen in-home/relative provider's background check results;

(5) Authorize payments only to child care providers who allow a consumer to access his or her children whenever they are in care;

(6) ((~~Only~~)) Authorize payment when no adult in a consumer's family (under WAC 170-290-0015) is able or available (under WAC 170-290-0003) to care for the consumer's children at application and reapplication;

(7) Inform a consumer of:

(a) His or her rights and responsibilities under the WCCC program at the time of application and reapplication;

(b) The types of child care providers DSHS can pay;

(c) The community resources that can help a consumer select child care when needed; and

(d) Any change in a consumer's copayment during the authorization period except under WAC 170-290-0120(5).

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) WCCC eligibility;

(b) Copayment; or

(c) Providers.

(9) Provide prompt child care payments to a consumer's child care provider;

(10) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer;

(11) Ensure that Social Security cards, driver's licenses, or other government-issued identification for in-home/relative providers are valid and verified; and

(12) For providers who care for children in states bordering Washington, verify that they are currently complying with their state's licensing regulations.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0050 Additional requirements for self-employed WCCC consumers. (1) **Self-employment generally.** To be considered self-employed, a WCCC consumer must:

(a) Earn income directly from the consumer's trade or business, not from wages paid by an employer;

(b) Be responsible to pay the consumer's self-employment Social Security and federal withholding taxes;

(c) Have a work schedule, activities or services that are not controlled in an employee-employer relationship;

(d) Participate directly in the production of goods or services that generate the consumer's income; and

(e) At application and reapplication, work outside of the home ((~~during~~)) the amount of hours for which the consumer requests WCCC benefits. If a consumer's self-employment activities are split between the home and outside of the home, only self-employment and other approved activities outside of the home will be eligible for child care benefits.

(2) **Self-employed consumers receiving TANF.** If a consumer receives TANF and is also self-employed, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC benefits a consumer receives for self-employment is equal to the number of hours in the consumer's approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(3) **Self-employed consumers not receiving TANF.** If a consumer does not receive TANF and requests WCCC benefits for the consumer's self-employment, the consumer may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) A consumer who does not receive TANF cash assistance and requests WCCC benefits for self-employment must provide DSHS with the consumer's:

(i) Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(ii) Uniform business identification (UBI) number for the state of Washington, or, for self-employment in bordering states, the registration or filing number;

(iii) Completed self-employment plan that is written, signed, dated and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity including time needed for transportation and the location of work activity;

(iv) Profit and loss statement, projected profit and loss statement if starting a new business; and

(v) Either federal self-employment tax reporting forms for the most current reporting year or DSHS self-employment income and expense declaration form.

(b) ((~~During~~)) At application and reapplication, the first six consecutive months of starting a new self-employment business, the number of hours ((~~of care the~~)) a consumer is eligible to receive is based on the consumer's report of how many hours are needed, up to sixteen hours per day. A consumer is eligible to receive this provision only once during the consumer's lifetime and must use the benefit provided by this provision within the consumer's authorization period.

(c) At application and reapplication, DSHS determines ((~~a consumer's need for care~~)) the number of care hours the consumer is eligible to receive after receiving WCCC self-employment benefits for six consecutive months as provided in (b) of this subsection by:

(i) Dividing the consumer's gross monthly self-employment income by the federal or state minimum wage, whichever is lower, to determine the average monthly hours of care needed by the consumer; and

(ii) Adding the consumer's additional ((~~child care needs for other~~)) approved employment, education, training, or travel to the total approved self-employment hours.

(d) If both parents in a two-parent family are self-employed, at the same or a different business, each parent must report the parent's own self-employment earnings and self-employment plan. If the requested verification is not provided, then WAC 170-290-0012 applies to determining eligibility.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0055 Receipt of benefits ((~~when not engaged in approved activities~~)) during fourteen-day wait period. (1) **Fourteen-day wait period.** DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.

(2) ((~~**Twenty-eight-day gap period.** DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period:~~

~~(a) Twice in a calendar year; and~~

~~(b) For the same number of units open while the consumer is in the approved activity not to exceed full-time care.~~

~~(3) The twenty-eight-day gap period must be used within the consumer's current eligibility period and is not an approved activity for the purpose of determining eligibility.~~

~~(4) In order for a consumer to qualify for the twenty-eight-day gap period:~~

~~(a) The consumer must be currently receiving WCCC benefits;~~

~~(b) The consumer must report to DSHS within ten days the loss of employment or approved activity; and~~

~~(c) The consumer must:~~

~~(i) Be looking for another job; or~~

~~(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.~~

~~(5) A consumer is eligible for the minimum copayment during the fourteen-day wait period or twenty-eight-day gap period.~~

~~(6)~~)) If the consumer does not enter the fourteen-day wait period activity, DSHS will terminate the consumer's case, as provided in WAC 170-290-0110.

(3) In the situation described in subsection (1) of this section, the child needs to attend at least one day in the calendar month for the provider to bill.

(4) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0082 Eligibility period. (1) A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for twelve months. The twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1).

(2) Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

((~~(2)~~)) (3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(4) The twelve-month eligibility period begins:

(a) When the benefits begin under WAC 170-290-0095; or

(b) Upon reapplication under WAC 170-290-0109.

(5) A consumer's eligibility may be for less than twelve months if:

(a) Requested by the consumer; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

(~~((3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.~~

~~(4) The twelve-month eligibility period begins:~~

~~(a) When benefits begin under WAC 170-290-0095; or~~

~~(b) Upon reapplication under WAC 170-290-0109(4).~~))

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0085 Change in copayment. (1) A consumer's copayment may change when:

(a) The consumer's monthly income decreases;

(b) The consumer's family size increases and causes the copayment to decrease;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of application, reapplication, or when reporting a change in circumstances;

(e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;

(f) DEL makes a mass change in benefits due to a change in law or program funding; or

(g) The consumer is approved for a new eligibility period((~~; or~~

~~(h) The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055~~)).

(2) Copayment changes are effective on the first day of the month immediately following the date the copayment change was made.

(3) DSHS does not increase a consumer's copayment during the current eligibility period when countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005((~~, and:~~

~~(a) The consumer's monthly countable income increases; or~~

~~(b) The consumer's family size decreases~~)).

(4) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0090 Minimum copayment. (1) The minimum copayment is paid when the consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines.

(2) **First application.** The consumer pays the minimum copayment at first application for WCCC when benefits are paid. The consumer pays the minimum copayment:

(a) Beginning in the month that DSHS pays for WCCC child care services((~~,~~)); and

(b) The first full calendar month thereafter.

(3) **Reapplication.** The consumer pays the minimum copayment at reapplication for WCCC after a break of at least thirty days in the consumer's approved activities. The consumer pays the minimum copayment:

(a) Beginning in the month that DSHS pays for WCCC services((,)); and

(b) The first full calendar month thereafter.

(4) The consumer pays the minimum copayment when he or she is a minor parent, and:

(a) Receives TANF; or

(b) Is part of the parent's or relative's TANF assistance unit.

(5) ((~~Two-parent families automatically qualify for the minimum copayment during a twenty-eight-day gap period in WAC 170-290-0055 only if both parents meet the gap requirements. Otherwise, eligibility workers must determine the change in copayment based on the family's countable income and family size, as specified in WAC 170-290-0065 and 170-290-0085.~~

~~(6)~~)) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0095 When WCCC benefits start. (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application for WCCC benefits, except in the case of new employment or new non-TANF activities. In those cases, under WAC 170-290-0012 and 170-290-0014, the consumer must provide third-party verification within sixty days of DSHS approving the application or reapplication;

(b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055; and

(c) The consumer needs child care for approved activities within at least thirty days of the date of application for WCCC benefits.

(2) If a consumer fails to turn in all information within thirty days from the application date, the consumer must restart the application process, except in the case of new employment or new non-TANF activities. In those cases, under WAC 170-290-0012 and 170-290-0014, the consumer must provide third-party verification within sixty days of DSHS approving the application or reapplication.

(3) The consumer's application date is whichever of the following is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0109 Reapplication. (1) If a consumer wants to receive uninterrupted child care benefits for another eligibility period, the consumer must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) Effective October 1, 2016, if a consumer's household has countable income greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG, the consumer may be eligible for a three-month eligibility period called Income Phase-Out. In determining eligibility for the Income Phase-Out period, the following rules apply:

(a) All countable income must be greater than two hundred percent of the FPG and less than two hundred twenty percent of the FPG. If the countable income is equal to or greater than two hundred twenty percent of the FPG, DSHS denies the reapplication;

(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;

(c) There is no break between the twelve-month eligibility period and the Income Phase-Out period;

(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;

(e) DSHS certifies the consumer for a three-month eligibility period;

(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month Income Phase-Out period; and

(g) The consumer will not be eligible for a second, back-to-back Income Phase-Out period if the countable income of the consumer's household remains equal to or greater than two hundred percent of the FPG and less than two hundred twenty percent of the FPG at the end of the first three-month Income Phase-Out period.

(4) If DSHS determines that a consumer is eligible for WCCC benefits based on reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

(((~~4~~))) (5) When a consumer submits a reapplication after the last day of the current eligibility period, the consumer's benefits begin:

(a) On the date that the consumer's reapplication is date-stamped as received in DSHS's community service office or entered into the DSHS automated system, whichever date is earlier;

(b) When the consumer is working or participating in an approved activity; and

(c) The consumer's child is being cared for by an eligible WCCC provider.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0110 Termination of and redetermining eligibility for benefits. (1) DSHS stops a consumer's eligibility for WCCC benefits when the consumer does not:

(a) ((~~The consumer's monthly copayment is higher than the state maximum monthly rate, including special needs payment, but not including registration, field trip and nonstandard hours bonus payments, for all of the consumer's children in care under WAC 170-290-0005; or~~

~~(b) The consumer does not:~~

~~(i)~~)) Comply with the copayment requirements of WAC 170-290-0030 (3) and (4);

(((~~(ii)~~))) (b) Complete the requested application or reapplication before the deadline noted in WAC 170-290-0109 (2)(a);

(((~~(iii) Meet other WCCC eligibility requirements related to family size, income and approved activities; or~~

~~(iv)~~))) (c) Enter the approved activity at the end of the fourteen-day wait period;

(d) Complete the WorkFirst orientation process when approved for TANF;

(e) Return the requested income verification of new employment by the sixtieth day as provided in WAC 170-290-0012; or

(f) Cooperate with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

(2) A consumer may be eligible for WCCC again beginning on the date that the consumer:

(a) Meets all WCCC eligibility requirements;

(b) Complies with the copayment requirements of WAC 170-290-0030 (3) and (4); and

(c) Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0125 Eligible child care providers. To receive payment under the WCCC program, a consumer's child care provider must be:

(1) An in-home/relative provider. Providers other than those specified in subsection (2) of this section must meet the requirements in WAC 170-290-0130; or

(2) **A licensed, certified, or DEL-contracted provider.**

(a) Licensed providers must:

(i) Be currently licensed as required by chapter 43.215 RCW and as described by chapters 170-295, 170-296A, or 170-297 WAC; or

(ii) Meet the provider's state's licensing regulations, for providers who care for children in states bordering Washington. DSHS pays the lesser of the following to qualified child care facilities in bordering states:

(A) The provider's private pay rate for that child; or

(B) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.

(b) Certified providers are exempt from licensing but certified by DEL, such as:

(i) Tribal child care facilities that meet the requirements of tribal law;

(ii) Child care facilities on a military installation; and

(iii) Child care facilities operated on public school property by a school district.

(c) New child care providers, as defined in WAC 170-290-0003, who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:

(i) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care.

(A) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(B) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(ii) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care;

(iii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(iv) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(v) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(d) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

(i) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(A) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(B) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019;

(iv) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(v) Maintain an up-to-date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(e) If a child care provider serving nonschool age children, as defined in WAC 170-290-0003, and receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

(f) DEL-contracted seasonal day camps ((~~has~~)) have a contract with DEL to provide subsidized child care.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0130 In-home/relative providers—Eligibility. (1) To be eligible as an in-home/relative provider to care for children under WCCC, the applicant must be:

(a) Eighteen years of age or older;

(b) A citizen or legal resident of the U.S.; and

(c) Meet all of the requirements listed in WAC 170-290-0135.

(2) Additionally, eligible in-home/relative providers must:

(a) Meet all applicable background check requirements in part II of this chapter;

(b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs; and

(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS and used by the parent ((~~for approved activities~~)).

(3) The following eligible in-home/relative providers, except those providers residing with a disqualified person, may provide care in either their home or the child's home:

(a) Adult siblings that live outside the child's home;

(b) Extended tribal family members;

(c) Grandparents or great-grandparents; or

(d) Aunts or uncles, or great-aunts or great-uncles.

(4) All other eligible providers, including other family members, friends, neighbors, or nannies must provide care in the child's home only.

(5) The following persons are not eligible to provide in-home/relative care under part II of this chapter:

(a) The child's biological, adoptive, or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner;

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner; or

(d) An individual who has a revoked child care license.

(6) WCCC consumers may have up to two in-home/relative providers authorized for payment during the consumer's eligibility period plus one back-up provider, either licensed or in-home/relative, also authorized to care for the consumer's children.

(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. WCCC consumers must ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, unless exempt under department of health regulations.

(8) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(9) In-home/relative provider payments cannot begin prior to the receipt of all required background checks indicating no disqualifying information.

(10) WCCC consumers must be in an approved activity at application and reapplication and the requirements in WAC 170-290-0020 pertain for the in-home/relative provider to be eligible for subsidy payments.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0138 In-home/relative providers—Responsibilities. An in-home/relative provider must:

(1) Provide care, supervision, and daily activities based on the child's developmental needs;

(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;

(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;

(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider, including any person sixteen years of age or older who newly resides with the provider, when the provider cares for the child in the provider's home. Background checks must be completed for these persons as provided in WAC 170-290-0143;

(5) Report a revoked child care license;

(6) Bill only for actual hours of care provided. Those hours:

(a) Must be authorized by DSHS((~~, and~~));

(b) Must be used by the consumer ((~~for approved activities~~)); and

(c) Can be claimed whether or not the consumer is present during the hours of care.

(7) Bill for no more than six children at one time during the same hours of care;

(8) Track attendance documenting the days and hours of care provided and keep records for five years:

(a) If paper attendance records are used, the provider must have the consumer sign and date the attendance records at least weekly, verifying the accuracy of the dates and times.

(b) Providers may use an electronic attendance system as provided in WAC 170-290-0139 to record attendance in lieu of a paper sign-in record;

(9) Repay any overpayments under WAC 170-290-0268; and

(10) Have at least one working telephone accessible in the home for incoming and outgoing calls during all times that subsidized child care is provided. The telephone must have 911 emergency services calling access.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. (1) DSHS may authorize and pay for the following:

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day;

(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;

(c) Hourly child care for in-home/relative child care;

(d) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means the following:

(i) For licensed care or certified facilities, twenty-three full-day units if the child needs five or more hours of care per day, or thirty half-day units if the child needs fewer than five hours of care per day; and

(ii) Two hundred thirty hours for in-home/relative child care;

(e) A registration fee (under WAC 170-290-0245);

(f) A field trip fee (under WAC 170-290-0247);

(g) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(h) A nonstandard hours bonus under WAC 170-290-0249.

(2) Beginning September 1, 2016, and applicable to school-age children, DSHS will authorize and pay for child care as follows:

(a) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and

(b) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year until the following June. If the consumer's schedule has changed and more care is needed, the consumer must request an increase, and DSHS will verify the need for increased care. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025;

(3) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

((~~(3)~~)) (4) DSHS authorizes overtime care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.

(5) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$((~~31.47~~)) 32.10	$((~~26.47~~)) 27.00	$((~~25.00~~)) 25.50	$((~~23.55~~)) 24.02
	Half-Day	$((~~15.74~~)) 16.05	$((~~13.24~~)) 13.50	$((~~12.50~~)) 12.75	$((~~11.78~~)) 12.01
Spokane County	Full-Day	$((~~32.19~~)) 32.84	$((~~27.07~~)) 27.62	$((~~25.58~~)) 26.10	$((~~24.09~~)) 24.58
	Half-Day	$((~~16.10~~)) 16.42	$((~~13.54~~)) 13.81	$((~~12.79~~)) 13.05	$((~~12.05~~)) 12.29
Region 2	Full-Day	$((~~31.79~~)) 32.44	$((~~26.53~~)) 27.06	$((~~24.61~~)) 25.10	$((~~21.76~~)) 22.20
	Half-Day	$((~~15.90~~)) 16.22	$((~~13.27~~)) 13.53	$((~~12.31~~)) 12.55	$((~~10.88~~)) 11.10
Region 3	Full-Day	$((~~42.07~~)) 42.92	$((~~35.08~~)) 35.78	$((~~30.30~~)) 30.92	$((~~29.42~~)) 30.02
	Half-Day	$((~~21.04~~)) 21.46	$((~~17.54~~)) 17.89	$((~~15.15~~)) 15.46	$((~~14.71~~)) 15.01
Region 4	Full-Day	$((~~48.96~~)) 49.94	$((~~40.88~~)) 41.70	$((~~34.30~~)) 35.00	$((~~30.89~~)) 31.52
	Half-Day	$((~~24.48~~)) 24.97	$((~~20.44~~)) 20.85	$((~~17.15~~)) 17.50	$((~~15.45~~)) 15.76
Region 5	Full-Day	$((~~35.90~~)) 36.62	$((~~30.89~~)) 31.52	$((~~27.20~~)) 27.74	$((~~24.14~~)) 24.62
	Half-Day	$((~~17.95~~)) 18.31	$((~~15.45~~)) 15.76	$((~~13.60~~)) 13.87	$((~~12.07~~)) 12.31
Region 6	Full-Day	$((~~35.30~~)) 36.02	$((~~30.30~~)) 30.92	$((~~26.47~~)) 27.00	$((~~25.89~~)) 26.42
	Half-Day	$((~~17.65~~)) 18.01	$((~~15.15~~)) 15.46	$((~~13.24~~)) 13.50	$((~~12.95~~)) 13.21

(Chart effective ((~~01/01/15~~)) 07/01/16)

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 and 170-295-0050 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$((~~26.80~~)) 29.62	$((~~26.80~~)) 29.62	$((~~23.30~~)) 25.76	$((~~23.30~~)) 23.78	$((~~20.73~~)) 21.14
	Half-Day	$((~~13.40~~)) 14.81	$((~~13.40~~)) 14.81	$((~~11.65~~)) 12.88	$((~~11.65~~)) 11.89	$((~~10.37~~)) 10.57
Spokane	Full-Day	$((~~27.40~~)) 30.32	$((~~27.40~~)) 30.32	$((~~23.83~~)) 26.36	$((~~23.83~~)) 24.32	$((~~21.18~~)) 21.60
County	Half-Day	$((~~13.70~~)) 15.16	$((~~13.70~~)) 15.16	$((~~11.92~~)) 13.18	$((~~11.92~~)) 12.16	$((~~10.59~~)) 10.80
Region 2	Full-Day	$((~~28.30~~)) 30.66	$((~~28.30~~)) 30.66	$((~~24.61~~)) 26.66	$((~~22.01~~)) 24.44	$((~~22.01~~)) 22.46
	Half-Day	$((~~14.15~~)) 15.33	$((~~14.15~~)) 15.33	$((~~12.31~~)) 13.33	$((~~11.01~~)) 12.22	$((~~11.01~~)) 11.23
Region 3	Full-Day	$((~~37.54~~)) 41.98	$((~~37.54~~)) 41.98	$((~~32.36~~)) 35.54	$((~~28.48~~)) 35.54	$((~~25.89~~)) 28.80
	Half-Day	$((~~18.77~~)) 20.99	$((~~18.77~~)) 20.99	$((~~16.18~~)) 17.77	$((~~14.24~~)) 17.77	$((~~12.95~~)) 14.40
Region 4	Full-Day	$((~~44.17~~)) 53.30	$((~~44.17~~)) 53.30	$((~~38.41~~)) 44.42	$((~~32.36~~)) 39.98	$((~~31.06~~)) 31.68
	Half-Day	$((~~22.09~~)) 26.65	$((~~22.09~~)) 26.65	$((~~19.21~~)) 22.21	$((~~16.18~~)) 19.99	$((~~15.53~~)) 15.84
Region 5	Full-Day	$((~~29.78~~)) 36.34	$((~~29.78~~)) 36.34	$((~~25.89~~)) 31.60	$((~~24.61~~)) 26.66	$((~~22.01~~)) 22.46
	Half-Day	$((~~14.89~~)) 18.17	$((~~14.89~~)) 18.17	$((~~12.95~~)) 15.80	$((~~12.31~~)) 13.33	$((~~11.01~~)) 11.23

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 6	Full-Day	$((~~29.78~~)) 32.68	$((~~29.78~~)) 32.68	$((~~25.89~~)) 28.42	$((~~25.89~~)) 26.66	$((~~24.61~~)) 25.10
	Half-Day	$((~~14.89~~)) 16.34	$((~~14.89~~)) 16.34	$((~~12.95~~)) 14.21	$((~~12.95~~)) 13.33	$((~~12.31~~)) 12.55

(Chart effective ((~~01/01/15~~)) 07/01/16)

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen years of age or older, the provider must follow WAC 170-296A-0050 and 170-296A-5625 and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 13-21-113, filed 10/22/13, effective 11/22/13)

WAC 170-290-0210 Tiered reimbursement and quality improvement awards. (1) Starting September 1, 2013, providers receiving payment under the WCCC program will receive a two percent increase in the subsidy rate, calculated on the base rate, for enrolling in level 2 in the early achievers program. Providers must complete level 2, advance to level 3 within thirty months, and maintain a level 3 rating in order to maintain this increase.

(2) Quality improvement awards, as described by chapter 43.215 RCW, are reserved for early achievers participating providers offering programs to an enrollment population consisting of at least five percent of nonschool age children receiving a state subsidy.

(a) Qualifying state subsidy programs include working connections child care (WCCC), seasonal child care (SCC), children's administration (CA) child care programs, homeless child care program (HCCP), ECLIPSE and medicare child care programs. Other qualifying programs may include those supported by municipalities, colleges or universities, local school districts, or federally recognized tribal organizations.

(i) Participants providing homeless child care program, ECLIPSE, or medicaid services must present DEL with information indicating that services were provided under these programs.

(ii) Participants providing subsidized child care supported by municipalities, colleges or universities, local school districts, or federally recognized tribal organizations must present DEL with information indicating that services were provided under these programs.

(b) Percent subsidy calculations are derived from a monthly average of the number of children receiving state subsidy divided by the monthly average licensed capacity of a specific provider over a twelve-month period.

(i) The twelve-month period utilized for the above calculation will include the twelve months prior to the formal release of a facility's early achievers rating.

(ii) Facilities must have provided care at least one day in a given month for that month to be utilized in the above calculation.

AMENDATORY SECTION (Amending WSR 14-24-070, filed 11/26/14, effective 1/1/15)

WAC 170-290-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When a consumer employs an in-home/relative provider, DSHS pays the lesser of the following to an eligible in-home/relative provider for child care:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy rate of two dollars and ((~~forty-two~~)) forty-seven cents per hour for the child who needs the greatest number of hours of care and two dollars and ((~~thirty-nine~~)) forty-four cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DSHS pays the employer's share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0271 Payment discrepancies—Consumer overpayments. (1) DSHS establishes overpayments for past or current consumers when the consumer:

(a) Received benefits when the consumer was not eligible;

(b) ((~~Used care for an unapproved activity or for children not in the consumer's WCCC household;~~)) Was determined eligible at application or reapplication based on the con-

sumer's participation in an approved activity and used benefits while never participating in said activity;

(c) Failed to report ((~~information~~)) changes under the requirements of WAC 170-290-0031 to DSHS resulting in an error in determining eligibility, amount of care authorized, or copayment;

(d) Used a provider that was not eligible per WAC 170-290-0125; ((~~or~~))

(e) Received benefits for a child who was not eligible per WAC 170-290-0005, 170-290-0015 or 170-290-0020;

(f) Failed to enter their approved activity at the end of the fourteen-day wait period;

(g) Failed to have TANF approved and enter an approved WorkFirst activity; or

(h) Failed to return, by the sixtieth day, the requested income verification of new employment as provided in WAC 170-290-0012.

(2) DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) If a consumer is not eligible under WAC 170-290-0030 through 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3520 Eligibility. (1) **((~~Parents.~~))** To be eligible for SCC the person applying for benefits must:

(a) Not currently be receiving temporary aid for needy families (TANF);

(b) Live in one of the following Washington state counties: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom, or Yakima;

(c) At application and reapplication, have parental control of one or more children;

(d) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian as verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Aunt;

(vi) Uncle;

(vii) Niece or nephew;

(viii) Grandparent; or

(ix) Any of the above relatives in (v), (vi), or (viii) of this subsection, with the prefix "great," such as great-aunt((~~;~~)).

(e) At application and reapplication, participate in an approved activity under WAC 170-290-3555;

(f) Have countable income at or below the maximum eligibility limit described in WAC 170-290-0005. The consumer's eligibility shall end if the consumer's countable income is greater than eighty-five percent of the state median income or if resources exceed one million dollars;

(g) Complete the application for child care and DSHS verification process, regardless of other program benefits or services received; and

(h) Meet eligibility requirements for SCC described under part III of this chapter.

(2) **Children.** To be eligible for SCC, the child receiving SCC must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005; and

(b) Live in Washington state and be:

(i) Less than ((~~age~~)) thirteen years of age; or

(ii) Less than ((~~age~~)) nineteen years of age and:

(A) Have a verified special need according to WAC 170-290-0220; or

(B) Be under court supervision.

((~~(3) Consumers are not eligible for SCC program subsidies if they:

(a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state child care rate for all of the consumer's children in care;

(b) Are receiving TANF benefits; or

(c) Are the only parent in the household and will be away from the home for more than thirty days in a row.~~))

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3550 Eligibility—Special circumstances ((~~for two-parent families~~)). (1) A consumer may be eligible for the SCC program when the consumer is a parent in a two-parent family and both parents currently work in seasonally available agricultural related work.

(2) A consumer may be eligible for SCC if the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is currently working or participating in approved seasonally agricultural related work.

(3) If a consumer claims one parent is not able to care for the children, the consumer must provide written documentation from an acceptable medical source (see WAC 388-449-0010) that states the:

(a) Reason the parent is not able to care for the children; and

(b) Expected duration and severity of the condition that keeps the parent from caring for the children.

(4) Single-parent family. A consumer is not eligible for SCC benefits when the consumer is the only parent in the family and will be away from the home for more than thirty days in a row.

(5) When a consumer's monthly copayment is higher than the state maximum rate including any special needs pay-

ments for all of the consumer's children in care under WAC 170-290-0005:

(a) The consumer's eligibility period may continue; and

(b) DSHS will not authorize payment to the provider until the copayment becomes lower than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3555 Eligibility—Approved activities. (1) A consumer may be eligible for SCC program subsidies for up to sixteen hours per day for the time the consumer is involved in seasonally available agricultural related work in Washington state.

(2) When the consumer is part of a two-parent family, both parents must be employed as described in subsection (1) of this section((;)).

(3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(4) The twelve-month eligibility period begins:

(a) When benefits begin under WAC 170-290-0095; or

(b) Upon reapplication under WAC 170-290-0109.

(5) DSHS may authorize care for:

(a) Travel time only between the child care location and the employment location; or

(b) ((~~Job search, of no more than five days per month, if the consumer's seasonally available agricultural related work ends and the consumer is still eligible and continues to need child care; or~~

~~(c)~~)) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.

NEW SECTION

WAC 170-290-3558 Resources. DSHS verifies a consumer's resource as provided in WAC 170-290-0022.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3565 Consumers' responsibilities. (1) When a person applies for or receives SCC program subsidies, the applicant or consumer must, as a condition of receiving those subsidies:

(a) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(b) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(c) ((~~Leave the consumer's children with the eligible provider while the consumer is in SCC approved activities outside of the consumer's home;~~

~~(d)~~)) Pay the provider for child care services when the consumer requests additional child care ((~~for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS~~)) outside of the current authorization;

((~~(e)~~)) (d) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

((~~(f)~~)) (e) Document their child's attendance in child care by having the consumer or other person authorized by the consumer to take the child to or from child care:

(i) If the provider uses a paper attendance record, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure; or

(ii) Record the child's attendance using an electronic system if used by the provider;

((~~(g)~~)) (f) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it could affect the consumer's benefits;

((~~(h)~~)) (g) Cooperate (provide the information requested) with the child care subsidy audit process.

(i) A consumer becomes ineligible for SCC benefits upon a determination of noncooperation and remains ineligible until he or she meets child care subsidy audit requirements.

(ii) The consumer may become eligible again when he or she meets SCC requirements in Part III of this chapter and cooperates.

(iii) Care can begin on or after the date the consumer cooperated and meets SCC requirements in Part III of this chapter.

((~~(i)~~)) (h) Ensure that their children who receive subsidized child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(i) A department of health (DOH) medical exemption form signed by a health care professional; or

(ii) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization;

((~~(j)~~)) (i) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider; and

((~~(k)~~)) (j) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late.

(2) In cases of overdue or past due copayments, the consumer, as a condition of maintaining eligibility, must do one of the following:

(a) Pay past or overdue copayments;

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a signed

return receipt for correspondence not responded to, or a returned document that was not picked up.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3570 Notification of changes. (1) When a consumer applies for or receives SCC program subsidies, the consumer must:

(((1))) (a) Notify DSHS, within five days, of any change in providers;

(((2))) (b) Notify DSHS, within ten days, when the consumer's countable income increases and the change would cause the consumer's countable income to exceed eighty-five percent state median income as provided in WAC 170-290-0005;

(c) Notify DSHS, within ten days, when the consumer's countable resources exceed one million dollars as provided in WAC 170-290-3558;

(d) Notify DSHS, within ten days, when the consumer's home address or telephone number changes; and

(e) Notify the consumer's provider, within ten days, when DSHS changes the consumer's child care authorization((;

~~(3) Notify DSHS within ten days of any change in the consumer's:~~)).

(2) When a consumer receives SCC benefits, he or she may notify DSHS when:

(a) The number of child care hours ((~~needed~~)) the consumer needs changes (more or less hours);

(b) ((~~Child's eligibility for migrant Head Start or another child care program;~~

~~(c)~~)) Household income((~~, including any new receipt of a TANF grant or child support increases or decreases~~)) decreases, which may lower the copayment;

(((~~d~~))) (c) Household size such as any family member moving in or out of the consumer's home((;

~~(e) Employment hours such as starting, stopping or changing employers;~~

~~(f) Home address and telephone number~~)), which may lower the copayment; or

(((~~g~~))) (d) The consumer's legal obligation to pay child support ((~~payments made by the consumer~~)) changes.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3580 Failure to report changes. (1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, DSHS may establish an overpayment to the consumer per WAC 170-290-3850, the consumer may have to pay additional costs, such as a higher copayment, or DSHS may terminate benefits.

(2) If an overpayment occurs, the consumer may receive an overpayment for what the provider has correctly billed, including absent days (see publication "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*" and "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*").

(3) If a consumer receives an overpayment for failure to report changes or failure to provide required verification, they will be required to repay any overpayment as provided in WAC 170-290-0271.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3590 DSHS's responsibilities to consumers. DSHS must:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Complete applications for SCC program subsidies based on information the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;

(3) Accept a variety of forms of verification and may not specify the type of documentation required;

(4) Authorize payments only to a licensed or certified child care provider the consumer chooses who meets the requirements in WAC 170-290-3750;

(5) At application and reapplication, authorize payments ((~~only~~)) when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-0003;

(6) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing;

(7) Provide prompt child care authorizations to a consumer's child care provider;

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) SCC eligibility;

(b) Copayment; or

(c) Providers; and

(9) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3640 Determining income eligibility and copayment. (1) For the SCC program, DSHS determines a consumer's family's income eligibility and copayment by:

(a) The consumer's family size as defined under WAC 170-290-3540;

(b) The consumer's average monthly income as calculated under WAC 170-290-3620; and

(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG)((~~; and~~

~~(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075~~)).

(2) At application and reapplication, if a consumer's family's income is above the maximum eligibility limit as provided in WAC 170-290-0005, the consumer's family is not eligible for the SCC program.

(3) The FPG is updated every year. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(4) SCC shall assign a copayment amount based on the family's countable income. The consumer pays the copayment directly to the provider.

(5) SCC does not prorate the copayment ((~~when a consumer uses care for part of a month~~)).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3650 Change in copayment. (1) A consumer's SCC program copayment could change when:

(a) DEL makes a mass change in subsidy benefits due to a change in law or program funding;

(b) The consumer's family size increases and causes the copayment to decrease;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of ((~~eligibility determination or application/reapplication~~)) application and reapplication; or

(e) The consumer is approved for a new eligibility period.

(2) If a consumer's copayment changes during the eligibility period, the change is effective((~~:~~

~~(a)~~)) on the first day of the month immediately following the date the copayment change((~~, when:~~

~~(i) The report is made to DSHS or the information is learned by DSHS ten or more days after the change as provided in WAC 170-290-3570; and~~

~~(ii) The consumer receives ten days written notice; or~~

~~(b) On the first day of the month that the change occurred when:~~

~~(i) The report is made to DSHS or the information is learned by DSHS within ten days or less after the change as provided in WAC 170-290-3570; and~~

~~(ii) The copayment is decreasing~~)) was made.

(3) DSHS does not prorate ((~~when a consumer uses care for part of a month~~)) the copayment.

(4) DSHS does not increase a consumer's copayment during the current eligibility period when countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3660 Eligibility period. (1) A consumer who meets all of the requirements of part III of this chapter is eligible to receive SCC subsidies for ((~~six~~)) twelve months before having to redetermine ((~~his or her income~~)) eligibility. The ((~~six-month~~)) twelve-month eligibility period applies only if enrollments in the SCC program are capped as provided in WAC 170-290-0001(1) and 170-290-3501. Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-3570.

(2) A consumer's eligibility may be for less than ((~~six~~)) twelve months if requested by the consumer.

(3) A consumer's eligibility may end sooner than ((~~six~~)) twelve months if:

(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3665 When SCC program subsidies start. (1) SCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required SCC application and verification process as described under WAC 170-290-0012 and 170-290-0014 within thirty days of the date DSHS received the consumer's application for SCC benefits, except in the case of new employment. In that case, under WAC 170-290-0012, the consumer must provide third-party verification within sixty days of application or reapplication;

(b) The consumer is working or participating in an approved activity under WAC 170-290-3555 at application and reapplication; and

(c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for SCC benefits.

(2) If a consumer fails to turn in all information within thirty days from the application date, the consumer must restart the application process, except in the case of new employment. In that case, under WAC 170-290-0012, the consumer must provide third-party verification within sixty days of application or reapplication.

(3) The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3720 Notice of payment changes. DSHS provides SCC consumers with at least ten days written notice of changes to payments related to the ((~~suspension,~~)) reduction, or termination of benefits, in child care arrangements, except as noted in WAC 170-290-3730.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter 43.215 RCW and 170-295, 170-296A, or 170-297 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

(a) The provider's private pay rate for that child; or

(b) The state maximum child care subsidy rate for the DSHS region where the child resides; or

(3) Exempt from licensing but certified by DEL, such as:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation; and

(c) Child care facilities operated on public school property by a school district.

(4) New child care providers, as defined in WAC 170-290-0003, who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care;

(c) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(d) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(e) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;

(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(e) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(6) If a child care provider serving nonschool age children, as defined in WAC 170-290-0003, and receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3770 Authorized SCC payments. The SCC program may authorize payments to licensed or certified child care providers for:

(1) Basic child care either full-day or half-day, at rates listed in the chart in WAC 170-290-0200 and 170-290-0205:

(a) A full day of child care when a consumer's children need care ((~~is needed~~)) for five to ten hours per day;

(b) A half day of child care when a consumer's children need care ((~~is needed~~)) for less than five hours per day;

(c) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means twenty-three full day units if the child needs five or more hours of care per day or thirty half-day units if the child needs fewer than five hours of care per day;

(d) Beginning September 1, 2016, for school-aged children, DSHS will authorize and pay for child care as follows:

(i) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and

(ii) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year, until the following June. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025. If the consumer's schedule has changed and the child continues to need full-day care during the school year, the consumer must request the increase and verify the need for full-day care.

(2) A registration fee, according to WAC 170-290-0245;

(3) Subsidy rates for five-year old children according to WAC 170-290-0185;

(4) The field trip/quality enhancement fees in WAC 170-290-0247;

(5) The nonstandard hours bonus in WAC 170-290-0249; and

(6) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 170-290-0220, 170-290-0225, and 170-290-0230.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3790 When additional SCC subsidy payments are authorized. DSHS may authorize additional child care when:

(1) Needed to accommodate a family's work schedule;

(2) ((~~Employer~~)) Verification of work schedule is presented; and

(3) More than ten hours of care is needed per day ((~~for the consumer to participate in an approved activity~~)) (up to a maximum of sixteen hours a day) and the provider's written policy is to charge all families for these ((~~extra~~)) hours of care in excess of ten hours per day.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3840 New eligibility period. (1) If a consumer wants to receive SCC program subsidies for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current SCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for SCC program subsidies for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-3670 and 170-290-3750; and

(c) The consumer meets all SCC eligibility requirements.

(3) Effective October 1, 2016, if a consumer's household has countable income greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG, the consumer may be eligible for a three-month eligibility period called income phase-out. In determining eligibility for the income phase-out period, the following rules apply:

(a) All countable income must be between two hundred and two hundred twenty percent of the FPG. If the countable income exceeds two hundred twenty percent of the FPG, DSHS denies the reapplication;

(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;

(c) There is no break between the twelve-month eligibility period and the income phase-out period;

(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;

(e) DSHS certifies the consumer for a three-month eligibility period;

(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month income phase-out period; and

(g) The consumer will not be eligible for a second, back-to-back income phase-out period if the countable income of the consumer's household remains between two hundred and two hundred twenty percent of the FPG at the end of the first three-month income phase-out period.

(4) If DSHS determines that a consumer is eligible for SCC program subsidies based on the consumer's reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

((~~(4)~~)) (5) If a consumer fails to contact DSHS on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies, he or she must reapply according to WAC 170-290-3665.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3855 Termination of and redetermining eligibility for SCC program subsidies. (1) A consumer's continued eligibility for SCC ((~~program subsidies~~)) benefits stops when the consumer:

(a) ((~~The consumer's monthly copayment is equal to or higher than the state maximum monthly child care rate, including special needs payment, but not including registration, field trip, and nonstandard hours bonus payments, for all of the consumer's children in care; or~~

~~(b) The consumer:~~

~~(i)~~)) Does not complete the requested application or reapplication before the deadline provided in WAC 170-290-3665 and 170-290-3840;

(b) At application and reapplication, is not participating in an approved activity as defined in WAC 170-290-3555;

(((~~ii~~))) (c) Does not meet other SCC eligibility requirements related to family size, income and ((~~approved activities~~)) resources as provided in WAC 170-290-3558;

(((~~iii~~))) (d) Does not return the requested income verification of new employment by the sixtieth day as provided in WAC 170-290-0012;

(e) Does not comply with the copayment requirements of WAC 170-290-3565 (((~~(6) and (7)~~)); or

(((~~iv~~))) (f) Refuses to cooperate with the child care subsidy audit process or the DSHS office of fraud and accountability (OFA).

(2) A consumer might be eligible for SCC program subsidies again beginning on the date that the consumer:

(a) Meets all SCC program eligibility requirements;

(b) Complies with the copayment requirements of WAC 170-290-3565(((~~6~~))); and

(c) Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).