

WSR 18-05-001
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed February 7, 2018, 12:31 p.m., effective March 10, 2018]

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

Purpose: The purpose of this rule making is [to] amend rules due to changes in advertising requirements for licensed marijuana businesses by the legislature during the 2017 legislative session (codified in RCW 69.50.369). The rule changes adjust rules relative to changes in the law, as well as additional clarifying changes needed to ensure advertising rules implement the changes to advertising restrictions as intended by the legislature. Changes to rules provide additional guidance to licensed marijuana businesses for clarity on requirements and will promote clarity and consistency in enforcement.

Citation of Rules Affected by this Order: Amending WAC 314-55-155.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, and 69.50.369.

Adopted under notice filed as WSR 17-24-119 on December 6, 2017.

Changes Other than Editing from Proposed to Adopted Version: Technical and clarifying changes that are not substantially different from the proposed rules as filed in the CR-102 were made prior to the version as presented for adoption. These changes were made in direct response to comments received and seek to further clarify rule provisions.

In subsection (2)(a)(i), all text on outdoor signs, including billboards, are limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.

In subsection (2)(a)(ii), addition of the language, "logos or artwork that do not contain depictions of marijuana plants or marijuana products as defined in this section are permissible."

In subsection (2)(e), additional language added to clarify that similar informational signs not related to the products or services of the marijuana business are not considered advertising.

In subsection (3), clarification that only signs placed on windows facing outward must meet the advertising restrictions for outdoor advertising.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: February 7, 2018.

Jane Rushford
Chair

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

WAC 314-55-155 Advertising. ~~((1) Advertising by retail licensees.~~ The WSLCB limits each retail licensed premises to a maximum of two separate signs identifying the retail outlet by the licensee's business name or trade name. Both signs must be affixed to the building or permanent structure and each sign is limited to sixteen hundred square inches.

~~(2) General.)~~ The following provisions apply in addition to the requirements and restrictions in RCW 69.50.369.

(1) Advertising generally. The following requirements apply to all advertising by marijuana licensees in Washington state.

(a) All marijuana advertising and labels of usable marijuana, marijuana concentrates, and marijuana-infused products sold in the state of Washington must not contain any statement, or illustration that:

~~((a))~~ (i) Is false or misleading;

~~((b))~~ (ii) Promotes over consumption;

~~((c))~~ (iii) Represents the use of marijuana has curative or therapeutic effects;

~~((d))~~ (iv) Depicts a child or other person under legal age to consume marijuana, or includes:

~~((e))~~ (A) The use of objects, such as toys, inflatables, movie characters, ~~((f))~~ cartoon characters suggesting the presence of a child, or any other depiction or image designed in any manner to be likely to be appealing to youth or especially appealing to children or other persons under legal age to consume marijuana; or

~~((g))~~ (B) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

~~((h))~~ (b) No ~~((licensed))~~ marijuana ~~((producer, processor, or retailer))~~ licensee shall place or maintain, or cause to be placed or maintained, an advertisement of a marijuana business or marijuana product, including marijuana concentrates, usable marijuana, or ~~((a))~~ marijuana-infused product:

(i) In any form or through any medium whatsoever ~~((a))~~ within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older unless the one thousand minimum distance requirement has been reduced by ordinance in the local jurisdiction where the licensed retailer is located and the licensed location listed in this paragraph;

~~((b))~~ (ii) On or in a private vehicle, public transit vehicle ~~((c))~~, public transit shelter, bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location; ~~((c))~~

~~((d))~~ (e) On or in a publicly owned or operated property.)

(c) All advertising for marijuana businesses or marijuana products, regardless of what medium is used, must contain text stating that marijuana products may be purchased or possessed only by persons twenty-one years of age or older. Examples of language that conforms to this requirement include, but are not limited to: "21+," "for use by persons 21 and over only," etc.

(d) A marijuana licensee may not engage in advertising or marketing that specifically targets persons residing out of the state of Washington.

(2) **Outdoor advertising.** In addition to the requirements for advertising in subsection (1) of this section, the following restrictions and requirements apply to outdoor advertising by marijuana licensees:

(a) Except for the use of billboards as authorized under RCW 69.50.369 and as provided in this section, licensed marijuana retailers may not display any outdoor signage other than two separate signs identifying the retail outlet by the licensee's business name or trade name, stating the location of the business, and identifying the nature of the business. Both signs must be affixed to a building or permanent structure and each sign is limited to sixteen hundred square inches.

(i) All text on outdoor signs, including billboards, is limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.

(ii) No outdoor advertising signs, including billboards, may contain depictions of marijuana plants or marijuana products. Logos or artwork that do not contain depictions of marijuana plants or marijuana products as defined in this section are permissible.

(A) A depiction of a marijuana plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.

(B) A depiction of a marijuana product means an image or visual representation of usable marijuana, marijuana-infused products, or marijuana concentrates, or an image that indicates the presence of a product, such as smoke, etc.

(iii) Stating the location of the business may include information such as the physical address or location, directional information, web site address, email address, or phone number of the licensed business.

(iv) Identifying the nature of the business may include information related to the operation of the business, what the business is engaged in, or the goods the business offers for sale.

(v) Double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.

(b) No marijuana licensee may use or employ a commercial mascot outside of, and in proximity to, a licensed marijuana business.

(c) Outdoor advertising is prohibited on signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, whether any of the foregoing are open air or enclosed, but not including any such sign or placard located at an adult only facility.

(d) The restrictions in this section and RCW 69.50.369 do not apply to outdoor advertisements at the site of an event to be held at an adult only facility that is placed at such site during the period the facility or enclosed area constitutes an adult only facility, but must not be placed there more than fourteen days before the event, and that does not advertise any marijuana product other than by using a brand name, such as the business or trade name or the product brand, to identify the event. Advertising at adult only facilities must not be visible from outside the adult only facility.

(e) A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, that the licensed location has an ATM inside, or other similar informational signs not related to the products or services of the marijuana business are not considered advertising for the purposes of this section.

(f) "Adopt-a-Highway" signs erected by the Washington state department of transportation under a current valid sponsorship with the department of transportation are not considered advertising for the purposes of this section.

(3) Advertising placed on windows within the premises of a licensed marijuana retail store facing outward must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.

(4) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned.

(5) Marijuana retail licensees holding a medical marijuana endorsement may donate product to qualifying patients or designated providers who hold a valid recognition card. Retail licensees may not advertise "free" or "donated" product.

(6) Except for outdoor advertising under subsection (2) of this section, all advertising must contain the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

(7) For the purposes of this section, the following definitions apply:

(a) "Adult only facility" means:

(i) A location restricted to persons age twenty-one and older by the WSLCB or classified by the WSLCB as off limits to persons under twenty-one years of age; or

(ii) A venue restricted to persons age twenty-one and older and where persons under twenty-one years of age are prohibited from entering or remaining, including employees and volunteers.

(b) "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of five feet in height by eleven feet in width.

(c) "Off-premises sign" means a sign relating, through its message and content, to a business activity, product, or service not available on the premises upon which the sign is erected.

WSR 18-05-003
PERMANENT RULES
SECRETARY OF STATE

[Filed February 7, 2018, 1:38 p.m., effective March 10, 2018]

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

Purpose: Main purpose of this proposal, is to simplify language, update to include modern records functions, and include provisions from chapter 303, Laws of 2017. This bill expanded the grant program to include the use of hardware and software technology, to improve the disclosure of public records.

Citation of Rules Affected by this Order: Repealing WAC 434-670-070; and amending WAC 434-670-010, 434-670-020, 434-670-030, 434-670-040, 434-670-050, 434-670-060, 434-670-080, and 434-670-090.

Statutory Authority for Adoption: RCW 40.14.020(6), 36.22.175(1), and chapter 40.14 RCW as amended by chapter 303, Laws of 2017.

Adopted under notice filed as WSR 18-01-118 on December 19, 2017.

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 8, Repealed 1.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 8, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 6, 2018.

Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-010 Washington state archives local records grant program. The ~~((Washington state archives))~~ local records grant program, administered ~~((by))~~ in the office of the secretary of state by the Washington state archives, provides financial assistance to local governments ~~((officials))~~ to support records management and preservation efforts, ~~((particularly for records of permanent retention. This grants-in-aid program is a significant effort in the overall mission of the program to enhance the quality of archival~~

~~preservation and public access to records of enduring value. This))~~ to improve records retention compliance, and to provide technology information systems that improve public records disclosure.

Local records grant program funds are provided for one-time investments and are not an ongoing source of revenue for operation or management costs. A grantee may not supplant local funding with local records grant program funding. The local records grant program is governed by this chapter and by RCW 36.22.175 and chapter 40.14 RCW.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-020 Eligible and ineligible activities.

(1) The following activities~~((s))~~ including, but not limited to, are eligible for support through the local records grant((s)) program administered pursuant to this chapter:

~~((a))~~ ~~((Planning;))~~
~~((b))~~ ~~((Records management;))~~
~~((c))~~ ~~((Preservation;))~~
~~((d))~~ ~~((Conservation;))~~
~~((e))~~ ~~((Professional consultants;))~~
~~((f))~~ ~~((Essential))~~ (e) Technology hardware and/or equipment;

~~((g))~~ ~~((Reference tools, and;))~~
~~((h))~~ ~~((Education;))~~
~~((i))~~ ~~((Temporary personnel;))~~ (f) Software to manage public records and requests;

(g) Reference tools;
(h) Training needs;
(i) Temporary personnel;
(j) Indexing; and
(k) Planning for the activities above.

(2) The following activities, including but not limited to, are ineligible for support through the local records grant((s)) program administered pursuant to this chapter:

(a) Projects already completed;
(b) Expenses incurred prior to the grant period;
(c) Existing/permanent staff positions;
(d) Equipment nonessential to the project;
(e) Capital improvements to buildings;
(f) Payments to lobbyists;
~~((g))~~ (g) Hospitality expenses; and
~~((h))~~ (h) Prizes/awards((;))
~~((i))~~ ~~((Benefit activities (social, fund raisers, etc.);))~~
~~((k))~~ ~~((Educational outreach not available to the public;))~~
~~((l))~~ ~~((Tuition reimbursement for academic credit;))~~
~~((m))~~ ~~((Activities having a religious purpose;))~~
~~((n))~~ ~~((Inventories/guides not available to the public and;))~~
~~((o))~~ ~~((Purchase of manuscripts/records)).~~

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-030 Eligibility. Local government ~~((entities, including))~~ agencies, include every county, city, town, municipal corporation, quasi-municipal corporation, special purpose district((s)), or any office, department, division, bureau, board, commission, or agency thereof, are eligi-

ble to apply for local records grant(~~(s)~~) program grants under this chapter.

Preference will be given to smaller local government agencies based upon applicant agency's need and to information technology demonstration projects designed to improve public records retention, records management, and public disclosure. Entities other than local governments, such as individuals, state agencies, federal agencies, and private organizations are ineligible(~~(, but local public records housed by state agencies may be included in a grant application that is submitted and administered by the local official who has statutory authority over the records)~~).

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-040 Evaluation of proposals. (1) Washington state archives staff will review (~~(grant)~~) applications for completeness, conformity to application requirements, soundness of budget, (~~(and)~~) relevancy to the objectives of the (~~(Washington state archives)~~) local records grant program(~~(- (Staff may also consider, in addition to the factors specified above the)), and~~ potential for widespread citizen use, research value and value for ongoing governmental operations of the proposed project including improvements to existing operations.(3)) The proposal may be returned to the applicant institution for further development or clarification, prior to application deadline.

(2) (~~(A summary)~~) An analysis will be prepared by the Washington state archives for each complete application and forwarded to the archives oversight committee established by RCW 40.14.027. The committee will review the applications (~~(at its annual)~~) in an open public meeting and make funding recommendations to the secretary of state.

(3) The office of the secretary of state will notify the applicant in writing as to whether the proposal has been funded or rejected.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-050 Local records grant program application requirements. In order to be complete, an application must include:

- (1) Identification of the local government entity (~~(and)~~);
- (2) Project personnel;
- (~~(2-A)~~) (3) Description of the ((activity proposed for funding including:
 - (a) Statement of purpose and goals;
 - (b) Project summary;
 - (c) Detailed) project (goals, objectives, and final results);
- (4) An analysis of the project plan(~~(- discussion of techniques and a timetable;~~
 - (d) Project objectives; and
 - (e) Specific end results or products.
- (3)));
- (5) Documentary evidence for the need of the project (photos, testimonies, etc.) if applicable;
- (6) A timetable;
- (7) A funding description(~~(, including)~~) that includes:

- (a) A budget layout and explanation;
- (b) (~~(Budget explanation~~;
- (c) Need for outside funding;
- (d) Funding of future management and preservation projects; and
- (e) Local entity's accounting methods and audit procedures.
- (4) Relevant information, including:
 - (a)) The need for outside funding; and
 - (c) Availability of sustaining funds.
- (8) Evaluation of results (~~((how will the success or failure be measured);~~
 - (b) Statement of any previous actions; and
 - (e) Description of importance of the project in terms of an overall, long-range record management program
- (5) Authorization, including:
 - (a) Being signed and dated by proper official; and
 - (b) Identification of preparer of the application.
- (6) Support material, including:
 - (a) Letter of commitment from the applicant's funding authority;
 - (b) Resumes of);
 - (a) How will the project be measured a success or failure; and
 - (b) How will the project improve records management, retention practices, and the ability to respond to public disclosure requests.
- (9) Authorization, including:
 - (a) Being signed and dated by a proper official;
 - (b) Identification of the application preparer.
- (10) Support material, including:
 - (a) Brief biography and description of the grant-related duties for grant project personnel, consultants, volunteers, etc.(~~(- and descriptions of their grant-funded duties~~
 - (c) Required forms);
 - (~~(d)~~) (b) Identification of necessary services, equipment, supplies, etc.; and
 - (~~(e)~~) (c) Other relevant information.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-060 Local records grant calendar. (1) (~~(The grant period begins on the date of the award issued by the Office of the Secretary of State. Grant projects must be completed in the awarded biennium.~~

(2) ~~The grant payment and reporting schedule will be approved and published by the oversight committee for each grant cycle. All unused grant funds and interest in possession of the grantee must be returned to the Washington state archives local records grant program within sixty days of completion.)~~ Local records grant program grants will be awarded annually on the state fiscal year cycle (July - June) and must be completed in the awarded biennium, or fiscal year if awarded for the second half of the biennium.

(2) The local records grant program application and reporting schedule will be approved and published by the archives oversight committee for each grant cycle.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-080 ((Auditing)) Other requirements.

~~((Grantees must comply with the audit requirements set forth in Washington statutes for local government units. The grantee is responsible for ensuring that the Washington state archives receives copies of the audit report for any audit performed during the grant period or for the following three years. Specific accounting requirements for the Washington state archives local records grant program are:~~

~~(1) Grant money must be deposited in an auditable, interest bearing account. Interest received must be applied to the project.~~

~~(2) Grant work must be monitored in progress. The Washington state archives staff may visit the work site for review at any time during the project.~~

~~(3) Changes in the approved grant, including changes of personnel, must be requested in writing to the Washington state archives, local records grant program.~~

~~(4) In the case of default by the grantee, the grant will be revoked and all unused funds must be returned to the Washington state archives local records grant program. The Washington state archives will notify the grantee of default in writing.~~

~~(5) The grantee shall submit a final grant report by June 30.~~

~~(6) Grantees must submit copies of all invoices with the final report, and~~

~~(7) Grantees must adhere to local and state bid requirements and submit documentation with the final grant report.))~~
Specific requirements for the Washington state archives local records grant program are:

(1) Archives staff may visit the worksite for review at any time during the project.

(2) Unless otherwise approved, grants will be cost-reimbursement grants.

(3) Proposed changes in the approved grant must be submitted in writing to the Washington state archives, local records grant program.

(4) The archives must be notified of any changes in personnel impacting the approved grant.

(5) In the case of default by the grantee, the local records grant program grant will be revoked and all unused funds may be distributed for use by other grantees. The Washington state archives will notify the grantee of default in writing.

(6) The grantee shall submit a final report and participate in a survey.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-090 Conflicts of interest. (1) The Washington state archives oversight committee will not consider a proposal where a committee member ~~((or a member of the secretary of state's staff derives compensation from the proposed))~~ derives compensation from the proposed local records grant program grant.

(2) A ~~((board))~~ committee member shall abstain from reviewing or voting on proposals if she/he is directly or indirectly connected with a proposed project through employ-

ment at the same ~~((institution, (directly or) indirectly supervises the project, or serves as an unpaid consultant to the project))~~ government agency.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
434-670-080	434-670-075
434-670-090	434-670-085

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-670-070 Accounting.

WSR 18-05-006
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed February 7, 2018, 3:20 p.m., effective March 10, 2018]

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

Purpose: The purpose of this rule making is to ensure rules comply with changes in public records laws so the Washington state liquor and cannabis board (WSLCB) may continue to assess costs for producing public records when appropriate. The costs proposed in these rule amendments mirror those costs provided in RCW 42.56.120 as amended by the 2017 legislature in EHB 1595. WSLCB proposes amendments to chapters 314-60 and 314-42 WAC to ensure rules are updated appropriately, clear, and well organized through completing a chapter review of chapter 314-60 WAC in conjunction with the changes needed as a result of EHB 1595.

Citation of Rules Affected by this Order: New WAC 314-42-001 and 314-60-025; repealing WAC 314-60-087 and 314-60-040; and amending WAC 314-60-010, 314-60-015, 314-60-070, 314-60-080, 314-60-085, 314-60-090, 314-60-100, and 314-60-110.

Statutory Authority for Adoption: RCW 42.56.120, 34.05.220, 42.56.040, 66.08.030, and 66.08.050.

Adopted under notice filed as WSR 17-24-120 on December 6, 2017.

Changes Other than Editing from Proposed to Adopted Version: Technical changes were made to remove exemptions to disclosure that no longer apply or are already covered by exemptions included in the Public Records Act (PRA). Subsection (1) of WAC 314-60-100 states that "requesters should be aware of" other exemptions outside the PRA that restrict availability of records. After reviewing the laws cited in proposed new language of subsections (1)(j) and (k) as filed with the CR-102, the cited sections of the liquor act provided for recordkeeping but did not provide an exemption

from disclosure of those records that differs from what is provided in the PRA or other subsections of the proposed rule. For this reason, these subsections were not needed and were removed from the proposed rules prior to adoption

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 8, Repealed 2.

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: February 7, 2018.

Jane Rushford
Chair

NEW SECTION

WAC 314-42-001 Board operations and procedure.

This section details the general course and method by which the operations of the board are channeled and determined in addition to the other functions and procedures of the board as provided in Title 314 WAC.

(1) The "Washington state liquor and cannabis board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor, with the consent of the senate, for staggered terms of six years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor and cannabis board.

(2) The board delegates certain administrative functions to an administrative director appointed by the board as provided in WAC 314-42-010.

(3) Pursuant to the requirements of the Open Public Meetings Act, chapter 42.30 RCW all determinations and business of the board will be made and conducted in meetings open to the public, except matters exempt from the act under RCW 42.30.140 or properly conducted in executive session pursuant to RCW 42.30.110.

(a) The board holds regular meetings as published with the office of the code reviser in the *Washington State Register* per RCW 42.30.075 and as published on the board's web site at www.lcb.wa.gov. For scheduling purposes, it is the board's intent to schedule petitions, take public testimony, conduct rule making activities, and adopt resolutions at its regular board meetings as published in the *Washington State Register* and posted on the WSLCB web site.

(b) Occasionally the board may deem it necessary to cancel meetings or conduct business at times other than as published in the *Washington State Register*. For these occasions, stakeholder notification will occur as provided in the Open Public Meetings Act, chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-010 Purpose~~((—Washington state liquor control board))~~. The purposes of this chapter are to:

(1) Describe the organization of the Washington state liquor ~~((control))~~ and cannabis board ~~((LCB))~~ WSLCB;

(2) ~~((Ensure that LCB))~~ Detail how the WSLCB complies with laws governing the disclosure (release) of public records; and

(3) Explain how an individual or organization ~~((can))~~ may obtain public records.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-015 Agency description—Contact information~~((—Public records officer))~~. (1)(a) The

~~((board))~~ Washington state liquor and cannabis board (WSLCB) is an agency created to exercise the police power of the state in administering and enforcing ~~((all of the))~~ laws and regulations relating to alcoholic beverage control (Title 66 RCW), marijuana (chapter 69.50 RCW), tobacco (chapter 70.155 RCW), and vapor products (chapter 70.345 RCW).

~~((to persons who handle liquor))~~ relating to liquor, marijuana, tobacco, and vapor products; and collects taxes imposed on liquor ~~((; and distributes and sells spirituous liquor))~~ and marijuana.

~~((b))~~ ~~((c))~~ The ~~((board))~~ WSLCB is responsible for enforcing laws preventing access to tobacco products by persons under the age of eighteen years (chapter 70.155 RCW). The board enforces the tobacco tax laws and the department of revenue administers tobacco tax laws (chapters 82.24 and 82.26 RCW).

~~((2))~~ ~~((The "Washington state liquor control board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor with the consent of the senate, for terms of six years that are staggered so that an appointment or reappointment is made every two years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor control board.~~

~~((3))~~ The board delegates certain administrative functions to an administrative director appointed by the board.

~~((4))~~ The Washington state liquor ~~((control))~~ and cannabis board is organized into ~~((six))~~ seven divisions:

(a) ~~((The))~~ Board administration;

(b) Director's office;

~~((b))~~ ~~((c))~~ Licensing and regulation;

~~((e))~~ ~~((d))~~ Enforcement and education;

~~((d))~~ Administrative services;

~~((e))~~ Business enterprise); (e) Finance;

(f) Information technology; and

~~((f))~~ ~~((g))~~ Human resources.

~~((5))~~ (3)(a) The administrative offices of the Washington state liquor ~~((control))~~ and cannabis board are located at 3000 Pacific Avenue Southeast, Olympia, Washington 98504-3080.

(b) ~~((LCB))~~ WSLCB staff is also located at(:

(i) ~~The distribution center, 4401 East Marginal Way South, Seattle, Washington;~~

(ii) State liquor stores in areas throughout the state; and

~~((iii)) enforcement offices maintained in major cities throughout the state.~~

~~((e) LCB contracts with individuals to sell liquor on commission. These contract liquor stores are located in areas throughout the state.~~

~~(d) Exact locations of state liquor stores, contract liquor stores, enforcement offices, addresses and contact numbers are located on the LCB home page at www.liq.wa.gov or WSLCB's web site at www.lcb.wa.gov.~~

~~((6) Any person wishing to access LCB public records should contact the LCB's public records officer:~~

Public Records Officer
Liquor Control Board
3000 Pacific Avenue Southeast
Olympia, Washington 98504
360-664-1714
Fax 360-664-9689
email publicrecords@liq.wa.gov

Information is also available on the LCB web site at www.liq.wa.gov.

~~(7) The public records officer will oversee compliance with the act and the implementation of the LCB's rules and regulations regarding release of public records, coordinating the staff of the public records unit and the LCB employees in this regard, and generally coordinating compliance by the LCB with the public records disclosure requirements of chapter 42.56 RCW. The public records officer will provide the "fullest assistance" to requestors; create and maintain for use by the public and LCB officials an index to public records of the LCB; ensure that public records are protected from damage or disorganization; and to prevent public records requests from causing excessive interference with essential functions of the LCB.)~~ (4) An organizational chart is available from the board's public records office which illustrates the general structure of the WSLCB's operations. More information on the construct of the WSLCB is also available on the WSLCB's web site at www.lcb.wa.gov.

NEW SECTION

WAC 314-60-025 Public records officer. (1) The WSLCB public records officer:

(a) Receives all public records requests made to the WSLCB;

(b) Provides "fullest assistance" to persons seeking WSLCB public records;

(c) Oversees the WSLCB's compliance with the Public Records Act, including locating, processing, and releasing records responsive to public records requests;

(d) Creates and maintains an index of certain WSLCB public records, to the extent required by RCW 42.56.070; and

(e) Prevents the fulfillment of public records requests from causing excessive interference with essential functions of the department.

(2) Any person wishing to access WSLCB public records should contact the WSLCB's public records officer or designee at:

Public Records Officer
Liquor and Cannabis Board
3000 Pacific Avenue Southeast
Olympia, Washington 98504
360-664-1693
Fax: 360-664-9689
Email: publicrecords@lcb.wa.gov

Current contact information is also available on the WSLCB web site at www.lcb.wa.gov.

(3) The public records officer may designate one or more WSLCB staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process public records requests. Therefore, use of the term public records officer in this chapter may include the public records officer's designee(s) or any other staff assisting in processing public records requests, where indicated by context.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-070 Availability of public records. (1) Many records are available on the WSLCB's web site at www.lcb.wa.gov. Requestors are encouraged to search for and view records on the WSLCB's web site in lieu of or prior to making a public records request. An index of public records is available as provided in subsection (3) of this section.

(2) Requestors are encouraged to contact the public records officer to determine the location and availability of records prior to or at the time of making a public records request.

(3) Hours for inspection of records.

(a) Public records are available for inspection and copying at the main office of the board during normal business hours of the WSLCB, Monday through Friday, from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., excluding state legal holidays.

((2)) (b) Records must be inspected at the offices of the WSLCB and may not be removed from WSLCB offices. The majority of public records are located at the WSLCB's central office, although some may be located in other locations, including the regional offices.

(4) Records index. (Am) The WSLCB maintains an index as required under RCW 42.56.070 and updates the index on a biennial basis at minimum. The index of public records is available (for use by members of the public) on the WSLCB's web site at www.lcb.wa.gov, including:

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

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

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

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

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports

or surveys, whether conducted by public employees or others.

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

~~(3)) Declaratory orders issued pursuant to RCW 34.05.240 containing an analysis or decision of substantial importance to the agency in carrying out its duties.~~

~~(5) Organization of records. The ((LCB)) WSLCB will maintain its records in a reasonably organized manner. The ((LCB)) WSLCB will take reasonable actions to protect records from damage and disorganization. ((A requestor shall not take LCB records from LCB offices without the permission of the public records officer. A variety of records is available on the LCB web site at www.lcb.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.))~~

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-080 ((Making)) Requests for public records. An individual may request a public record orally or in writing. The ((board)) WSLCB encourages ((that)) all public records requests be submitted in writing ((and)). Public records requests may be sent to the WSLCB via email at publicrecords@lcb.wa.gov.

(1) A form for public records requests prescribed by the ((board)) WSLCB is available at its main office and on its web site at www.lcb.wa.gov. ((The)) A written request or ((prescribed)) public records request form ((shall)) must be submitted or presented to the public records officer or designee and may be sent to the WSLCB via email at publicrecords@lcb.wa.gov. The request should include the following information:

(a) The name, organization, mailing address, telephone number((, fax number)), and email address of the ((person requesting the record.)) requestor;

(b) The date and time of day ((and calendar date on which the request was received at the main office of the board.)) of the request;

(c) ((A detailed description of the public record being requested.)) Identification of the public records sought, in a form or description adequate for the public records officer to identify and locate the records;

(d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described((-)); and

(e) The address where copies of the record are to be mailed or emailed, or notification that the requestor wants to examine the record at the ((LCB)) WSLCB.

(2) If the public records officer or designee accepts a request other than in writing, he or she will confirm receipt of the information and the substance of the request in writing.

~~((3) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the~~

records or a deposit. Standard photocopies will be provided at fifteen cents per page. (See WAC 314-60-090.)

~~(4) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the board is also a party (or when a request is made by or on behalf of an attorney for a party) the request shall be referred to the assistant attorney general assigned to the board for an appropriate response.))~~

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-085 Processing public records requests. (1) **Order of processing public records requests.** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

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

(a) Provide the records or make the records available for inspection and copying depending on the nature of the request;

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

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

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

(e) Deny the request.

(3) **If no response is received.** If the public records officer does not respond in writing within five business days after the day of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the WSLCB received the request.

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

~~((4))~~ (5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part, under chapter 42.56 RCW or as otherwise provided by law. If the ((LCB)) WSLCB believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions,

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

~~((5))~~ **(6) Inspection of records.**

(a) Consistent with other demands, the ~~((LCB))~~ WSLCB shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. ~~((The requestor shall indicate which documents he or she wishes the agency to copy.))~~ If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, he or she should so indicate to the public records officer or designee. Copies will be provided pursuant to subsection (7) of this section.

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

~~((6))~~ **(7) Providing copies of records.** ~~((After inspection is complete, the public records officer shall make the requested copies or arrange for copying.~~

~~(7))~~ (a) Upon request, the public records officer or designee will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 314-60-090 and costs for copies of records must be paid to the WSLCB prior to delivery of copies of records.

(b) Copies may be mailed or emailed to the requestor, or made available for pickup at the WSLCB's offices, depending on the format of the records and the request of the requestor. If the copies are available for pickup at the WSLCB's offices, the requestor must pay for and pick up the copies within thirty days of the WSLCB's notification to him or her that the copies are available for pickup. The WSLCB will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the WSLCB to make arrangements to pay for and pick up the copies. If the requestor fails to pay for or pick up the copies within the thirty-day period, or fails to make other arrangements, the WSLCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(8) Electronic records. The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic

format, the public records officer will provide the nonexempt records, or portions of such records that are reasonably locatable, in an electronic format that is used by the WSLCB and is generally commercially available, or in a format that is reasonably translatable from the format in which the WSLCB keeps the record.

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

~~((8))~~ **(10) Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the ~~((LCB))~~ WSLCB has completed ~~((a diligent search for the requested))~~ the records request and made any located nonexempt records available for inspection.

~~((9))~~ **(11) Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate the closure to the requestor ~~((that the LCB has closed the request)).~~

~~((10))~~ **(12) Later discovered documents.** If, after the ~~((LCB))~~ WSLCB has informed the requestor that it has provided all available records and closed a request, the ~~((LCB))~~ WSLCB becomes aware of additional responsive ~~((documents))~~ records existing at the time of the request, it will promptly inform the requestor of the additional ~~((documents))~~ records and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-090 Costs of providing copies of public records. (1) No fee ~~((shall be))~~ is charged for the inspection of public records.

(2) ~~((After the first one hundred free copies, the board charges one or more of the following fees for copies of public records:~~

(a) Up to fifteen cents per page for black and white photocopies of a record;

(b) The actual cost of manuals, blueprints, and other non-printed materials such as CDs, audio tapes, or video tapes;

(c) Up to fifteen cents per page for scanning existing WSLCB paper or other nonelectronic records. There will be no charge for emailing electronic records to a requestor, unless a scanning fee applies; and

(d) The cost of postage, when items are mailed. (See RCW 42.56.070.)) The WSLCB does not charge any fee for access to or downloading records posted on its internet web site prior to a request, unless the requestor specifically

requests that posted records be provided by other means, such as a printed copy or electronic copies provided by the WSLCB.

(3)(a) The board finds it would be unduly burdensome to calculate the actual costs of providing public records to requestors as the type of request and staff time to copy and provide records vary widely. The board does not have the resources to conduct a study of these costs, and conducting a study would interfere with other essential agency functions. Additionally, through the 2017 legislative process, the public and requestors commented on and were informed of authorized fees and costs, including costs for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(b) The following fee schedule adapted from RCW 42.56.120 applies to physical and electronic copies of public records provided by the WSLCB. Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

Public Records Fee Schedule	
Charge:	Record Type:
15 cents/page	Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to make photocopies.
10 cents/page	Scanned records, or use of agency equipment for scanning.
5 cents for each 4 electronic files or attachment	Files and attachments loaded and delivered on a digital storage media (CD, DVD, or thumb drive).
10 cents per gigabyte	Records transmitted in electronic format or for use of agency equipment to send records electronically.
Actual cost	Digital storage media or devices.
Actual cost	Any container or envelope used to mail copies.
Actual cost	Postage or delivery charges.
Actual cost	Customized service charge (in addition to fees for copies - See copying fees above), if the board estimates that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access when such compilations and customized access services are not used by the agency for other agency purposes. The board will notify such

Public Records Fee Schedule	
	requestor of the customized service charge to be applied, why the charge applies, and an estimate of the cost of the charge, and will allow the requestor to amend the request in order to avoid or reduce the cost of the customized service charge.
Option for Copies:	
Up to \$2 flat fee	As an alternative to the copy charges above, the board may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees will not be charged for subsequent installments.

(4) If the requestor asks the WSLCB to provide a summary of the applicable charges before any copies are made, the WSLCB will provide an estimate and will allow the requestor to revise the request to reduce the number of copies to be made to reduce the charges. The WSLCB may require a deposit of up to ten percent of the cost of providing copies for a request, including a customized service charge.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-100 Exemptions. (1) The Public Records Act (chapter 42.56 RCW) (~~provides that a number of types of documents are~~) exempts a number of types of records from public inspection, production, and copying that the board may assert when responding to a request for public records. In addition, (~~documents~~) records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by WSLCB for inspection and copying:

- (a) **Autopsy, post mortem or medical examiner reports.** Requests for these records should be referred to the agency which originated the record(s): Coroner's office, medical examiner's office, etc. (RCW 68.50.105)
- (b) **Claim file information.** On any industrial insurance claim. (RCW 51.28.070)
- (c) **Criminal history reports.** Certain criminal history information concerning nonconviction data is prohibited from disclosure under chapter 10.97 RCW. Law enforcement agency reports should be referred to the agency that originated the report. (RCW 10.97.080)
- (d) **Crime victims.** Files and information. (RCW 7.68-140)
- (e) (~~Individual purchases.~~ All records whatsoever of the board showing purchases of liquor by any individual or

establishment. (RCW 66.16.090)) **Attorney client privileged communications, mediation communications. Communications protected by RCW 5.60.060(2), 42.56.290 and 7.07.030 exempt from disclosure.**

(f) **Medical records and data.** Medical records, drug records, accident victims and other persons to which ~~((LCB))~~ WSLCB has access. (RCW 42.56.360(2) and chapter 70.02 RCW)

(g) **Social Security numbers.** (RCW 42.56.250(3) and 42 U.S.C. Section 405 (c)(2)(C)(vii)(1))

(h) **Trade secrets.** As defined in RCW 19.108.010, including blueprints, diagrams, drawings, formulas, photos, etc., requested to be held confidential by the affected person. Should be labeled "RESTRICTED TRADE INFORMATION." (RCW 39.10.470(2) and 49.17.200)

~~((i) Special order requests and records of purchases by any person or persons, including spirits, beer, and wine restaurant licensees. (See RCW 66.16.090.)~~

~~(j) Financial or proprietary information supplied to the board by a domestic winery, brewery, or microbrewery, acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, containing the identity and amount of beer or wine sold directly to licensed Washington retailers. (See RCW 66.24.206 (1)(a), 66.24.270 (2)(a), and 42.56.270.)~~

~~(k) Financial or proprietary information supplied to the board by a licensed Washington liquor retailer containing the identity and amount of beer or wine purchased directly from a domestic winery, brewery, microbrewery, or a certificate of approval holder with a direct shipping to Washington retailer endorsement. (See RCW 66.24.210, 66.24.290, and 42.56.270.)~~

(2) The WSLCB is prohibited by statute from disclosing lists of individuals for commercial purposes~~((See))~~ under RCW 42.56.070(4)

~~(3) Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The LCB will not charge sales tax when it makes copies of public records))~~

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by ~~((tendering))~~ submitting a written request for review. The written request ~~((shall))~~ must specifically refer to the written statement by the public records ~~((staff member))~~ officer or designee which constituted or accompanied the denial. ~~((Send your))~~ A written petition for review may be sent to:

Public Records Officer~~((, Public Records Unit))~~
P.O. Box 43080
Olympia, Washington 98504-3080
~~((360-664-1714~~

~~jdk@hq.wa.gov))~~ 360-664-1693
~~publicrecords@lcb.wa.gov~~

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer shall refer it to the administrative director. The administrative director shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the ~~((LCB's))~~ WSLCB's receipt of the request for review of the original denial, or within such other time as the ~~((LCB))~~ WSLCB and the requestor mutually agree to.

(3) If the ~~((LCB))~~ WSLCB denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter~~((The attorney general has adopted rules on such requests))~~ as provided in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records request.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-60-040 Operations and procedure.

WAC 314-60-087 Processing public records requests—
Electronic records.

WSR 18-05-010

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed February 8, 2018, 9:46 a.m., effective April 1, 2018]

Effective Date of Rule: April 1, 2018.

Purpose: This rule-making order adopts chapter 16-131 WAC, Marijuana infused edibles, as directed by the Washington state legislature under chapter 138, Laws of 2017 (SHB 1462). This bill requires the department to regulate marijuana-infused edible (MIE) processing the same as other food processing under the Washington Food Processing Act (chapter 69.07 RCW). The rule provides additional details on MIE definitions, MIE endorsement, initial application, application approval, specific MIE labeling, allowable MIE product types, processing requirements, and inspection and enforcement procedures, including a penalty matrix for MIE violations. The rules are consistent with the ruled [rules] adopted by the Washington state liquor and cannabis board and the Washington state department of health.

Citation of Rules Affected by this Order: New WAC 16-131-010, 16-131-020, 16-131-030, 16-131-040, 16-131-050, 16-131-060, 16-131-070, 16-131-080, 16-131-090, 16-131-100, and 16-131-110.

Statutory Authority for Adoption: RCW 69.07.020, 69.07.200, and chapter 34.05 RCW.

Adopted under notice filed as WSR 18-01-108 on December 19, 2017.

Changes Other than Editing from Proposed to Adopted Version: In response to comments received during the official comment period, the department modified WAC 16-131-050 (3)(b) by replacing "The written recipe" with "A complete and accurate list of ingredients." As a result of this revision, businesses applying for an MIE endorsement will not be required to submit product recipes; instead they will be required to submit a list of ingredients.

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 11, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 11, Amended 0, Repealed 0.

Date Adopted: February 8, 2018.

Derek I. Sandison
Director

Chapter 16-131 WAC

MARIJUANA-INFUSED EDIBLES

NEW SECTION

WAC 16-131-010 Purpose of this chapter. The purpose of this chapter is to establish rules pursuant to chapter 69.07 RCW relating to:

- (1) Procedures to obtain and maintain a marijuana-infused edible endorsement;
- (2) Requirements for marijuana-infused edible processing facilities; and
- (3) Requirements for marijuana-infused edible labeling.

NEW SECTION

WAC 16-131-020 Definitions. In addition to the definitions in RCW 69.07.010, the following definitions apply to this chapter:

"MIE" has the same meaning as "marijuana-infused edible" in RCW 69.07.010.

"MIE processing" means the same as "marijuana-infused edible processing" in RCW 69.07.010. The term includes all activities covered by "food processing" under RCW 69.07.010. The term also includes packaging of MIEs and bottling operations (preparing bottles, filling, and capping).

"MIE processing facility" means the room or rooms where MIEs are processed.

"MIE processor" means a person who holds an MIE endorsement.

"WSLCB" means the same as "board" in RCW 69.07.-010; the state liquor and cannabis board.

NEW SECTION

WAC 16-131-030 General requirements. (1) For initial authorization to produce MIEs, a person must obtain an MIE endorsement as provided under RCW 69.07.200 and WAC 16-131-040.

(2) An MIE processor must comply with all laws to which other food processors are subject including, but not limited to, chapter 69.07 RCW, Washington Food Processing Act, chapter 16-165 WAC, Food inspection, and chapter 16-167 WAC, Intrastate commerce in foods.

(3) An MIE processor in good standing may renew an endorsement through the department of revenue as provided in RCW 69.07.200.

(4) A person must hold an MIE endorsement and obtain the department's approval of each MIE as provided in WAC 16-131-050 before offering the MIE for sale.

(5) All communication in connection with MIEs from an applicant or endorsement holder to the department must reference the applicant or endorsement holder's WSLCB license number and the name under which the WSLCB license is held.

(6) An MIE endorsement is valid for only one location.

(7) MIE processing facilities must comply with all applicable state, county, and municipal laws and ordinances that apply to conducting business in the MIE processing facility location.

NEW SECTION

WAC 16-131-040 Initial application requirements.

(1) Persons seeking to produce MIEs must apply to the department of revenue as required under RCW 69.07.200. The initial endorsement is not valid until the department approves the applicant's submittals required under this section, inspects the MIE processing facility, and determines that the applicant and facility substantially complies with applicable laws and regulations.

(2) Once the department receives the endorsement application from department of revenue's business licensing service, the department will contact the applicant and provide electronic copies of required forms for the applicant to complete.

(3) Before the department will begin evaluation of an initial application, the applicant must submit the following:

- (a) Full facility plans as required under WAC 16-131-090;
- (b) A detailed floor plan or diagram of the MIE processing facility as required under WAC 16-131-090;
- (c) All documents required under WAC 16-131-050 for each initially proposed MIE;
- (d) Documentation verifying that the water supply meets standards in WAC 16-165-130.

(4) Once the department determines that an initial applicant's submittal is complete and satisfactory, the department will contact the applicant to schedule an inspection. The MIE processing facility must be production ready at the time of

inspection; perishable ingredients are not required to be in stock.

(5) Following the inspection, the department will notify the applicant of its decision to approve or deny the endorsement. If approving the endorsement, the department will identify the MIE products approved for processing.

NEW SECTION

WAC 16-131-050 MIE approval. (1) An MIE is specific to its form, formulation and ingredients, including color and flavor. The same formulation and ingredients in different forms (for example, powder and solid forms) are different MIEs.

(2) A person must obtain the department's review and approval for each MIE before offering it for sale.

(3) A person must provide the following information to the department in electronic format for each proposed MIE product:

- (a) The product name;
- (b) A complete and accurate list of ingredients;
- (c) A description of the processing steps for the MIE product;
- (d) A description of the packaging; and
- (e) A copy of the proposed ingredient label conforming to WAC 16-131-060.

(4) The department will approve only the types of MIEs that comply with WAC 16-131-070.

(5) Any change in the ingredients of an approved MIE requires department review and approval as provided in subsection (2) of this section.

(6) The department may require another facility inspection if a newly proposed or reformulated MIE introduces a new type of processing in the MIE processing facility. For example, the department will require a new inspection if a facility that previously produced baked goods proposes to add a bottled beverage MIE.

NEW SECTION

WAC 16-131-060 MIE labeling. (1) MIE processors must submit a copy of the proposed ingredient label for each MIE to the department for approval. The proposed ingredient label may not be used without the department's written approval.

(2) MIE product labels must comply with the WSLCB's packaging and labeling requirements under chapter 314-55 WAC and, for the purposes of the MIE endorsement, additionally display:

(a) A statement of ingredients as specified under 21 C.F.R. 101.4 (2017). The ingredient statement must identify sulfites, if present, as required under 21 C.F.R. 101.100 (2017) and the names of Food and Drug Administration certified color additives such as FD&C Yellow 5 and the like, if present.

(b) Allergens (milk, egg, fish, crustacean shellfish, tree nuts, wheat, peanuts, soybeans) as specified under the Food Allergen Labeling and Consumer Protection Act of 2004 (P.L. 108-282, Title II).

(3) The following sample label illustrates the ingredient and allergen labeling requirements:

Chocolate Peanut Butter Walnut Brownie

Ingredients: Brown Sugar (Sugar, Invert sugar, Cane molasses), All-purpose flour (Wheat flour, Niacin, Reduced iron, Thiamine mononitrate, Riboflavin, Folic acid), Milk chocolate (Sugar, Whole milk powder, Cocoa butter, Cocoa mass, Soy lecithin, Vanilla), Peanut Butter (Peanuts, Sugar, Molasses, Hydrogenated vegetable oil, Mono and diglycerides, Salt), Chopped Walnuts, Dextrose, Salt, Artificial Flavoring, Leavening (Sodium bicarbonate), Cannabis Extract.

CONTAINS: Milk, Peanuts, Soy, Walnuts, Wheat

NEW SECTION

WAC 16-131-070 MIE product types. (1) All MIEs must comply with WAC 314-55-077.

(2) The department will not approve an MIE for commercial sale unless it complies with WAC 314-55-077 and is a low hazard food that typically does not support bacterial or toxigenic growth. Such foods include, but are not limited to:

(a) Baked goods that do not require refrigeration such as cookies, brownies, fruit pies and fruit tarts;

(b) Candies and chocolates;

(c) Stove top treats, which are candies or confections made from sugar or syrup to which flavorings and/or colorants are added such as molded chocolates, fruit rolls, roasted coated nuts, and nonbaked bars or granola products;

(d) Flavored water beverages (like vitamin style waters), carbonated beverages, and lemonade style beverages. Product safety is formulation dependent; the department may reject some formulations as potentially hazardous;

(e) Dry mixes such as coffee granules, leaf tea, soup mixes, beverage mixes, and seasonings;

(f) Jams, jellies, and related products made in accordance with 21 C.F.R. Part 150;

(g) Roasted nut butters, such as peanut butter, almond butter, etc;

(h) Honey and syrups;

(i) Vinegars, tinctures, and tonics. If infused with dried marijuana, the processor must strain and entirely remove all plant parts and particulates from the final product. Use of other plant parts and particulates for infusion, such as herbs and garlic, is prohibited (see WAC 314-55-077);

(j) Tablets and capsules.

(3) A processor may infuse oils or fats (canola oil, olive oil, coconut oil, butter, etc.) with marijuana and use such for preparation of MIEs intended for sale. Retail sale of MIE oils and fats is prohibited. Use of other plant parts and particulates for infusion in oils and fats, such as herbs and garlic, that is intended for use in production of retail MIEs is prohibited (see WAC 314-55-077 and 314-55-104).

(4) The department will not approve an MIE for commercial sale if it is a potentially hazardous food. The following nonexhaustive list includes foods prohibited as MIEs:

(a) Any food that must be temperature controlled (frozen, refrigerated, hot holding) for food safety (see WAC 314-55-077);

(b) Foods that required acidification to assure food safety (for example, ready-to-drink tea and barbecue sauce) (see WAC 314-55-077);

- (c) Foods that must be retorted or pasteurized to assure food safety (see WAC 314-55-077);
- (d) Dairy products of any kind such as butter, cheese, ice cream, or milk (see WAC 314-55-077);
- (e) Fruit or vegetable juices, except shelf stable concentrates (see WAC 314-55-077);
- (f) Oils and vegetable butters (see WAC 314-55-077);
- (g) Pies containing egg such as pumpkin or custard (see WAC 314-55-077);
- (h) Dried or cured meats (see WAC 314-55-077);
- (i) Jams, jellies, and related products with sugar to fruit ratio less than provided by 21 C.F.R. Part 150.

NEW SECTION

WAC 16-131-080 MIE processing. (1) All MIE processing must take place in the MIE processing facility. An MIE intended for retail sale must leave the MIE processing facility in sealed consumer packaging.

(2) Processing plans for each MIE and operation of the MIE processing facility must comply with all laws applicable to food processing under chapter 69.07 RCW.

(3) All ingredients must be from approved sources, meaning the food ingredients are from a source that a regulatory authority routinely and regularly inspects. Whole raw agricultural commodities are exempt from approved source requirements.

NEW SECTION

WAC 16-131-090 MIE processing facilities. (1) Facilities plans. MIE processors must maintain current, to scale, and legible floor plans of the MIE processing facility. At a minimum, the plans must include:

(a) A plan showing the entire facility subject to the marijuana processor license and indicating the MIE processing facility. An applicant may use plans submitted for the marijuana processor license to meet this requirement provided the plans clearly identify the MIE processing facility.

(b) A detailed floor plan, which may be a hand drawn diagram if to scale and legible, showing room dimensions, fixtures (sinks, counters, etc.), equipment (refrigeration units, range/stove, oven, stand-alone processing equipment, etc.), storage shelves/racks (for edible ingredients, utensils, packaging supplies, cleaning supplies), and floor drain, if required. Applicant must identify the finished surfaces of the ceiling, walls, and floor on the floor plan/diagram or in a separate document.

(2) MIE facility requirements. MIE processing facilities must comply with all laws applicable to food processing under chapter 69.07 RCW and the following:

(a) The MIE processing facility must be entirely enclosed (walls, ceiling, and doors) and separate from other parts of the facility subject to the marijuana processor license;

(b) Toilet room doors must not open directly into the MIE processing facility or adjacent air space. This requirement may be met with double doors or with an air management system;

(c) Hand sinks and equipment sinks required of all processors must be located inside the MIE processing facility.

(3) MIE processors must notify the department of any proposed significant changes to the required floor plans.

NEW SECTION

WAC 16-131-100 Inspections. (1) MIE processors must allow access to the department for inspections and to collect samples as required under RCW 69.07.080 and as otherwise authorized by law. The department must have access to the MIE facility and the entire facility subject to the marijuana processors license, including exterior of the building and grounds, to the extent that these may affect the safety of MIEs produced in the MIE facility.

(2) The department will use the same inspection procedures and protocols used for inspections of all food processors licensed under chapter 69.07 RCW. This includes unscheduled and unannounced inspections.

NEW SECTION

WAC 16-131-110 Suspension, revocation, and denial of endorsement and penalties. (1) The department may suspend, revoke, or deny an MIE endorsement in accordance with RCW 69.07.060.

(2) The department may impose penalties on any person who processes, advertises, or distributes MIEs without an MIE endorsement. Each of the following is a distinct and separate violation:

- (a) Processing MIEs without a valid MIE endorsement;
- (b) Advertising or distributing MIEs processed without a valid MIE endorsement;
- (c) Processing, advertising, or distributing an MIE that has not received department approval under WAC 16-131-050.

(3) For violations under an endorsement, the department may impose civil penalties in conformance with the penalty assignment schedules in this section and chapter 16-139 WAC, excluding WAC 16-139-020, 16-139-030, and 16-139-040.

(4) MIE penalty assignment schedules:

Table 1. MIE Penalties for Processing, Advertising, or Distributing Without a Valid MIE Endorsement

PENALTY	
\$1,000 per day per violation	

Table 2. MIE Penalties for Number of Critical Violations in a 3-Year Period

VIOLATION	PENALTY	
	Risk of Adulteration	
	Potential	Probable
First	\$1,000 and 4-day suspension	\$5,000 and 14-day suspension
Second	\$2,000 and 8-day suspension	\$5,000 and 30-day suspension
Third	\$4,000 and 16-day suspension	\$5,000 and revocation

Table 3. MIE Penalties for Number of Significant Violations in a 3-Year Period

VIOLATION	PENALTY	
	Risk of Adulteration	
	Potential	Probable
First	\$500 and 2-day suspension	\$1,000 and 4-day suspension
Second	\$1,000 and 4-day suspension	\$2,000 and 8-day suspension
Third	\$2,000 and 8-day suspension	\$4,000 and 16-day suspension

Table 4. MIE Penalties for Number of Economic or Other Violations in a 3-Year Period

VIOLATION	PENALTY	
	Unknowing	Knowing
First	\$500 and 2-day suspension	\$1,000 and 4-day suspension
Second	\$1,000 and 4-day suspension	\$2,000 and 6-day suspension
Third	\$1,500 and 6-day suspension	\$5,000 and 20-day suspension

**WSR 18-05-011
PERMANENT RULES
DEPARTMENT OF REVENUE**

[Filed February 8, 2018, 9:19 a.m., effective March 11, 2018]

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

Purpose: The department is amending WAC 458-20-121 and 458-20-134 to add definitions of "biomass fuel." Both rules are also amended to describe the new limit to just biomass fuel on the prior use tax exemption in RCW 82.12.0263 for extractors or manufacturers.

Citation of Rules Affected by this Order: Amending WAC 458-20-121 and 458-20-134.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 17-23-114 on November 16, 2017.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: February 8, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-031, filed 4/26/10, effective 5/27/10)

WAC 458-20-121 Sales of heat or steam—Including production by cogeneration. (1) **Introduction.** This section provides tax reporting information to persons who sell heat and/or steam. Because heat and steam are often the product of a cogeneration facility, this section also provides tax information for persons operating cogeneration facilities. Persons generating electrical power should also refer to WAC 458-20-179 (Public utility tax).

(2) **Definitions.**

(a) The term "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes.

(b) The term "hog fuel" means wood waste and other wood residuals including forest derived biomass. "Hog fuel" does not include firewood or wood pellets.

(3) **Sale of heat or steam - Business and occupation (B&O) tax.** Persons engaging in the business of operating a plant for the production, extraction, or storage of heat or steam for distribution, for hire or sale, are taxable under the service and other business activities classification. This includes heat or steam produced by a biomass system, cogeneration, geothermal sources, fossil fuels, or any other method.

~~((3))~~ (4) **Sale or production of electricity - Cogeneration.** The production of steam, heat, or electricity is not a manufacturing activity within the definition of RCW 82.04.120. Persons who operate a plant or system for the generation, production or distribution of electrical energy for hire or sale are subject to the provisions of the public utility tax under the light and power tax classification. Persons who generate electrical energy should refer to WAC 458-20-179 (Public utility tax). A deduction may be taken for:

(a) Power generated in Washington and delivered out-of-state. (See RCW 82.16.050(6).)

(b) Amounts derived from the sale of electricity to persons who are in the business of selling electricity and are purchasing the electricity for resale. (See RCW 82.16.050(2).)

~~((4))~~ (5) **Tax incentive programs - Cogeneration.** There were tax incentive programs available for cogeneration projects begun before January 1, 1990. Sales and use tax deferrals may apply under certain conditions for power generation facilities, even though the production of power is not specifically subject to a manufacturing tax. For example, if the cogeneration facilities are part of a manufacturing plant for the production of new articles of tangible personal property and the requirements for tax deferral are met, the business may apply for tax deferral programs. These incentive programs are discussed in WAC 458-20-240 (Manufacturer's new employee tax credits), 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development activi-

ties in rural counties—Applications filed after March 31, 2004), and 458-20-24002 (Sales and use tax deferral—New manufacturing and research/development facilities).

~~((5))~~ **(6) Fuel.** Persons who produce their own fuel to generate heat, steam, or electricity are subject to the manufacturing B&O tax on the value of the fuel. This includes the value of fuel which is created at the same site as a by-product of another manufacturing process, such as production of hog fuel. The taxable value should be determined based on comparable sales, or on the basis of all costs in the absence of comparable sales. Refer to WAC 458-20-112 (Value of products).

(a) Fuel does not become an ingredient or component of power, steam, or electricity. The sale of fuel to be used by the purchaser to generate heat, steam, or electricity is a retail sale. In most cases, the purchase of fuel for such purposes is subject to payment of retail sales tax to the supplier. (See (b) of this subsection for discussion of a sales and use tax exemption specific to ~~((hog))~~ biomass fuel.)

In the event retail sales tax is not paid to the supplier, and no exemption from retail sales tax is available, deferred sales or use tax must be paid. However, the law provides a specific exemption from the use tax for biomass fuel ~~((which is))~~ used ~~((in the same))~~ by the fuel's extractor or manufacturer when used directly in the operation of the particular extractive operation or manufacturing plant which produced ((the)) or manufactured the same biomass fuel. For example, if a lumber manufacturer produces wood waste which is used in the same plant to produce heat for drying lumber ~~((and also electricity which is sold to a public utility district)),~~ the wood waste is not subject to use tax even though the manufacturing B&O tax ~~((will apply))~~ applies to this biomass fuel. (See RCW 82.12.0263.)

(b) Effective July 1, 2009:

- Sales of hog fuel used to produce electricity, steam, heat, or biofuel are exempt from retail sales tax when the purchaser provides the seller with a properly filled out "buyer's retail sales tax exemption certificate." RCW 82.08.956.

- The use of hog fuel for production of electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956~~((For these exemptions, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" has the same meaning as provided in RCW 43.325.010)).~~

~~((6))~~ **(7) Equipment and supplies.** Persons who are in the business of producing heat, steam, or electricity are required to pay retail sales tax to suppliers of all equipment and supplies. If the supplier fails to collect retail sales tax, deferred sales or use tax must be paid.

AMENDATORY SECTION (Amending WSR 10-10-031, filed 4/26/10, effective 5/27/10)

WAC 458-20-134 Commercial or industrial use. (1) ((Introduction:)) Definitions.

(a) "The term 'commercial or industrial use' means the following uses of products, including by-products, by the same person that extracted or manufactured them:

~~((a))~~ **(i)** Any use as a consumer; and

~~((b))~~ **(ii)** The manufacturing of articles, substances or commodities." (RCW 82.04.130.)

(b) The term "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes.

(2) Examples of commercial or industrial use. The following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer of that lumber to build a shed for its own use.

(b) The use of a motor truck by the manufacturer of that truck as a service truck for itself.

(c) The use by a boat manufacturer of patterns, jigs and dies which it has manufactured.

(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel which it has extracted.

(3) Business and occupation tax. Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to tax under the manufacturing or extracting B&O tax classifications, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. (See WAC 458-20-112 for definition and explanation of value of products.)

(4) Use tax. Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to use tax on the value of the articles used, unless a specific exemption is provided. (See WAC 458-20-178 for further explanation of the use tax and definition of value of the article used.)

(5) Exemptions. The following uses of articles produced for commercial or industrial use are expressly exempt of use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of biomass fuel by the same person that extracted or manufactured that biomass fuel when it is used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same biomass fuel.

(b) Property produced for use in manufacturing ferrosilicon which is subsequently used to make magnesium for sale is exempt of use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon. (RCW 82.04.190(1).)

(c) Effective July 1, 2009, hog fuel used to produce electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For the purposes of this exemption, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" has the same meaning as provided in RCW 43.325.010.

(6) Special provisions regarding value of article used. RCW 82.12.010 provides the following special valuation provisions to persons manufacturing products for commercial or industrial use:

(a) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the United States Department of

Defense, the value of the articles used is determined according to the value of the ingredients of those articles.

(b) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by:

- The retail selling price of such new or improved product when first offered for sale; or
- The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

WSR 18-05-012
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed February 8, 2018, 9:24 a.m., effective March 11, 2018]

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

Purpose: The department is amending WAC 458-07-035 to delete language relating to advance tax deposits under RCW 58.08.040.

Citation of Rules Affected by this Order: Amending WAC 458-07-035 Listing of property—Subdivisions and segregation of interests.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Adopted under notice filed as WSR 17-23-106 on November 16, 2017.

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

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

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

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

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

Date Adopted: February 8, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-059, filed 7/30/08, effective 8/30/08)

WAC 458-07-035 Listing of property—Subdivisions and segregation of interests. (1) **Introduction.** This rule explains when the assessor must begin the listing and valuation of property in the county. It also provides information relating to the listing and valuation of subdivisions of real property. Finally, this rule explains when a person will be

allowed to pay property taxes on their partial interest in a parcel of real property.

(2) **Listing of property.** The assessor must begin the listing and valuation of all property in the county, except new construction and mobile homes not previously assessed in this state, not later than December 1st of each year, and complete the listing and valuation not later than May 31st of the succeeding year. The listing and valuation of new construction and mobile homes not previously assessed in this state must be completed by August 31st of each year.

(3) **Valuation of subdivisions.** For purposes of this subsection, "subdivision" means a division of land into two or more lots. The assessor must list and value all subdivisions of real property at one hundred percent of true and fair value as follows: ~~((a) If an advance tax deposit was paid in accordance with RCW 58.08.040,))~~ Each lot of a subdivision must be valued by October 30th of the year following the recording of the plat, replat, or altered plat. The value established will be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year.~~(and~~

~~(b) If no advance tax deposit was paid, each lot of a subdivision must be valued by the end of the calendar year following the recording of the plat, map, subdivision, or replat. The value established must be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year.))~~

(4) **Petition for payment of taxes on partial interest.** Any person desiring to pay taxes on only their interest in a parcel of real property, whether their interest is a divided interest or an undivided interest, may do so by applying to the assessor of the county where the property is located. The assessor must determine the value of the applicant's interest and certify that value to the county treasurer who will accept payment of taxes for the applicant's interest in the property. No segregation of the property can be made unless all current year and delinquent taxes and assessments on the entire parcel have been paid in full, except for the following situations, in which all current year and delinquent taxes and assessments on the entire parcel need not first be paid in full:

- (a) When property is being acquired for public use; and
- (b) When a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise.

WSR 18-05-013
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed February 8, 2018, 9:52 a.m., effective March 11, 2018]

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

Purpose: The department is amending WAC 458-19-045 to add language reflecting that the redemption payments on bonds which cannot exceed nine years, may not exceed twenty-five years for taxes levied for collection in 2018 and thereafter in Thurston County.

Citation of Rules Affected by this Order: Amending WAC 458-19-045.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.48.080, 84.48.200, 84.52.0502, 84.55.060.

Adopted under notice filed as WSR 17-23-107 on November 16, 2017.

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

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

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

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

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

Date Adopted: February 8, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-023, filed 6/23/14, effective 7/24/14)

WAC 458-19-045 Levy limit—Removal of limit (lid lift). (1) **Introduction.** The levy limit may be exceeded when authorized by a majority of the voters voting on a proposition to "lift the lid" of the levy limit in accordance with RCW 84.55.050. This "lid lift" is intended to allow the levy limit to be exceeded for the levy made immediately following the vote on the proposition. The purpose of the lid lift is to allow additional property taxes to be collected at a time when the levy limit in chapter 84.55 RCW is the effective legal constraint to the collection of additional property taxes. Lid lifts may result in increasing the limit factor for one year or up to six consecutive years. The result of the limit factor increase can temporarily or permanently impact subsequent levy limit calculations. The requirements for the text of a ballot title and measure differ depending on whether the levy limit will be exceeded for a single year or multiple years, up to six consecutive years. This rule explains the procedures for implementing a lid lift ballot measure when a taxing district wants to ask its voters for the authority to exceed the levy limit.

(2) **Election for approval of lid lift proposition—when held.** The election to approve a lid lift proposition must be held within the taxing district and may be held at the time of a general election, or at a special election called by the governing body of the taxing district for that purpose. The election must be held not more than twelve months prior to the date the proposed levy is to be made. For purposes of this rule, a levy is "made" when the taxing district's budget is certified. The ballot title and measure proposing the lid lift are prepared by the county prosecutor or city attorney, as applicable, in accordance with RCW 29A.36.071. RCW 29A.36.-071 requires a ballot title to include a concise description of the measure, not to exceed seventy-five words. A simple majority vote is required for approval of a lid lift.

(3) **Single year lid lift.** A "single year lid lift" allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1986 for one year. The text of a ballot title and measure for a single year lid lift must contain the following:

(a) The dollar rate of the proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district;

(b) Any of the following limitations that are applicable:

(i) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years, except for taxes levied for collection in 2018 and thereafter in Thurston County, the period for which the increased levies are made may not exceed twenty-five years; and/or

(ii) The purpose or purposes of the increased levy; and

(iii) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base.

(4) **Multiple year lid lift.** A "multiple year lid lift" allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1986 for up to six consecutive years.

(a) The text of a ballot title and measure for a multiple year lid lift must contain the following:

(i) The dollar rate of the first year's proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district;

(ii) The limit factor, or specific index used to determine the limit factor (such as the consumer price index), which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years;

(iii) Any of the following limitations that are applicable:

(A) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years, except for taxes levied for collection in 2018 and thereafter in Thurston County, the period for which

the increased levies are made may not exceed twenty-five years;

(B) The purpose or purposes of the increased levy; and

(C) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base.

(b) Supplanting of existing funds.

(i) Except as otherwise provided in (b) of this subsection, funds raised by a levy under this section may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of (b) of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(ii) In counties with a population of less than one million five hundred thousand, funds raised through a lid lift can be used to supplant existing funds beginning with levies submitted and approved by the voters after July 26, 2009.

(iii) In counties with a population of one million five hundred thousand or more, funds raised through a lid lift can be used to supplant existing funds for levies approved by the voters between July 26, 2009, and December 31, 2011.

(5) **Permanent lid lift.** A permanent lid lift occurs when the ballot title and ballot measure expressly state that the levy will be used for the purpose of computing the limitations for subsequent levies as provided in subsection (3)(a)(iii) and (4)(a)(iii)(C) of this section. Approval of a permanent lid lift permanently increases the base used to calculate the levy limit.

(a) The first regular levy of a taxing district made after voter approval of a permanent lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a permanent lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

(6) **Temporary lid lift.** If the ballot title and ballot measure do not expressly indicate that the final levy will be used for the purpose of computing subsequent levies, the levy increase is presumed temporary.

(a) The first regular levy of a taxing district made after voter approval of a temporary lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a temporary lid lift proposition is calculated by

multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

WSR 18-05-016

PERMANENT RULES

RECREATION AND CONSERVATION OFFICE

(Recreation and Conservation Funding Board)

[Filed February 8, 2018, 1:03 p.m., effective March 11, 2018]

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

Purpose: This rule-making order amends chapter 286-06 WAC by:

(1) Adopting the default fee schedule for public records established in RCW 42.56.120;

(2) Adopt the option to waive fees in certain circumstances;

(3) Clarify that public records requests must be for identifiable records; and

(4) Conform to the model rules recommended by the attorney general's office (chapter 44-14 WAC).

Citation of Rules Affected by this Order: Amending chapter 286-06 WAC.

Statutory Authority for Adoption: Chapter 42.56 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 18-01-102 on December 19, 2017.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 31, 2018.

Kaleen Cottingham
Director

AMENDATORY SECTION (Amending WSR 14-22-100, filed 11/4/14, effective 12/5/14)

WAC 286-06-070 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the office, from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

(2) Records index.

(a) An index of public records is available for use by members of the public, including:

- (i) Archived files;
- (ii) Equipment inventory;
- (iii) Office and board policies and procedures, including manuals;
- (iv) Active project files;
- (v) Publications such as brochures and special reports;
- (vi) Policy statements entered after June 30, 1990, as defined in RCW 34.05.010, including grant program manuals; and
- (vii) Rule-making files, as described in RCW 34.05.370, for each rule proposed for adoption in the Washington State Register and adopted.

(b) Before June 30, 1990, the office did not maintain an index of:

- (i) Declaratory orders containing analysis or decisions of substantial importance to the office in carrying out its duties;
 - (ii) Interpretive statements as defined in RCW 34.05.010; and
 - (iii) Policy statements as defined in RCW 34.05.010.
- (c) The following general records and files are available by reference to topic, and generally arranged alphabetically or chronologically within such topic. Due to volume, costs, and complexity; however, no master index is maintained:

- (i) Administrative files;
- (ii) Comprehensive park-recreation plans;
- (iii) Summaries of office staff meetings;
- (iv) Closed or inactive project files;
- (v) General correspondence;
- (vi) Attorney general opinions;
- (vii) Financial records;
- (viii) Summaries and memoranda of office and board meetings;
- (ix) Final adjudicative proceeding orders entered after June 30, 1990, as defined in RCW 34.05.010 that contain an analysis or decision of substantial importance to the office or board in carrying out its duties (each listed alphabetically by subject with a phrase describing the issue or issues and relevant citations of law);

(x) Declaratory orders entered after June 10, 1990, that contain an analysis or decision of substantial importance to the office or board in carrying out its duties (each listed alphabetically by case name with a phrase describing the issue or issues and relevant citations of law); and

(xi) Interpretive statements as defined in RCW 34.05.-010 (each indexed by the office or board program).

(3) Organization of records. The office will maintain its records in a reasonably organized manner. The office will take reasonable actions to protect records from damage and disorganization. A requestor shall not take records from the office without the permission of the public records officer or designee. A variety of records is available on the office's web site at www.rco.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the office should make the request in writing on the office's

request form, or by letter, fax, or email addressed to the public records officer and include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit.

(c) A form is available for use by requestors at the office of the public records officer and online at www.rco.wa.gov.

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

(5) A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

(6) An agency may deny a bot request that is one of multiple requests from the requestor to the agency within a twenty-four hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential functions of the office. For purposes of this subsection, "bot request" means a request for public records that an office reasonably believes was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 14-22-100, filed 11/4/14, effective 12/5/14)

WAC 286-06-085 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the office and is generally commercially available, or in a format that is reasonably translatable from the format in which the office keeps the record. Costs for providing electronic records are governed by WAC 44-14-07003.

(3) **Customized access to databases.** With the consent of the requestor, the office may provide customized access under RCW 43.41A.130 if the record is not reasonably locatable or not reasonably translatable into the format requested. The office may charge a fee consistent with RCW ((43.41A.-430)) 43.105.355 for such customized access.

AMENDATORY SECTION (Amending WSR 14-22-100, filed 11/4/14, effective 12/5/14)

WAC 286-06-090 Costs of providing copies of public records. (1) Costs for paper and electronic copies.

~~((a) There is no fee for inspecting public records in the office or emailing electronic records to a requestor, unless another cost applies such as a scanning fee.~~

~~(b) The office will charge an amount necessary to reimburse its costs for providing paper and electronic copies of records, including costs for electronic copies on a CD-ROM and scanning paper or other nonelectronic records.~~

~~(c) The fee amounts shall be reviewed from time to time by the office, and shall represent the costs of providing copies of public records and for use of the office's copy equipment, including staff time spent copying records, preparing records for copying, and restoring files. This charge is the amount necessary to reimburse the office for actual costs for copying. The charge for special copy work of nonstandard public records shall reflect the total cost, including the staff time necessary to safeguard the integrity of these records.~~

~~(d) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.~~

~~(e) The office will not charge sales tax when it makes copies of public records unless it uses an outside vendor to make the copies.~~

~~(2) **Costs of mailing.** The office may also charge actual costs of mailing, including the cost of the shipping container.~~

~~(3) **Payment.** Payment may be made by cash, check, or money order to the office.) The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW.~~

~~(2) Pursuant to RCW 42.56.120 (2)(b), as amended by section 3, chapter 304, Laws of 2017, the office will not be calculating actual costs for copying records because to do so would be unduly burdensome for the following reasons:~~

~~(a) The office does not have the resources to conduct a study to determine all its actual copying costs;~~

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

~~(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records.~~

~~(3) The office will charge for copies of records consistent with the fee schedule established in RCW 42.56.120(2).~~

~~(a) No fee shall be charged for the inspection of public records or locating public documents and making them available for copying, unless another cost applies such as a copy fee;~~

~~(b) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;~~

~~(c) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;~~

~~(d) Five cents per each four electronic files or attachments uploaded to email, cloud-based data storage service, or other means of electronic delivery;~~

~~(e) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically;~~

~~(f) The cost of any digital storage media or device provided by the office, the cost of any envelope or container used to mail the copies to the requestor, and the cost of any postage or delivery charge;~~

~~(g) The office will not charge sales tax when it makes copies of public records unless it uses an outside vendor to make the copies;~~

~~(h) A requestor may ask the office to provide, and if requested the office shall provide, an estimated summary of the applicable charges before any copies or scans are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges;~~

~~(i) The office shall not impose copying charges under this section for access to or downloading of records that the agency routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means;~~

~~(j) The office shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations;~~

~~(k) The charges for copying methods used by the office are summarized in the fee schedule available on the office's web site at www.rco.wa.gov.~~

~~(4) Fee waivers are an exception and are available for some small requests under the following conditions:~~

~~It is within the discretion of the public records officer to waive copying fees when: (a) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or (b) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.~~

~~(5) The public records officer may require advanced payment. An advance deposit of twenty-five percent of the estimated fees may be required when the fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.~~

~~(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requestor of when payment is due.~~

~~(7) Payment should be made by check or money order to the recreation and conservation office. The office will not accept cash payment.~~

~~(8) The office will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.~~

WSR 18-05-021
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Services and Enterprise Support Administration)

[Filed February 9, 2018, 9:18 a.m., effective March 12, 2018]

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

Purpose: The department is amending chapter 388-01 WAC in order to comply with new statutes and add rule language to clarify, update, and ensure clear policies for responding to public records requests under chapter 42.56 RCW. These changes include repeal of WAC 388-01-040 and creation of a new definition section, WAC 388-01-005.

Citation of Rules Affected by this Order: New WAC 388-01-005; repealing WAC 388-01-040; and amending WAC 388-01-010, 388-01-015, 388-01-020, 388-01-030, 388-01-050, 388-01-060, 388-01-070, 388-01-080, 388-01-090, 388-01-100, 388-01-110, 388-01-120, 388-01-130, 388-01-140, 388-01-150, 388-01-160, 388-01-170, 388-01-180, 388-01-190, and 388-01-200.

Statutory Authority for Adoption: RCW 42.56.040.

Adopted under notice filed as WSR 18-01-100 on December 19, 2017.

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 20, Repealed 1.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 20, Repealed 1.

Date Adopted: February 9, 2018.

Katherine I. Vasquez
Rules Coordinator

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 18-06 issue of the Register.

WSR 18-05-026
PERMANENT RULES
GAMBLING COMMISSION

[Filed February 9, 2018, 11:21 a.m., effective May 1, 2018]

Effective Date of Rule: May 1, 2018.

Purpose: This is the first of five packages to make changes to the commission's licensing fee structure. In this first package, new rules were added and rule changes were recommended in the following chapters:

- Chapter 230-05 WAC, Fees.
- Chapter 230-03 WAC, Permitting and licensing rules.

The purpose of these new rules and rule changes are to simplify our current fee structure that was created over forty years ago. Prior to this permanent filing the gambling commission had approximately one hundred ninety-four different fees for commercial and nonprofit organizations and individuals.

The commission has included a new fee schedule that consists of WAC 230-05-160 and 230-05-165.

A new rule was added for calculating quarterly license fees and is explained in WAC 230-05-122.

Penalties for late filing of quarterly license reports or late payment of quarterly license fees was also added under WAC 230-05-132.

New definitions were created to explain the new way of calculating fees:

- Defining "base license fee" (WAC 230-05-104).
- Defining "maximum annual license fee" (WAC 230-05-106).
- Defining "quarterly license fees" (WAC 230-05-108).
- Defining "gross gambling receipts rate" (WAC 230-05-110).

Most of the key rules in chapter 230-03 WAC, Permitting and licensing rules, in this first package were made because the current fee schedule includes descriptions of what a license authorizes, rather than simply stating the fee for the license.

Citation of Rules Affected by this Order: New WAC 230-05-016, 230-05-017, 230-05-018, 230-05-101, 230-05-104, 230-05-106, 230-05-110, 230-05-112, 230-05-114, 230-05-116, 230-05-120, 230-05-122, 230-05-124, 230-05-126, 230-05-128, 230-05-132, 230-05-134, 230-05-136, 230-05-138, 230-05-140, 230-05-142, 230-05-160, 230-05-165, 230-03-161, 230-03-162, 230-03-163, 230-03-164, 230-03-177, 230-03-178, 230-03-179 and 230-03-192; repealing WAC 230-05-005; and amending WAC 230-03-015, 230-03-035, 230-03-060, 230-03-185, 230-03-190, 230-03-235, 230-03-265, 230-03-285, and 230-03-330.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 17-23-195 on November 22, 2017.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 31, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 31, Amended 9, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 9, 2018.

Brian J. Considine
Legal and Legislative Manager

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-015 Permits to conduct bingo at agricultural fairs. (1) You must apply to us if you wish to operate bingo games at agricultural fairs licensed to conduct bingo. You may apply for either:

(a) An annual permit to conduct bingo games at different agricultural fairs; or

(b) A special property bingo permit to conduct bingo games at a single agricultural fair.

(2) Each agricultural fair is fully responsible for the operation of bingo conducted under its license.

(3) A commercial or charitable or nonprofit organization may apply for a special property bingo permit.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-035 Applying for a license. (1) You must fully complete the license application form we provide in order to be considered for a license. You must return it, along with the appropriate fees, to our headquarters office.

(2) If your application is incomplete, you must provide us with the required items within thirty days of notification or we may administratively close the application.

(3) Applicants for a new organization license or permit will submit the base license fee for each authorized activity they are applying for with their application.

(4) Applicants for a new individual license will submit the new application fee they are applying for with their application.

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

WAC 230-03-060 Fingerprinting. (1) The following persons must submit fingerprints and undergo a national criminal history background check:

(a) Substantial interest holders of commercial businesses and charitable or nonprofit organizations who live or have lived out of the state in the last ten years; and

(b) Card room employees, commercial and nonprofit gambling managers, and manufacturer, distributor, service supplier, call centers for enhanced raffles, and linked bingo prize provider representatives; and

(c) Any other substantial interest holder when we have information they may not be qualified for licensure or to participate in a gambling activity(~~(=and)~~).

~~(2) ((Applicants or licensees for the following activities)) Recreational gaming activity and agricultural fair permit holders do not need to submit fingerprints((=Recreational gaming activities, agricultural fair permits, and Class A commercial amusement games)).~~

AMENDATORY SECTION (Amending WSR 16-19-015, filed 9/8/16, effective 10/9/16)

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))~~ an 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 16-19-015, filed 9/8/16, effective 10/9/16)

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 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))~~ an amusement game licensee.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-235 Applying for charitable or nonprofit gambling manager license. You must apply for a charitable or nonprofit gambling manager license if you are an employee or member of a charitable or nonprofit organization who:

(1) Will have control to a material degree over a ~~((Class D and above))~~ bingo ~~((license))~~ or punch board and pull-tab

licensee with gross gambling receipts over one hundred fifty thousand dollars in their previous licensing year; or

(2) ~~((Will have control to a material degree over a Class C and above punch boards and pull-tabs license; or~~

~~(3)) Will be the supervisor of gambling managers who manage ((a Class D and above bingo license or Class C and above); A bingo or punch board((s)) and pull-tab((s) license))~~
licensee with gross gambling receipts over one hundred fifty thousand dollars in their previous license year; or

~~((4)) (3) Will be assigned the highest level of authority by the officers or governing board of directors to manage the day-to-day affairs of the organization and is responsible for safeguarding assets purchased with gambling funds and/or managing the disbursement of gambling funds when the organization:~~

~~(a) Is licensed to receive more than three hundred thousand dollars in gross gambling receipts; or~~

~~(b) Has established a trust and/or endowment fund to which gambling receipts in excess of one hundred thousand dollars have been contributed; or~~

~~((5)) (4) Will be the supervisor of the operation of progressive jackpot pull-tab games.~~

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-265 Applying for a card room employee license. You must apply for a card room employee license;

(1) If you will be involved in the operation of a((:

~~(1) Class E card room; or~~

~~(2) Class F card room; or~~

~~(3) House-banked card room; and~~

~~(4)) nonhouse-banked card room, Class F endorsed non-house-banked card room, or house-banked card room; and~~

(2) You perform any of the following functions:

(a) Collecting fees; or

(b) Dealing; or

(c) Supervising any card game or other card room employee, such as acting as a pit boss, floor person, or section supervisor; or

(d) Selling or redeeming chips; or

(e) Performing cashier or cage duties such as counting and handling chips or cash, completing credit slips, fill slips, or inventory slips, or accounting for other card room receipts in the cage; or

(f) Observing dealers and card games to detect cheating or control functions; or

(g) Controlling card room funds including keys to secure locations; or

(h) Taking part in the operation of a card game.

(3) A Class B card room employee license is required to work at a house-banked card room and Class F endorsed non-house-banked card room.

(4) A Class A card room employee license is required to work at a nonhouse-banked card room.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-285 Class III gaming employee working as card room employee. A certified Class III gaming employee must submit an ~~((add/transfer))~~ application and pay a fee before beginning work for a public card room.

AMENDATORY SECTION (Amending WSR 09-24-012, filed 11/20/09, effective 12/21/09)

WAC 230-03-330 Representing one or more licensed businesses. (1) If you are a licensed distributor representative, gambling service supplier representative, or a linked bingo prize provider representative or applying for one of these representative licenses, you must represent only one licensed distributor, gambling service supplier, or linked bingo prize provider at a time.

(2) If you are a licensed manufacturer representative, you may represent more than one licensed manufacturer.

(3) If the owner you represent owns more than one licensed business, you may represent the owner in all those licensed businesses, including licensed manufacturers~~((;~~ ~~without applying for another representative license)).~~

(4) You must submit an application and pay a fee before beginning work at a new or additional employer.

NEW SECTION

WAC 230-03-161 Applying for a combination license. (1) Charitable or nonprofit organizations may apply for a combination license to operate one or more of the following gambling activities:

(a) Authorized nonhouse-banked card games without collection of a fee to play; and

(b) Raffles with gross gambling receipts up to two thousand dollars during the license year; and

(c) Bingo with gross gambling receipts up to twenty-five thousand dollars during the license year; and

(d) Amusement games, owned and operated by the organization, with gross gambling receipts up to seven thousand five hundred dollars during the license year.

(2) You must apply for a separate license if any of the gambling activities in subsection (1)(b) through (d) of this section you operate will exceed the gross gambling receipt limits specified during your license year.

NEW SECTION

WAC 230-03-162 Applying for a fund-raising event license. (1) Charitable or nonprofit organizations may offer fund-raising events as authorized by RCW 9.46.0233.

(2) Your organization must apply for a fund-raising event license to operate gambling activities for:

(a) One event not to exceed twenty-four consecutive hours; or

(b) One event not to exceed seventy-two consecutive hours; or

(c) Participation in joint fund-raising events; or

(d) One limited fund-raising event not to exceed six consecutive hours.

NEW SECTION

WAC 230-03-163 Applying for a charitable or non-profit amusement game license. You must apply for a charitable or nonprofit amusement game license if your organization owns, leases or rents approved amusement games and:

- (1) Operates the approved amusement games in your licensed location; or
- (2) Rents or leases approved amusement games for operation in approved locations.

NEW SECTION

WAC 230-03-164 Applying for a commercial amusement game license. You must apply for a commercial amusement game license if your business:

- (1) Owns and operates approved amusement games in your licensed location; or
- (2) Rents or leases approved amusement games for operation in approved locations.

NEW SECTION

WAC 230-03-177 Applying to operate nonhouse-banked card games—Charitable or nonprofit organizations. (1) You must apply for a nonhouse-banked card game license if you are a charitable or nonprofit organization that wants to:

- (a) Offer for play authorized nonhouse-banked card games, whether a fee to play is charged or not; and/or
- (b) Conduct approved tournaments.
- (2) You may not operate more than fifteen card tables.

NEW SECTION

WAC 230-03-178 Applying to operate nonhouse-banked card games and/or a Class F endorsement—Commercial organizations. (1) You must apply for a nonhouse-banked card game license if you are a commercial stimulant business that wants to:

- (a) Offer for play authorized nonhouse-banked card games, whether a fee to play is charged or not; and/or
- (b) Conduct approved tournaments.
- (2) You must apply for a Class F endorsement to use:
 - (a) Authorized alternative fee collections; and/or
 - (b) Player-supported jackpots.
- (3) You may not operate more than fifteen card tables.

NEW SECTION

WAC 230-03-179 Applying to operate house-banked card games. (1) You must apply for a house-banked card game license if you want to offer for play authorized house-banked card games.

- (2) With this license, you may also:
 - (a) Offer for play nonhouse-banked card games; and/or
 - (b) Conduct approved tournaments; and/or
 - (c) Offer player-supported jackpots; and/or
 - (d) Use alternative fee collection.
- (3) You may not operate more than fifteen card tables.

NEW SECTION

WAC 230-03-192 Applying for a fund-raising equipment distributor license. (1) You must apply for a fund-raising equipment distributor license if you are a commercial or charitable or nonprofit organization and want to:

- (a) Rent or lease gambling equipment to:
 - (i) Fund-raising event license holder; or
 - (ii) A qualified organization, business or association for recreational gaming activities; or
- (b) Organize and conduct recreational gaming activities.
- (2) Fund-raising equipment distributors cannot make their own gambling equipment.

NEW SECTION

WAC 230-05-016 Exceeding license class. (1) Licensees must not exceed the gross gambling receipts limits for their license class during any annual license period.

(2) Licensees must apply a projection of year-to-date receipts to the remaining period of their license and, if it indicates that it is reasonably likely that they may exceed their license, they must immediately:

- (a) Apply for a license that authorizes the anticipated level of gross gambling receipts; and
- (b) Submit the fee required for the new license, minus the amount originally submitted for the previous license, plus a change of classification fee.

(3) If we issue a license upgrade, it is valid only for the remainder of the original term of the license.

(4) Licensees may exceed license class limits once, by the amount shown in the fees table, without having to upgrade or pay the penalties as long as they upgrade to the higher license class the next time they renew their license.

NEW SECTION

WAC 230-05-017 Failing to apply for license class upgrade. (1) If licensees fail to apply for a license class upgrade and exceed the license class limit within a present or previous license year, we assess an additional fee. We charge an additional fee of up to fifty percent of the difference between the fee for the present license class and the new license class, or one thousand dollars, whichever is less.

(2) Licensees must pay any required license class upgrade fee, plus any additional fee required by subsection (1) of this section, within thirty days of our notification.

(3) Failure to pay the fees may result in an immediate summary suspension of all licenses.

NEW SECTION

WAC 230-05-018 Partial refund of license fees if gambling receipts limit not met. (1) Licensees may apply for a partial refund of their license fee when their annual gross gambling receipts are less than the minimum for the class of license we issued to them.

(2) Licensees may receive a refund for the difference between the fees actually paid and the fees that would normally apply to the level of gross gambling receipts actually received during the period less our processing costs.

(3) Licensees may make their request for refund after the end of any annual license period and before the end of the next annual license period.

NEW SECTION

WAC 230-05-101 Implementation of new permit and license fees. WAC 230-05-102 through 230-05-175 apply to all:

- (1) Permits or license years ending on or after June 30, 2018;
- (2) Permits or licenses issued on or after July 1, 2018; and
- (3) Other fees assessed in this chapter on or after July 1, 2018.

NEW SECTION

WAC 230-05-104 Defining "base license fee." (1) "Base license fee" is the fee you pay us when you:

- (a) Apply for an organization license or permit; or
 - (b) Renew your organization's license or annual permit.
- (2) "Base license fee" is the minimum annual license fee a licensed organization or permit holder will pay for operating an authorized activity.

NEW SECTION

WAC 230-05-106 Defining "maximum annual license fee." "Maximum annual license fee" is the most you will pay to operate an authorized activity for the license year, which includes the:

- (1) Base license fee; and
- (2) Quarterly license fees.

NEW SECTION

WAC 230-05-108 Defining "quarterly license fees." "Quarterly license fees" means the licensee's gross gambling receipts from the previous quarter multiplied by the gross gambling receipts rate.

NEW SECTION

WAC 230-05-110 Defining "gross gambling receipts rate." "Gross gambling receipts rate" is the rate listed in this chapter that licensees use to calculate their quarterly license fees.

NEW SECTION

WAC 230-05-112 Defining "gross gambling receipts." (1) "Gross gambling receipts" means the amount due to any operator of an authorized activity as described in subsection (5) of this section.

- (2) The amounts must be stated in U.S. currency.
- (3) The value must be before any deductions for prizes or other expenses, such as over/short.
- (4) "Gross gambling receipts" does not include fees from players to enter player-supported jackpots. However, any portion of wagers deducted for any purpose other than

increasing current prizes or repayment of amounts used to seed prizes are "gross gambling receipts."

(5) Gross gambling receipts for authorized activities:

Activity:	Gross gambling receipts include amounts due to any operator for:
(a) Punch board and pull-tab	Purchasing chances to play.
(b) Raffles and enhanced raffles	Purchasing chances to enter.
(c) Bingo	Fees or purchase of cards to participate.
(d) Amusement games	Amounts paid to play amusement games.
(e) Card games	<ul style="list-style-type: none"> • "Net win" from house-banked card games; • Tournament entry fees; • Administrative fees from player-supported jackpots; • Fees to participate in nonhouse-banked card games.
(f) Manufacturers and distributors	<p>(i) Fees from sales, rentals, leases, royalties, and service fees collected for the following gambling equipment in Washington to include, but not limited to:</p> <ul style="list-style-type: none"> • Punch boards and pull-tabs; • Devices for dispensing pull-tabs; • Electronic devices for conducting, facilitating or accounting for the results of gambling activities; • Cards; • Dice; • Gambling chips; • Cash exchange terminals; • Progressive meters; • Gambling software; • License agreements; • Card shuffling devices; • Graphical game layouts for table games; • Ace finders or no-peek devices; • Roulette wheels; • Keno equipment; • Tables manufactured exclusively for gambling purposes; • Bet totalizers; • Electronic devices for reading or displaying outcomes of gambling activities; • Tribal lottery systems and components thereof.

Activity:	Gross gambling receipts include amounts due to any operator for:
	(ii) Fees from the service, repair and modification of gambling equipment in Washington to include, but not limited to: <ul style="list-style-type: none"> • Charges for labor and parts for repairing gambling equipment; • Service fees related to gambling operations; • Training or set-up fees; • Maintenance contract fees related to gambling equipment and operations.
(g) Gambling service suppliers	Fees from gambling-related services provided in or to be used in Washington to include, but not limited to: <ul style="list-style-type: none"> • Consulting, advisory or management services related to gambling; • Interest from financing the purchase or lease of gambling equipment, infrastructure or facilities or equipment that supports gambling operations; • Acting as a lending agent, loan services or placement agent; • Assembly of components for gambling equipment to be used under a contract with a licensed manufacturer; • Ongoing financial arrangements for gambling related software with a licensed manufacturer; • Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; • Training individuals to conduct authorized gambling activities; • Performing testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compacts; • Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators; • Ownership of proprietary games or equipment.
(h) Punch board/pull-tab service businesses	Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators.

Activity:	Gross gambling receipts include amounts due to any operator for:
(i) Fund-raising event distributors	Fees from contracts to organize and conduct recreational gaming activities.
(j) Fund-raising events and agricultural fairs	Fees received from the operation of bingo, amusement games, raffles, lotteries, contests of chance, and/or net win from table games operated at a fund-raising event.

NEW SECTION

WAC 230-05-114 Defining "net win." "Net win" means gross wagers received from gambling activities or fund-raising events minus the:

- (1) Amount paid to players for winning wagers; and
- (2) Accrual of prizes for progressive jackpot contests; and
- (3) Repayment of amounts used to seed guaranteed progressive jackpot prizes.

NEW SECTION

WAC 230-05-116 Defining "quarterly license report." "Quarterly license report" means the report:

- (1) Filed by each licensed organization, annual permit holder and fund-raising event licensee thirty days after the end of each quarter; and
- (2) Which includes the licensee's gross gambling receipts from the previous quarter multiplied by the gross gambling receipts rate to calculate the quarterly license fee due to the commission.

NEW SECTION

WAC 230-05-120 Paying annual license fee. (1) All licensed organizations will pay annual license fees in up to five payments. The annual license fee includes:

- (a) A base license fee paid with your:
 - (i) Initial application for a new license or permit; or
 - (ii) License renewal or annual permit application; and
 - (b) Quarterly license fees based on the gross gambling receipts reported on your quarterly license report.
- (2) Licensed organizations starting a new activity will begin paying quarterly license fees on that activity upon completion of the first quarter, whether a partial or full quarter, after your license or annual permit was issued.
- (3) Individual licensees will pay an annual license fee with their initial application or license renewal application.

NEW SECTION

WAC 230-05-122 Calculating quarterly license fees.

- (1) The quarterly license fee is calculated based on the gross gambling receipts from the previous quarter as reported on your quarterly license report.
- (2) Each license year, the quarterly license fees will be offset by the base license fee. (For example, if your base

license fee is sixty-five dollars and your quarterly license fee is forty-five dollars for the first quarter, no additional amount is due for the first quarter. You would offset any future quarterly license fees by the remaining twenty dollars of your base license fee.)

NEW SECTION

WAC 230-05-124 Quarterly license fees and license reports. All licensed organizations must submit quarterly license fees and license reports to us for each licensed gambling activity beginning with the first quarter of their license year. The quarterly license fee is due with the quarterly license report.

The quarterly license reports must be in the format we require and must:

(1)

Cover the period:	Be received by us no later than:
January 1 through March 31	April 30
April 1 through June 30	July 30
July 1 through September 30	October 30
October 1 through December 31	January 30

(2) Be received online at our administrative office or postmarked no later than the dates indicated in the table in subsection (1) of this section; and

(3) Be submitted even if there is no quarterly license fee payable to us; and

(4) Be accurate; and

(5) Be completed by the highest ranking executive officer or a designee. If someone other than the licensee or an employee prepares the report, the preparer must include his or her name and business telephone number on the report; and

(6) Be submitted for any period of time the license was valid, even if there was no gambling activity or the gambling license was not renewed.

NEW SECTION

WAC 230-05-126 Online filing and payments required with waivers available upon request for good cause. (1) All licensees must submit the following online:

- (a) Renewal application and base license fees; and
- (b) Quarterly license fees; and
- (c) Quarterly license reports.

(2) We may waive these requirements if a licensed organization can show good cause. The reasons for good cause include:

(a) You do not have access to the internet using your own computer or similar equipment; or

(b) You do not have a bank account; or

(c) Your bank is unable to send electronic fund transactions; or

(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(3) We may waive these requirements if a licensed individual can show good cause. The reasons for good cause include:

(a) You do not have access to the internet using your own computer or similar equipment; or

(b) You do not have a bank account or credit card; or

(c) Your bank is unable to send electronic fund transactions; or

(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(4) You must request a waiver when applying for a new license or permit.

(5) A waiver will cover all fees and reports required under subsection (1) of this section.

NEW SECTION

WAC 230-05-128 Renew your license in a timely manner. (1) You must renew online, unless you have received a waiver as outlined in this chapter and allow enough time to:

(a) Print the license prior to midnight before the license expires; or

(b) Have us print the license and mail it to you so you receive it before your license expires.

(2) If you have a waiver and are not renewing your license online, you must ensure a properly completed renewal application and all applicable license fees are received at our administrative office in Lacey at least fifteen days before the expiration date on the license.

(3) If you do not submit a properly completed renewal application and all fees and your license expires, you must immediately stop the gambling activity covered by your license.

(4) If your license expires, you must submit an application and you must not operate any gambling activity until a new license is issued.

NEW SECTION

WAC 230-05-132 Late filing of quarterly license reports or late payment of quarterly license fees—Penalties. (1) Licensees who do not file their quarterly license reports and/or pay quarterly license fees within thirty days from the end of each quarter are in violation of this chapter.

(2) Licensees will be afforded one thirty-day late filing and payment period after their quarterly license reports and quarterly license fees are due. However, a twenty-five dollar fee will be charged for each day a licensee fails to file a quarterly license report or pay quarterly license fees during the thirty-day late filing and payment period.

(3) A licensee's failure to file quarterly license reports or pay quarterly license fees during the thirty-day late filing and payment period could result in administrative action against your licenses.

(4) Licensees will be responsible for paying any outstanding license fees including, but not limited to, late fees and any additional costs associated with the collection of these fees before a license suspension is lifted or a new licensing application is approved.

NEW SECTION

WAC 230-05-134 Amending quarterly license reports and changes to quarterly license fees paid. (1) You must amend any previously submitted quarterly license reports immediately upon discovering a discrepancy in reporting your gross gambling receipts or quarterly license fees paid.

(2) Any additional quarterly license fees due as a result of an amended quarterly license report will be due immediately upon filing your amended quarterly license report. You may face administrative action against your license for failing to accurately report. If you overpaid your quarterly license fees, you may receive a refund after we deduct our processing costs.

(3) You must submit amended quarterly license reports and any related payments to us online unless you have a waiver.

NEW SECTION

WAC 230-05-136 Prorating or refunding fees. (1) We may prorate organization license fees when we adjust expiration dates to schedule our workload.

(2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust license expiration dates under this provision, we may prorate the required fees.

(3) We will not prorate or refund fees when:

- (a) You discontinue your gambling activities; or
- (b) You voluntarily surrender your license or permit; or
- (c) We suspend or revoke your license.

(4) We keep a portion of your application or license fees for processing costs when:

- (a) We deny or administratively close your application;

or

- (b) You withdraw your application; or
- (c) You overpaid us; or
- (d) We received duplicate license fees.

NEW SECTION

WAC 230-05-138 Returned payments. (1) If your bank returns your payment to us for any reason, you must:

NEW SECTION

WAC 230-05-160 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees:

(1) Annual licenses:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Amusement games	\$65 plus \$65 per approved location	0.730%	\$1,000
Bingo	\$65	0.460%	\$11,000
Card games - House-banked	\$10,000	1.462%	\$40,000
Card games - Nonhouse-banked	\$65	0.430%	\$1,000

(a) Pay us in full, by certified check, money order, or cash, within five days of notification; and

(b) Reimburse our processing costs which would include, but not be limited to, time spent notifying you and seeking payment.

(2) If you fail to pay within five days of notification:

(a) We will administratively close your application; or

(b) Your license expires and all gambling activity must stop.

(3) If we administratively close your application or your license expires, you must give us a new application with fees paid by certified check, money order, or cash in order to be considered for a license.

NEW SECTION

WAC 230-05-140 Outstanding fees. (1) You must pay all outstanding fees assessed and owed if you:

(a) Stop operating the gambling activity; or

(b) Close your business; or

(c) Surrender your license; or

(d) Do not renew your license; or

(e) Your license is revoked.

(2) If you do not pay, we may take action against other licenses you hold or refer the debt to collections, or both.

(3) Licensees will be responsible for paying any outstanding license fees, including late fees, and any additional licensing or processing costs associated with the collection of these fees before a licensing suspension is lifted or any new licensing application is approved.

NEW SECTION

WAC 230-05-142 Fees for review of gambling equipment, supplies, services, or games. (1) You must submit gambling equipment, supplies, services, or games for our review.

(2) You must pay the application deposit before we perform the review.

(3) You must also reimburse us for any additional costs of the review.

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Combination	\$125	-	-
Fund-raising equipment distributor	\$270	1.430%	\$700
Punch board/pull-tabs	\$650	1.430%	\$10,000
Raffles	\$65	3.380%	\$2,000
Enhanced raffles	\$5,000	0.430%	\$32,000

(2) Event licenses or permits:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Fund-raising event	\$180	3.130%	\$1,000
Recreational gaming activity	\$65	-	-
Special property bingo/change of bingo premises	\$30	-	-

(3) Change fees:

Change of:	Fee
Name	\$100
Location	\$100
Fund-raising event location, date, or time	\$50

Transaction	Fee
Add a new amusement game location	\$65
Duplicate license	\$50
Review, inspection, and/or evaluation of gambling equipment, supplies, services, games, or schemes	Deposit and cost reimbursement

(4) Other fees:

NEW SECTION

WAC 230-05-165 Commercial stimulant organization fees. All commercial stimulant organizations must pay the following fees:

(1) Annual licenses:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Card games - Nonhouse-banked	\$65	1.462%	\$20,000
Card games - House-banked	\$10,000	1.462%	\$40,000
Punch boards/pull-tabs	\$700	1.430%	\$13,000

(2) Change fees:

Change of:	Fee
Name	\$100
Location	\$100
Business classification (same owners)	\$100
Corporate stock/limited liability company shares/units	\$100
License transfers	\$100

(3) Other fees:

Transaction	Fee
Duplicate License	\$50

WSR 18-05-028
PERMANENT RULES
ATTORNEY GENERAL'S OFFICE

[Filed February 9, 2018, 11:30 a.m., effective March 12, 2018]

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

Purpose: The Public Records Act is chapter 42.56 RCW. RCW 42.56.120 as amended effective July 23, 2017 (section 3, chapter 304, Laws of 2017), requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The new rule WAC 44-06-092 makes those findings. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. WAC 44-06-092 also provides for fee waivers. The purpose of the rule is to implement the state legislature's new Public Records Act requirement and provide the necessary findings so that the office of the attorney general may use the amended statutory default fee and waive copy fees under listed circumstances. The additional purpose of the rule is to explain procedures for payment. WAC 44-06-090 is repealed.

Citation of Rules Affected by this Order: New WAC 44-06-092; and repealing WAC 44-06-090.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120 (as amended by chapter 304, Laws of 2017), 43.10.110.

Adopted under notice filed as WSR 17-22-095 on October 30, 2017.

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

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

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

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

Date Adopted: February 9, 2018.

Bob Ferguson
 Attorney General

NEW SECTION

WAC 44-06-092 Copying fees—Payments. (1) The following copy fees and payment procedures apply to requests to the office under chapter 42.56.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons: (i) The office does not have the resources to conduct a study to determine all its actual copying costs; (ii) to conduct such a

study would interfere with other essential agency functions; and (iii) through the 2017 legislative process, the public and requesters have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The office will charge for customized services pursuant to 42.56.-120(3). Under RCW 42.56.130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requester under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at www.atg.wa.gov.

(4) Requesters are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions.

(a) It is within the discretion of the public records officer to waive copying fees when: (i) all of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requester will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requester of when payment is due.

(7) Payment should be made by check or money order to the attorney general's office. The office prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requester fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

REPEALER

WAC 44-06-090 Copying fees

WSR 18-05-029
PERMANENT RULES
GAMBLING COMMISSION

[Filed February 9, 2018, 1:29 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: The purpose of the rule changes in this second package are as follows:

- Deleted references to the term "classes." While the current fee structure is based on a "classes" system, the new proposed system is based primarily on gross gambling receipts. Therefore, approximately twenty rules need to be changed to delete references to "classes."
- Established new due dates for activity reports. All licensees will begin reporting their activity quarterly beginning with the third quarter July 1 through September 30.
- Added the process (brief adjudicative proceeding) staff will use if licensees don't submit their quarterly license reports and/or quarterly license fees.

Citation of Rules Affected by this Order: New WAC 230-06-081, 230-06-082, 230-06-176, 230-13-152, 230-17-151 and 230-17-152; and amending WAC 230-03-085, 230-06-046, 230-06-083, 230-06-100, 230-06-110, 230-06-112, 230-06-124, 230-06-150, 230-06-170, 230-07-090, 230-07-125, 230-07-140, 230-09-056, 230-09-115, 230-09-125, 230-10-045, 230-10-055, 230-10-065, 230-10-070, 230-10-075, 230-10-085, 230-10-090, 230-10-120, 230-10-125, 230-10-275, 230-10-330, 230-10-350, 230-10-385, 230-10-395, 230-10-420, 230-10-425, 230-10-435, 230-10-451, 230-11-095, 230-11-100, 230-13-075, 230-13-155, 230-13-160, 230-14-250, 230-14-280, 230-14-284, 230-15-005, 230-15-080, 230-15-100, 230-15-110, 230-15-120, 230-15-135, 230-15-200, 230-15-205, 230-16-130, 230-16-220, 230-17-150, and 230-17-155.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 17-23-198 on November 22, 2017.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 53, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 6, Amended 53, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 9, 2018.

Brian J. Considine
Legal and Legislative Manager

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit. We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action; or

(5) Has failed to pay a quarterly license fee or submit a quarterly license report; or

(6) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or

~~((6))~~ (7) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or

~~((7))~~ (8) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us; or

~~((8))~~ (9) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

- Prior activities; or
- Criminal record; or
- Reputation; or
- Habits; or
- Associations; or

~~((9))~~ (10) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities.

AMENDATORY SECTION (Amending WSR 10-07-102, filed 3/19/10, effective 7/1/10)

WAC 230-06-046 Additional requirements for licensed business premises of nonhouse-banked, Class ((E-)) F, and house-banked card rooms. (1) The licensed business premises of nonhouse-banked, Class ((E-)) F, and house-banked card rooms may not be adjacent to each other if each licensed business premises:

(a) Shares inside public access between the two licensed business premises; or

(b) Has employee access between the two licensed business premises visible to the public; or

(c) Shares windows or similar structures that allow customers to see into the other licensed business premises.

(2) Subsection (1) of this section does not apply to nonhouse-banked, Class ((E-)) F, and house-banked card room physical locations that have any of the features listed in sub-

section (1) of this section and were licensed on the effective date of this rule.

(3) Adjacent card rooms must post signs at each entrance that is accessible by the public to clearly notify customers of the licensed business premises' identity.

NEW SECTION

WAC 230-06-081 Submitting gambling service supplier contracts for review. Prior to executing financing, consulting, or management contracts, gambling service suppliers must submit these agreements to us for review for compliance with Title 230 WAC and chapter 9.46 RCW.

NEW SECTION

WAC 230-06-082 Manufacturers, distributors, gambling service suppliers, linked bingo prize providers, and call centers for enhanced raffles reporting changes in licensed employees. Manufacturers, distributors, gambling service suppliers, linked bingo prize providers and call centers for enhanced raffles licensees must:

(1) Submit an application and the required fees before allowing licensed employees to begin working.

(2) Notify us in the format we require when a licensed employee no longer works for them. We must receive the notice at our Lacey office within ten days of the licensed employee's last day.

AMENDATORY SECTION (Amending WSR 08-21-087, filed 10/14/08, effective 1/1/09)

WAC 230-06-083 Card game licensees reporting changes in licensed employees. Card game licensees (~~except Class B or Class D~~) must:

(1) Submit an (~~add/transfer~~) application and the required fees before allowing a licensed card room employee to begin working.

(2) Notify us in (~~writing~~) the format we require when a licensed card room employee no longer works for them. We must receive the notice at our Lacey office within ten days of the card room (~~employee terminating employment~~) employee's last day.

AMENDATORY SECTION (Amending WSR 16-19-015, filed 9/8/16, effective 10/9/16)

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 precicensing 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. (~~Class B and above~~) Amusement game licensees can lease or rent group 12 amusement games (~~to Class A~~) for operation at approved 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) locations.

(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.

AMENDATORY SECTION (Amending WSR 16-19-015, filed 9/8/16, effective 10/9/16)

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~~) other 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~~) for operation at other approved amusement game (~~licensees~~) locations; and

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

AMENDATORY SECTION (Amending WSR 15-08-017, filed 3/24/15, effective 7/1/15)

WAC 230-06-124 Online filing (~~and payments~~) required with waivers available upon request for good cause. (1) All licensees must submit (~~the following~~) activity reports online (~~and~~

~~(a) Renewal application and fees, as referenced in Title 230 WAC; and~~

~~(b) Activity reports, as referenced in Title 230 WAC).~~

(2) We may waive these requirements if a licensed organization can show good cause. The reasons for good cause include:

(a) You do not have access to the internet using your own computer or similar equipment; or

(b) You do not have a bank account; or

(c) Your bank is unable to send electronic fund transactions; or

(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

~~(3) ((We may waive these requirements if a licensed individual can show good cause. The reasons for good cause include:~~

~~(a) You do not have access to the internet using your own computer or similar equipment; or~~

~~(b) You do not have a bank account or credit card; or~~

~~(c) Your bank is unable to send electronic fund transactions; or~~

~~(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.~~

~~(4)) You must request a waiver, in writing, no later than sixty days before your activity report due date or license expiration date. ((A waiver will cover subsection (1)(a) and (b) of this section.))~~

~~(4) This section will be in effect until October 31, 2019.~~

AMENDATORY SECTION (Amending WSR 08-20-007, filed 9/18/08, effective 1/1/09)

WAC 230-06-150 Defining "gross gambling receipts." (1) "Gross gambling receipts" for activity reports means the amount due to any operator of a gambling activity for:

(a) Purchasing chances to play a punch board or pull-tab series; and

(b) Purchasing chances to enter a raffle; and

(c) Fees or purchase of cards to participate in bingo games; and

(d) Fees to participate in an amusement game, including rent or lease payments paid to licensees or franchisers for allowing operation of an amusement game on their premises; and

(e) "Net win" from a house-banked card game; and

(f) Tournament entry fees; and

(g) Administrative fees from player-supported jackpots; and

(h) Fees to participate in a nonhouse-banked card game (for example, time, rake, or per hand fee).

(2) The amount must be stated in U.S. currency.

(3) The value must be before any deductions for prizes or other expenses.

(4) "Gross gambling receipts" does not include fees from players to enter player-supported jackpots. However, any portion of wagers deducted for any purpose other than increasing current prizes or repayment of amounts used to seed prizes are "gross gambling receipts."

AMENDATORY SECTION (Amending WSR 08-20-007, filed 9/18/08, effective 1/1/09)

WAC 230-06-170 Defining "net win." "Net win" for activity reports means gross wagers received from gambling activities or fund-raising events minus the:

(1) Amount paid to players for winning wagers; and

(2) Accrual of prizes for progressive jackpot contests; and

(3) Repayment of amounts used to seed guaranteed progressive jackpot prizes.

SURRENDERING SUSPENDED OR REVOKED LICENSES

NEW SECTION

WAC 230-06-176 Surrendering suspended or revoked licenses. If we suspend or revoke your license, you must, on demand, surrender the license and return it to us.

AMENDATORY SECTION (Amending WSR 07-10-032, filed 4/24/07, effective 1/1/08)

WAC 230-07-090 Keeping and depositing all gambling funds separate from other funds. Charitable or non-profit licensees must protect all funds generated from gambling activities and keep these funds separate from their general funds.

(1) Licensees must:

(a) Keep a separate gambling receipts account(s) in a recognized Washington state bank, mutual savings bank, or credit union; and

(b) Deposit only gambling receipts into that account. Licensees may deposit receipts from nongambling activities operated in conjunction with bingo games into the gambling receipts account if the licensee keeps detailed receipting records of the nongambling receipts; and

(c) Deposit all gambling receipts first into the account before spending or transferring them into other accounts, except for prize pay outs; and

(d) Deposit funds received from commercial amusement game operators operating amusement games on their premises in the licensee's gambling receipts account no later than the second banking day after they receive the receipts; and

(e) Make all deposits of net gambling receipts from each activity separately from all other deposits, and keep the validated deposit receipt as a part of their records. Deposit receipts are a part of the applicable daily or monthly records and licensees must make them available for our inspection; and

(f) Deposit all net gambling receipts which they are holding, pending pay out:

(i) From bingo, no later than the second banking day after they receive them. Licensees may withhold bingo receipts from deposits for "jar," "pig," or other special game prizes if the total of all such prize funds does not exceed two hundred dollars, enter the amount withheld each session in the bingo daily record, and record the reconciliation of the special game fund on the bingo daily record. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records; and

(ii) From raffles (~~((Class E and above))~~) and amusement games (~~((Class D and above))~~) with gross gambling receipts over fifty thousand dollars in their previous license year, at least once each week; and

(iii) From punch board and pull-tabs, including cost recovery for merchandise prizes awarded, no later than two banking days after they remove the board or series from play; and

(g) Record the Washington state identification number assigned to the punch board or pull-tab series and the amount of net gambling receipts on the deposit slip/receipt. Licensees may record the number and the receipts on a separate record if they record the bank validation number and maintain the record with the deposit slip/receipt; and

(2) These requirements do not apply to organizations who:

(a) Conduct only one or more of the following activities:

(i) Raffles under the provisions of RCW 9.46.0315;

(ii) Bingo, raffles, or amusement games under the provisions of RCW 9.46.0321;

(iii) ~~((Class A, B, or C bingo game;~~

~~(iv) Class A, B, C, or D raffle; or~~

~~(v) Class A, B, or C amusement game))~~ Bingo, raffle, and amusement game licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year; and

(b) Do not have any other license(s) from us.

AMENDATORY SECTION (Amending WSR 16-22-049, filed 10/28/16, effective 11/28/16)

WAC 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations. (1) Organizations operating without a license under RCW 9.46.0315 or 9.46.0321 and lower volume charitable or nonprofit licensees must keep a set of permanent monthly records of the gambling activities. Lower volume licensees include:

(a) Fund-raising events;

(b) Bingo (~~((Classes A, B, and C)))~~ with gross gambling receipts of one hundred fifty thousand dollars or less in their previous license year;

(c) Raffles (~~((Classes A, B, C, and D)))~~ with gross gambling receipts of fifty thousand dollars or less in their previous license year;

(d) Amusement games (~~((Classes A, B, C, and D)))~~ with gross gambling receipts of fifty thousand dollars or less in their previous license year; and

(e) Nonhouse-banked card games (~~((Classes A, B, and C)))~~.

(2) The monthly records must include, at least:

(a) The gross gambling receipts from each activity;

(b) The gross gambling receipts from group 12 amusement games;

(c) The total amount of cash prizes actually paid out;

(d) The total of the cost to the licensee of all merchandise prizes actually paid out for each activity;

(e) A summary of all expenses related to each of the activities; and

(f) The net income received from the activity, the purpose(s) for which the net income was raised, and the amount paid to each recipient.

(3) Licensees must keep these records for three years from the end of the license year for which the record was created.

(4) Organizations operating under RCW 9.46.0315 or 9.46.0321 must maintain their records for one year.

AMENDATORY SECTION (Amending WSR 08-03-062, filed 1/14/08, effective 2/14/08)

WAC 230-07-140 Minimum accounting records for ~~((Class D and above))~~ bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year and licensees with combined activities over five hundred thousand dollars in their previous license year. ~~((Class D and above))~~ Bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year and licensees (~~(who are authorized for more than))~~ with over five hundred thousand dollars in gross gambling receipts from combined gambling activities (~~(during any fiscal))~~ in their previous license year must keep accounting records necessary to document all receipts, costs, and disbursements, including, at least, those related to gambling activities.

Requirements for accounting records

For these accounting records, licensees must:

(1) Conform to generally accepted accounting principles (GAAP) except as modified by other commission rules; and

(2) Include, at least:

(a) A cash disbursements journal and/or check register;

(b) A cash receipts and/or sales journal;

(c) A list of all assets the licensee paid for;

(d) A listing of all liabilities;

(e) A complete general ledger system; and

(f) A list of all donated items valued at more than two hundred fifty dollars; and

(g) Bank statements, related deposit slips, and canceled checks or facsimiles of canceled checks; and

Donated items

(3) Document donated items. Licensees must:

(a) Use the fair market value at the time of donation;

(b) Add items to the list no later than thirty days after receiving them;

(c) Remove items when they no longer have legal ownership; and

(d) Not remove an item from the list, even if it has become obsolete or completely depreciated, until management has completed and documented appropriate review. A depreciation schedule for all capitalized items is sufficient; and

(e) Add items to the list when they convert items from gambling merchandise prize inventory to licensee use. This list must include, at least:

(i) A description of the item;

(ii) The date purchased, acquired by donation, or converted from the gambling prize pool;

(iii) The cost at the time of purchase or, if donated, the fair market value at the time received; and

(iv) The date and method of disposition of the item; and

Method of accounting

(4) Use the accrual method of accounting; and

(5) The cash, modified cash, or tax basis accounting methods may be used only if that method accurately represents the licensee's financial position, the results of opera-

tions, and the licensee does not have substantial liabilities or expenses, such as depreciation or amortization expenses, which require a current outlay of cash; and

Expenditures for nongambling activities

(6) Sufficiently document all expenditures relating to nongambling activities in order to provide a satisfactory audit trail and to allow us to verify that the funds were used for the licensee's stated purpose(s); and

Expenditures for gambling activities

(7) Sufficiently document all of the licensee's expenditures relating to gambling activities. Canceled checks or facsimiles of canceled checks, and bank statements are not sufficient documentation for expenditures without additional support. Licensees must provide additional support for expenditures, including:

(a) Invoices or other supporting documents from commercial vendors or service agencies with at least:

(i) The name of the person or entity selling the goods or providing the services;

(ii) A complete description of goods or services purchased;

(iii) The amount of each product sold or services provided;

(iv) The price of each unit;

(v) The total dollar amount billed; and

(vi) The date of the transaction.

(b) Documentation, in the form of checks and other written records of disbursements in excess of twenty-five dollars made directly to individuals who do not furnish normal, business type, invoices or statements. The written records must indicate at least:

(i) The name of the person receiving the payment;

(ii) The amount;

(iii) The date; and

(iv) The purpose; and

(8) Document allocated expenditures that relate to more than one function to the various functions. Licensees must document their methods of allocation and make them available for our review; and

Capitalizing assets

(9) Include a capitalization policy based on materiality and expected life of operating assets. To determine a minimum level for capitalizing assets, licensees must:

(a) Capitalize and depreciate, or amortize over the useful life of the asset, any assets of more than two thousand dollars that have a useful life of more than one year; and

(b) Capitalize and depreciate, or amortize over sixty months, beginning with the first month that bingo games are conducted, preoperating start up costs related to bingo games of more than six thousand dollars; and

(c) Amortize, over a period not longer than the life of the lease, any leasehold improvements related to gambling activities that are more than six thousand dollars. Licensees may extend the amortization period to include any lease option periods if the licensee's management states a reasonable expectation that they will use the lease option; and

(d) Charge all unamortized leasehold improvements as an expense of the gambling activities in the year that the lease expires.

AMENDATORY SECTION (Amending WSR 06-22-051, filed 10/27/06, effective 1/1/08)

WAC 230-09-115 Bingo authorized. Licensees must operate bingo solely under their FRE license, not under a separate bingo license. If licensees operate bingo, they must:

(1) Count income from bingo against the maximum net receipts authorized for FREs; and

(2) Comply with all of our rules for ~~((Class A, B, and C))~~ bingo licensees with gross gambling receipts of one hundred fifty thousand dollars or less in their previous license year.

AMENDATORY SECTION (Amending WSR 06-22-051, filed 10/27/06, effective 1/1/08)

WAC 230-09-125 Raffles authorized. (1) Licensees may operate raffles at FREs in one of two ways:

(a) **Solely under their fund-raising event license.** Licensees must conduct all aspects of the raffle during the FRE. Income from this raffle counts toward the FRE limits; or

(b) **Under a separate raffle license.** Licensees must sell all tickets for the raffle and deposit all tickets in the drawing receptacle before the FRE and hold the raffle drawing at the FRE. ~~((Income from this raffle counts toward the limits of the licensee's raffle class.))~~

(2) For raffles conducted under an FRE license, licensees must:

(a) Not sell single FRE raffle tickets for more than twenty-five dollars per ticket; and

(b) Not require a person to buy more than one ticket; and

(c) Use consecutively numbered tickets; and

(d) Ensure that each ticket has a separate and equal chance to win; and

(e) Randomly draw the winning ticket; and

(f) Operate and account for raffles as independent gambling stations at the FRE; and

(g) Maintain records to verify gross sales of tickets; and

(h) Report all FRE raffle income, prizes awarded, and other expenses and these amounts count toward the maximum net receipts authorized for FREs.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-045 Disposable bingo card inventory control. Bingo licensees must control and account for all disposable bingo cards they purchase or otherwise obtain.

(1) All licensees must keep:

(a) All purchase invoices, or photocopies of the invoices, for received disposable bingo cards on the bingo premises; and

(b) All manufacturer packing records as part of the inventory control record.

(2) ~~((Class D and above))~~ Bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year must prepare an inventory control

record in the format we require immediately after purchase of disposable bingo cards or before the next bingo session. We may approve alternative formats, such as electronically generated forms, if the licensee requests it in writing.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-055 Bingo cards required for (~~Class F and above bingo games~~) licensees with gross gambling receipts over six hundred fifty thousand dollars in their previous license year. (~~Class F and above~~) Bingo licensees with gross gambling receipts over six hundred fifty thousand dollars in their previous license year must use disposable bingo cards, electronically generated bingo cards, player selection bingo cards, or three number speed bingo cards.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-065 Bingo ball mixer required (~~for Class D and above bingo games~~). (~~Class D and above~~) Bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year must use a machine that mixes balls and selects balls using air flow (a blower). The blower must:

- (1) Allow players full view of the mixing action of the balls; and
- (2) Not allow changes to the random placement of the balls in the exit tube of the blower except when it is shut off.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-070 Bingo flashboard (~~requirements for Class D and above bingo games~~) required. (1) (~~Class D and above~~) Bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year must use flashboards to display numbers. The flashboards must be visible to all players and clearly indicate all numbers that have been called; and

- (2) If a flashboard malfunctions, licensees must repair it before using it in any other bingo occasion.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-075 Licensed bingo manager required. A licensed bingo manager must be on the premises and supervising bingo operation during all hours bingo games are conducted, except bingo games conducted:

- (1) Under RCW 9.46.0321; or
- (2) At a qualified agricultural fair; or
- (3) (~~Under a Class A, B, or C bingo license~~) By licensees with gross gambling receipts of one hundred fifty thousand dollars or less in their previous license year; or
- (4) At a special bingo property we authorize.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-085 Members or employees only to work bingo. (1) Bingo licensees must not allow anyone except full and regular members or employees of the organization to take part in managing or operating bingo games.

(2) Licensees may allow:

(a) Persons other than the primary bingo manager to participate in bingo games for another bingo licensee. We do not consider a licensed assistant gambling manager to be a manager for this section; or

(b) Primary managers to manage or operate bingo for more than one (~~Class A, B, or C~~) licensee with gross gambling receipts of one hundred fifty thousand dollars or less in their previous license year as long as the managers do not receive payment for services from more than one licensee; or

(c) A person to manage or take part in operating a shared bingo operation according to WAC 230-10-470.

(3) Qualified agricultural fairs licensed to operate bingo are not required to meet these management or operation restrictions.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-090 Workers not playing in (~~Class D and above~~) bingo games. (1) (~~Class D and above~~) Bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year must not allow persons who participate in operating or managing their bingo games to play in any of their bingo games.

(2) Persons who work without compensation for (~~Class D and above~~) bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year may play bingo, but they must not play during bingo sessions they are operating or managing.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-120 Duplicate bingo cards not sold for (~~Class D or above~~) bingo games. (1) (~~Class D or above~~) Bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year must not sell duplicate cards in bingo games. Licensees using cards from multiple manufacturers may result in duplicate cards because the majority of cards in the "1 to 9000 series" are duplicate, regardless of the manufacturer.

(2) Licensees must:

(a) Inform players of limits on prizes if duplicate cards win because Braille cards are in play; and

(b) Not be held responsible for duplicate cards caused by Braille cards in play.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-125 Duplicate bingo cards pay out and documentation for (~~Class D or above~~) bingo games. (1) If (~~Class D or above~~) bingo licensees with gross receipts

over one hundred fifty thousand dollars in their previous license year inadvertently sell duplicate bingo cards, they must:

(a) Pay all winners with duplicate cards the entire prize amount that would be due if there were no duplicate cards; or

(b) Compute and pay all winners with duplicate cards using the following guidelines:

(i) **If the game provides a bonus for a single winner and all winners have duplicate cards**, then the licensee must pay all winners the bonus; or

(ii) **If the game results in multiple winners and some of the players have duplicate cards**, then the licensee must calculate the split of the prize pool by counting all duplicate card winners as one. All winners will be paid according to the calculated prize split; or

(iii) **If the prize pool contains noncash or merchandise prizes**, then the licensee may use the cost or retail value of the merchandise, whichever is posted in the game schedule, to calculate the amount added to the prize pool to make the split. Manufacturers are not responsible for reimbursement to this noncash or merchandise prize pool; or

(iv) **If the prize is more than one thousand dollars**, then the licensee must increase the total prize pool by no more than fifty percent or five thousand dollars, whichever is less. We authorize this limitation only once within a twelve-month period; and

(2) Licensees may deduct increases to prize pools caused by card manufacturers from prize pay outs when calculating cash flow.

(3) Licensees must document details of circumstances that resulted in duplicate cards being sold and maintain that documentation as a part of the daily bingo record for the session.

(4) Licensees must notify us within forty-eight hours after discovery of a duplicate card sale if:

(a) Manufacturer printing, packaging, or collation errors caused the duplication. Licensees must request reimbursement from the manufacturer responsible for duplicate card errors; or

(b) The licensee did not pay any winning player with a duplicate card the entire prize amount.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-275 Exceptions to other bingo rules for three number speed bingo. The following rules do not apply to three number speed bingo:

(1) Prize disclosure before players pay to play. Licensees must still disclose the per card cost to play and the amount required to wager on a single card; and

(2) Number of balls used to conduct the game; and

(3) Number of spaces required on each bingo card; and

(4) Requirements that (~~(Class F and above)~~) licensees with gross gambling receipts over six hundred fifty thousand dollars in their previous license year use disposable bingo cards; and

(5) Requirements to account for all income at the time it is received; and

(6) Requirements of WAC 230-10-145 about drawing and physically displaying bingo numbers. However, licensees offering three number speed bingo must display the number on a flashboard and use the audio system to announce the number; and

(7) Recordkeeping for prizes awarded.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-10-330 (~~Activity reports for Class A, B, and C~~) Recordkeeping requirements for bingo licensees with gross gambling receipts less than one hundred fifty thousand dollars in their previous license year, agricultural fairs, and other organizations. Licensees must immediately account for all income from bingo games. (~~(Class A, B, and C)~~) Bingo licensees with gross gambling receipts less than one hundred fifty thousand dollars in their previous license year, organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair must follow the recordkeeping requirements in WAC 230-07-125 or any of the receipting methods for bingo income required for Class D or above licensees.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-10-331 Activity reports for Class D and above bingo licensees. Class D and above bingo game licensees must submit activity reports to the commission. The activity reports must be in the format we require and must:

(1) Cover the periods:

(a) January 1 through March 31; and

(b) April 1 through June 30; and

(c) July 1 through September 30; and

(d) October 1 through December 31 of each year; and

(2) Be received at our administrative office or post-marked no later than thirty days following the end of the reporting period. Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and business telephone number on the report; and

(4) Submit a report for any period of time their license was valid, even if they had no activity or did not renew.

AMENDATORY SECTION (Amending WSR 08-03-062, filed 1/14/08, effective 2/14/08)

WAC 230-10-350 Recording bingo winners. Organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair, and (~~(Class A and B)~~) bingo licensees with gross gambling receipts of seventy-five thousand dollars or less in their previous license year do not have to follow this rule if they meet the requirements for lower volume charitable or nonprofit organizations in WAC 230-07-125. All other bingo licensees must report all prize payments for bingo games and

drawings for prizes, good neighbor prizes, and second element of chance prizes at bingo games and record payment on a prize receipt.

(1) Licensees must use prize receipts printed by a commercial printer. The receipts must:

(a) Be two-part, self-duplicating paper that provides for an original and a duplicate copy; and

(b) If the licensee (~~is Class F or above~~) has gross gambling receipts of over six hundred fifty thousand dollars in their previous license year, be imprinted with the name of the licensee and a consecutive ascending number that does not repeat in at least 100,000 occurrences; and

(c) If the licensee (~~is Class E or below~~) has gross gambling receipts of six hundred fifty thousand dollars or less in their previous license year, the receipt is not required to be imprinted with the licensee's name and the consecutive ascending number may repeat in 1,000 occurrences; and

(d) Provide space for the licensee to record the information we require.

Prize receipt

(2) Operators must complete the prize receipt including, at least:

(a) Date; and

(b) Game number; and

(c) Complete name of the winner; and

(d) Complete address of the winner, if the prize is over twenty dollars; and

(e) Dollar amount of the prize or the operator's cost, if noncash prize; and

(f) Full description of all noncash prizes; and

(g) Check number, if any portion of the prize is paid by check; and

(h) Initials of the bingo worker making the payout; and

(i) Initials of the cashier making the payment.

Prize log

(3) Licensees may receipt prizes of twenty dollars or less on a single prize log. Licensees must:

(a) Maintain a separate prize log for each session; and

(b) Record the same information required on prize receipts; and

(c) Retain the prize log as a part of the bingo daily records.

Linked bingo prizes

(4) Except for linked bingo prizes, licensees may omit an address for the winner if:

(a) The licensee pays all prizes greater than \$300 by check or a combination of cash and check; and

(b) Checks are drawn on the licensee's gambling bank account; and

(c) Checks used are of a type that provides a duplicate copy. The copies must be kept as a part of the daily bingo records; and

(d) Checks are made payable only to the winner. Licensees may make checks for prizes won by players under age eighteen payable to the guardian or immediate family member accompanying the player; and

(e) Licensees note the game number and prize receipt number on the check; and

(f) The bank returns all original checks to the licensee. Licensees must have the original checks available for our inspection on demand; and

(g) The licensee does not cash or otherwise redeem prize checks.

(5) Licensees must record the complete name and address of the winner of linked bingo prizes.

(6) Licensees must:

(a) Issue prize receipts consecutively in an ascending order; and

(b) Void and retain with the daily records any prize receipts bearing a lower number than the highest number issued during a session; and

(c) Give the original of each prize receipt to the winner; and

(d) Keep a duplicate copy as a part of their records for not less than three years; and

(e) Account for and document all prize receipts purchased or otherwise obtained on a vendor's invoice; and

(f) Keep the vendor's invoice, or a photocopy of it, on the premises and have it available for our inspection. The purchase invoice must document, at least:

(i) Name of the vendor;

(ii) Name of the purchasing organization;

(iii) Date of purchase;

(iv) Number of receipts purchased; and

(v) The beginning and ending receipt number.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-385 Receipting of bingo income required. Bingo licensees must account for all income from bingo games at the time they receive the income. Licensees must issue each player a receipt for the amount paid to play in each game or set of games at the time of payment. Players must keep this receipt to prove that they have properly purchased the number of cards they are playing.

(1) (~~Class A, B, and C~~) Licensees with gross gambling receipts of one hundred fifty thousand dollars or less in their previous license year, organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair may use the receipting method for bingo income in WAC 230-07-125 or any of the methods for receipting bingo income required for (~~Class D or above~~) licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year; and

(2) (~~Class D and above~~) Licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year must use the receipting method for bingo income required for the bingo games they are offering:

(a) The disposable bingo card receipting method; or

(b) The cash register receipting method; or

(c) The electronically generated receipting method; or

(d) The ticket receipting method; or

(e) The combination receipting method.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-395 Cash register method of receipting for bingo income. Bingo licensees may use a cash register to record bingo income if the cash registers:

- (1) Have separate keys to record each type of sale; and
- (2) Store and compute a total for each type of sale recorded and is capable of providing the total on request; and
- (3) Retain in the memory unit all transactions recorded during a session, regardless of whether or not the cash register power source is interrupted; and
- (4) Record all transactions, customer receipt numbers, and control totals on the internal tape retained in the cash register. The licensee must keep the internal tape, showing these transactions, as part of the daily bingo records; and
- (5) Assign and imprint on the customer receipt and internal tape a minimum four-digit consecutive number for every sales transaction processed. Only cash register service personnel may reset this numbering system and the numbering system must not return to zero at the conclusion of any period of use or power interruption. If licensees receive written approval from us before use, they may use cash registers that do not meet these requirements but have adequate alternative control features; and

(6) ~~((For Class D and above))~~ Licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year, must imprint a minimum three-digit consecutive number on the customer receipt and internal tape to note each time transactions are totaled or when a set of transactions are totaled and closed. If licensees receive written approval from us before use, they may use cash registers that do not meet these requirements but have adequate alternative control features.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-10-420 Ticket method of receipting bingo income. Bingo licensees may use tickets to document receipts of bingo income. Tickets must be:

- (1) Manufactured by a commercial printer and imprinted with:
 - (a) At least four digit numbers in a consecutive series. ~~((Class F and above))~~ Licensees with gross gambling receipts over six hundred fifty thousand dollars in their previous license year must use tickets with numbers that do not repeat in at least 99,999 occurrences; and
 - (b) Each ticket on a roll must represent the same dollar value or amount of money; and
 - (c) ~~((Include))~~ The name of the licensee operating ((Class F and above)) bingo ((game)) with gross gambling receipts over six hundred fifty thousand dollars in their previous license year; and

(2) If used by ~~((Class F or above))~~ licensees with gross gambling receipts over six hundred fifty thousand dollars in their previous license year, purchased from a licensed distributor or manufacturer; and

(3) Issued consecutively from each roll, starting with the lowest numbered ticket; and

(4) Accounted for by the licensee. If purchased from a commercial business or licensed distributor, documentation must be on the sales invoice. This invoice, or a photocopy, shall be maintained on the premises and available for inspection. Document the following information on the sales invoice for each roll of tickets purchased:

- (a) Name of distributor; and
- (b) Name of purchasing licensee; and
- (c) Date of purchase; and
- (d) Number of rolls of tickets purchased; and
- (e) The color, dollar value, total number of tickets, and beginning ticket number for each roll; and
- (5) Recorded in the daily records in the format we require; and
- (6) Retained by the licensee as a part of the bingo daily records for those not issued as receipts and that bears a number falling below the highest numbered ticket issued during that session and not be used to receipt for any type of income; and
- (7) Not be the same color and imprinted with the same ticket number as any other ticket on the premises.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-425 Ticket method of bingo receipting for bingo income restrictions. (1) All bingo licensees may use the ticket method of receipting bingo income for drawings and good neighbor prizes offered at their bingo games.

(2) ~~((Class E and below))~~ Licensees with gross gambling receipts of six hundred fifty thousand dollars or less in their previous license year may use the ticket method for games operated with hard cards and for bonus games.

(3) ~~((Class F and above))~~ Licensees with gross gambling receipts over six hundred fifty thousand dollars in their previous license year may use the ticket method for bonus games as a part of the combination receipting method.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-435 Combination receipting method of receipting bingo income. (1) Bingo licensees may use a receipting method that combines cash register receipting with another approved method of receipting bingo income.

(2) ~~((Class F and above))~~ Licensees with gross gambling receipts over six hundred fifty thousand dollars in their previous license year must use combination receipting for income from sales of:

- (a) Disposable bingo card packets; and
- (b) Disposable bingo card sheets from a set of bingo cards divided into subgroups; and
- (c) Electronically generated bingo cards, if sales transactions and issuing of cards are not completed and documented at the same time; and
- (d) Bonus games.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-10-451 Recordkeeping for linked bingo prize games. (1) ~~((Class A, B, or C))~~ All linked bingo licensees ((participating in linked bingo games)) must maintain all records required for ~~((Class D))~~ bingo licensees with gross gambling receipts over one hundred fifty thousand dollars in their previous license year for all their bingo operations; and

(2) For funds contributed to accrued linked bingo prizes, licensees must modify each bingo game daily record to include, at least:

- (a) The amount of the contribution; and
- (b) The amount of any consolation prize the licensee paid for a linked bingo prize game; and
- (c) The name of the linked bingo prize provider to whom the contribution is made.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

WAC 230-11-095 Recordkeeping requirements for ~~((Class A through D))~~ licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year and unlicensed raffles. ~~((Class A through D licensed raffles and))~~ Licenses with gross gambling receipts of fifty thousand dollars or less in their previous license year and organizations conducting unlicensed raffles under the authority of RCW 9.46.0315 or 9.46.0321 must keep a record by month of the following:

- (1) Gross receipts; and
- (2) Prizes paid; and
- (3) Net income; and
- (4) Documentation of expenses; and
- (5) Documentation of how the proceeds were used.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

WAC 230-11-100 Recordkeeping requirements for ~~((Class E and F))~~ licensees with gross gambling receipts over fifty thousand dollars in their previous license year and raffles using alternative drawing formats. Licensees conducting ~~((Class E or Class F))~~ raffles with gross gambling receipts over fifty thousand dollars in their previous license year or conducting raffles using alternative drawing formats must prepare a detailed record for each raffle they conduct. Licensees must:

- (1) Record all data required in the standard format we provide; and
- (2) Maintain the following:
 - (a) Validated deposit receipts for each deposit of raffle proceeds; and
 - (b) All winning tickets; and
 - (c) Name, address, and telephone number of all winners of a prize with a fair market value of more than fifty dollars; and
 - (d) All ticket stubs for raffles that participants are not required to be present at the drawing; and
 - (e) All unsold tickets for individual raffles for which gross gambling receipts exceed five thousand dollars; and

(f) Invoices and other documentation recording the purchase or receipt of prizes; and

(g) Invoices and other documentation recording the purchase of tickets and other expenses of the raffle; and

(3) Complete all records no later than thirty days following the drawing.

AMENDATORY SECTION (Amending WSR 16-22-049, filed 10/28/16, effective 11/28/16)

WAC 230-13-075 ~~((Assigning and))~~ Reporting ~~((group numbers of))~~ authorized amusement games. ~~((1))~~ Amusement game licensees must determine the authorized group number of each game and prepare a list of all games they plan to operate during each license year. They must submit this list to us with their activity report. The list must contain, at least, the name and group number of each game.

~~((2))~~ Amusement game licensees must notify us within thirty days of putting into play and removing from play a group 12 amusement game. Reporting must be in the format we require.

NEW SECTION

WAC 230-13-152 Applying for an approved location to operate amusement games. (1) Operators must apply, pay a fee, and receive a license for each location they will operate approved amusement games.

(2) Operators must notify us in the format we require within thirty days of removing all amusement games from an approved location.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

WAC 230-13-155 Contracts for commercial amusement games. (1) Operators must ensure that all contracts are written and specific in terms, setting out the term of the contract, amount of rent or consideration, rent due dates, and all expenses each party must pay.

(2) All contracts become part of the operator's license file. If commercial amusement game operators violate any terms of a contract, it may be grounds for suspension or revocation of their license.

(3) ~~((Class B or above licensees))~~ Operators may enter into contracts with business owners of any of the following approved locations to operate amusement games on their premises:

- (a) Amusement parks; or
- (b) Regional shopping centers; or
- (c) Any location that possesses a valid license from the Washington state liquor control board and prohibits minors on their premises; or
- (d) Movie theaters; or
- (e) Bowling alleys; or
- (f) Miniature golf course facilities; or
- (g) Skating facilities; or
- (h) Amusement centers; or
- (i) Department or grocery stores having more than ten thousand square feet of retail and support space, not including the parking areas; or

- (j) Charitable or nonprofit organizations (~~((with a premises licensed for Class A amusement games))~~); or
- (k) Any commercial business that provides food service for on premises consumption as its primary activity.
- (4) Operators must (~~((not))~~ only place amusement games at a location (~~((which does not have a valid license))~~) after a license has been issued under WAC 230-13-152.

AMENDATORY SECTION (Amending WSR 16-08-033, filed 3/30/16, effective 4/30/16)

WAC 230-13-160 Basing rent on a percentage of gross receipts. (~~(Class B or above)~~) Amusement game operators:

(1) May base the rent or consideration (~~((paid to a Class A commercial amusement game location or charitable or nonprofit amusement game location for group 12 amusement games))~~) on a percentage of revenue the activity generates if the method of distribution is specific. This applies to the following locations:

- (a) All commercial businesses; and
- (b) Charitable and nonprofit organizations renting group 12 amusement games.

(2) May not base the rent or consideration paid to a charitable or nonprofit organization on a percentage of revenue the activity generates unless the amount returned to the organization is equal to or exceeds twenty-two percent of the gross gambling receipts.

(3) Operators must pay the organization at least once a month.

(4) If located at regional shopping centers, may use a percentage of receipts to pay rental leases. They are also exempt from the profits restrictions of RCW 9.46.120(2).

AMENDATORY SECTION (Amending WSR 07-17-058, filed 8/10/07, effective 1/1/08)

WAC 230-14-250 Recording carry-over jackpots on a cash basis. (1) Operators must record carry-over jackpots on a cash basis. "Cash basis" means operators do not record carry-over jackpot contributions until the prize is awarded.

(2) However, punch board and pull-tab licensees who also hold a (~~((Class F or above))~~) bingo license with gross gambling receipts over six hundred fifty thousand dollars in their previous license year may record carry-over jackpot contributions on their monthly records if they:

- (a) Record contribution amounts, up to the jackpot maximum, as prizes paid on the monthly records; and
- (b) When the jackpot is awarded, record only amounts not previously accrued as prizes paid; and
- (c) Play no more than five carry-over jackpot series at once; and
- (d) Maintain a proper audit trail and adequate security over the funds if the licensee does not deposit the contributions with the net receipts.

AMENDATORY SECTION (Amending WSR 07-17-058, filed 8/10/07, effective 1/1/08)

WAC 230-14-280 ((Records review of) Unrecorded or inaccurate gross gambling receipts. (~~(To meet the gross~~

~~gambling receipts and license class requirements, punch boards and pull-tab licensees must adjust gross gambling receipts from the operation to comply with commission records review findings.~~

~~Licensees must perform the following calculations:)) For licensees that have not recorded all of their punch board/pull-tabs gross gambling receipts or reported inaccurately, we will use the following calculations to determine their gross gambling receipts:~~

(1) For unrecorded punch boards and pull-tab series

$$\begin{array}{r}
 - \\
 \text{Unadjusted gross gambling receipts} \\
 + \\
 \text{Unrecorded punch boards or pull-tab series} \\
 \text{(((total number of chances multiplied by price)))} \\
 \hline
 \text{Adjusted gross gambling receipts}(**)
 \end{array}$$

To account for any unrecorded punch boards and pull-tab series, licensees add the unrecorded punch board or pull-tab series to the unadjusted gross gambling receipts. To get the total of unrecorded punch boards or pull-tab series, licensees multiply the total number of chances available by the price of a single chance to determine the maximum amount that could be generated from the punch board or pull-tab series.

(**Licensees must apply this figure to the records for the month in which they purchased the punch board or pull-tab series.)

(a) The unadjusted gross gambling receipts is the amount reported for the period.

(b) The unrecorded punch board or pull-tab series is the total number of chances or games played multiplied by the price per game.

(c) Adjusted gross gambling receipts is the amount the licensee must record for the month in which they purchased the punch board or pull-tab series.

(2) For recording errors -

$$\begin{array}{r}
 \text{Unadjusted gross gambling receipts} \\
 +/- \\
 \text{Adjustment factor} \\
 \text{(((amount of sample group divided by recorded amount for the licensee)))} \\
 \hline
 \text{Adjusted gross gambling receipts for the quarter and the three quarters preceding}(***)
 \end{array}$$

To adjust gross gambling receipts for the results of our records review, licensees divide the amount we determined for a randomly selected sample of punch boards or pull-tab series by the recorded amount for them.

(*** Licensees apply this figure to the total recorded gross gambling receipts for the calendar quarter from which we took the sample and to the three quarters immediately before.)

(a) The unadjusted gross gambling receipts is the amount reported for the period.

(b) The adjustment factor is the amount of a randomly selected sample of punch board or pull-tab series divided by the amount the licensee recorded.

(c) We will apply the adjusted gross gambling receipts to the total recorded gross gambling receipts for the calendar quarter from which we took the sample and to the three quarters immediately before.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-14-284 Activity reports for punch board and pull-tab licensees. Punch boards and pull-tab licensees must submit an activity report to the commission. Licensees must complete the report in the format we require and must:

- (1) Prior to July 1, 2018, cover the periods:
 - (a) January 1 through June 30; and
 - (b) July 1 through December 31; and
- (2) Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102; and

(3) Be received at our administrative office or post-marked no later than thirty days following the end of the reporting period; and

~~((3))~~ (4) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the punch board and pull-tab licensee or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

~~((4))~~ (5) Be filed even if they do not renew their license. They must file a report for the period between the

previous report filed and the expiration date of the license; and

~~((5))~~ (6) Unless they are also licensed for Class D or above bingo, charitable and nonprofit licensees must submit a semiannual activity report for punch boards and pull-tabs; and

~~((6))~~ (7) Class D or above bingo licensees with a punch board and pull-tab license must report punch board and pull-tab activity, on the combined quarterly report provided by the commission as explained in WAC 230-10-331.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-005 Requirements for public card games. At any time public card game licensees are conducting card games, they must have:

(1) ~~((Have))~~ The food and/or drink business being commercially stimulated open to the public; and

(2) ~~((For Class E,))~~ A licensed card room employee on duty and in the public card room area if operating the following card games:

(a) Class F ~~((;))~~; or

(b) House-banked ~~((card games, have a licensed card room employee on duty and in the public card room area)); or~~

(c) Commercial nonhouse-banked card games of poker or other nonhouse-banked card games specifically approved by the director or the director's designee and a fee is collected to play.

AMENDATORY SECTION (Amending WSR 16-23-153, filed 11/22/16, effective 12/23/16)

WAC 230-15-080 Authorized fees and authorized methods of collection. Card game licensees must collect only one type of card game fee at a table at any given time. The following are authorized types of fees, the card game licensees who may use those fee types, and the methods of collection:

Authorized types of fees	Licensees authorized to use the fee types	Authorized methods of collection	Maximum amount to collect
(1) Period of time - (a) Licensees must collect the fee at least once per hour at times the licensee chooses, for example, at thirty minute increments; and (b) Licensees must record all fees immediately after collection; or	((Class A, B, C, E, F)) <u>Non-house-banked card games, Class F, and house-banked</u>	Direct collection; or Chip rack - Only allowed if licensed for three or fewer tables; or Drop box.	Not more than ten dollars per hour, per player.
(2) Per hand played - (a) Players must place fees charged on a per-hand basis in a designated area of the table and dealers must collect them before dealing the first round of cards; and	Class F and house-banked	Drop box; or Chip rack - Only allowed if licensed for three or fewer tables.	Not more than one dollar per hand, per player.

Authorized types of fees	Licensees authorized to use the fee types	Authorized methods of collection	Maximum amount to collect
(b) After collecting the fees, dealers must deposit all chips or coins in either the drop box or chip rack; or			
(3) Rake - (a) Dealers must collect fees charged on the amounts wagered during the play of the hand and place the fees in a designated area of the table; and (b) Once dealers accumulate the maximum fee for a hand, they must spread the chips or coins to allow players and the surveillance system to view the amount collected. After spreading the chips or coins, the dealer deposits them in either the drop box or chip rack.	Class F and house-banked	Drop box; or Chip rack - Only allowed if licensed for three or fewer tables.	Not more than ten percent of the total wagers for a hand.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-100 Providing cards and chips in card games. (1) Card game licensees, except for ~~((Class D))~~ non-house-banked card game licensees that do not charge a fee to play, must supply all chips and cards and not allow any other chips or cards to be used on their premises.

(2) Card game licensees must not charge additional fees to players for chips and cards except as allowed under WAC 230-15-110.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-110 Standards for chips. (1) Chips must be of conventional size and design that maximize the integrity of the card games. Chips must be identifiable as belonging to the licensee and must:

- (a) Include the house name or logo; and
- (b) Denote the chip value; and
- (c) Be made by a licensed manufacturer; and
- (d) Be purchased from a licensed manufacturer or distributor.

(2) ~~((Class D))~~ Nonhouse-banked card game licensees that do not charge a fee to play are exempt from subsection (1) of this section.

- (3) Card game licensees must:
 - (a) Safeguard all chips in their possession; and
 - (b) Not allow any other person to buy or sell chips for use in card games on their premises.
- (4) ~~((Class A, B, C, and E))~~ Nonhouse-banked card game licensees ~~((with))~~ that charge a fee to play and have five or

fewer tables may use chips without a house name or logo if the chips are identifiable as belonging to the licensee and they prominently post values of the chips in the card room.

AMENDATORY SECTION (Amending WSR 09-11-087, filed 5/18/09, effective 7/1/09)

WAC 230-15-115 Standards for cards. (1) Card game licensees must:

- (a) Supply cards of conventional size and design to maximize the integrity of the card games; and
- (b) Safeguard all cards; and
- (c) Not allow cards that have been modified or marked in any manner.

(2) For ~~((Class E,))~~ Class F, ~~((and))~~ house-banked ((games)), and nonhouse-banked card game licensees that play poker or other games approved by the director or the director's designee and collect a fee to play, the cards must:

- (a) Be made by a licensed manufacturer; and
- (b) Be purchased from a licensed manufacturer or distributor.
- (3) Cards with the house name or logo must be used for house-banked card games.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-120 Fees for decks of cards. (1) Card game licensees may charge a fee to a player asking for a new deck of cards.

(2) In addition, ~~((Class D))~~ nonhouse-banked card game licensees who do not charge a fee to play may charge a fee for every deck supplied to a table.

(3) The fee must not be greater than the licensee's actual cost for the deck.

(4) At the time licensees introduce new decks, they must collect the fee in cash directly from the player requesting the deck or the players of the game.

AMENDATORY SECTION (Amending WSR 16-23-153, filed 11/22/16, effective 12/23/16)

WAC 230-15-135 Wagering limits for nonhouse-banked card games. Card room licensees must not exceed these wagering limits:

(1) **Poker** -

(a) There must be no more than five betting rounds in any one game; and

(b) There must be no more than four wagers in any betting round, for example, the initial wager plus three raises; and

(c) The maximum amount of a single wager must not exceed forty dollars; however, Class F and house-banked card game licensees may offer a single wager not to exceed three hundred dollars;

(2) **Games based on achieving a specific number of points** - Each point must not exceed five cents in value;

(3) **Ante** - No more than the maximum wager allowed for the first betting round for any game, except for Panguingue (Pan). The ante may, by house rule:

(a) Be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round; and

(b) Be used as part of a player's wager;

(4) **Panguingue (Pan)** - The maximum value of a chip must not exceed ten dollars. An ante must not exceed one chip. We prohibit doubling of conditions. Players going out may collect no more than two additional chips for going out from each participating player.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-200 Reporting card game activity (~~(semiannually)~~). Card game licensees, except for Class D, must submit an activity report for their card games to us.

(1) Licensees must complete the report in the format we require; and

(2) We must receive the completed report, or the report must be postmarked, no later than thirty days after the end of the reporting period; and

(3) The highest ranking executive officer or designee must sign the report. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and phone number on the report; and

(4) Prior to July 1, 2018, licensees must report activities for:

(a) January 1 through June 30; and

(b) July 1 through December 31; and

(5) Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102; and

(6) Licensees must submit a report for any period of time their license was valid. If licensees do not renew, they must

submit a report for the period between the previous (~~(semiannually)~~) report they filed and the date their license expired.

AMENDATORY SECTION (Amending WSR 08-21-087, filed 10/14/08, effective 1/1/09)

WAC 230-15-205 Card tournament licenses. (~~((A, B, E, F, or))~~) Class F, house-banked, and nonhouse-banked card game licensees may conduct a card tournament where a fee or buy-in is charged without getting a card tournament license, but they must only operate those card games approved for their license (~~(class)~~) type.

(~~((2) Class D licensees must obtain a card tournament license to charge a fee for a card tournament.))~~

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-130 Disposable bingo card sales. (1) Manufacturers of disposable bingo cards must sell each set or collation as a single unit.

(2) We allow distributors to open containers for (~~(Class E and below))~~ licensed operators and operators of authorized unlicensed activities:

(a) At an operator's request to change the "on," "up," and "cut." When a modification is made, the distributor must reseal the carton and note all changes on the packing label; or

(b) To provide cards to individuals for recreational activities; or

(c) To provide cards for "promotional contests of chance."

(3) Subsets must have at least one container, except distributors may open the container and sell cards in smaller quantities described in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-220 Activity reports by manufacturers and distributors. Manufacturers and distributors must submit activity reports to us twice a year for sales and services related to gambling activities. The activity reports must be in the format we require and must:

(1) Prior to July 1, 2018, cover the periods:

(a) January 1 through June 30; and

(b) July 1 through December 31; and

(2) Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102; and

(3) Be received at our administrative office or post-marked no later than thirty days following the end of the reporting period; and

(~~((3))~~) (4) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the manufacturer or distributor or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

(~~((4))~~) (5) Be submitted for any period of time their license was valid, even if they had no activity or did not renew.

AMENDATORY SECTION (Amending WSR 07-21-156, filed 10/24/07, effective 1/1/08)

WAC 230-17-150 ~~((Use of))~~ **Brief adjudicative proceedings** ~~((BAPs))~~. ~~((1) Presiding officers must use)~~ The commission adopts the procedure for brief adjudicative proceedings ((BAPs) for) provided in RCW 34.05.482 through 34.05.494. The commission finds brief adjudicative proceedings will be conducted where the matter involves one of the following:

- ~~((a))~~ (1) Stays of summary suspension; and
- ~~((b))~~ (2) Denying or revoking extended operating hours for:
 - ~~((i))~~ (a) Card games; and
 - ~~((ii))~~ (b) Bingo; and
 - ~~((c))~~ (3) Charitable or nonprofit licensee appealing a denial of a request for waiver of significant progress requirements; and
 - ~~((d))~~ (4) Failure to pay required gambling taxes, where that is the only alleged violation in the administrative charges; and
 - ~~((e))~~ (5) Failure to pay a quarterly license fee or submit a quarterly license report; and
 - (6) When the penalty we are requesting is a suspension of seven days or less; and
 - ~~((f))~~ (7) When the parties stipulate to using a ~~((BAP- (2) If we conduct a BAP, we may conduct them telephonically and, therefore, the notice of hearing will not set a place of the hearing. (3) Any party to the BAP may request to appear in person and, in those cases, a place will be set and all parties notified))~~ brief adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 07-21-156, filed 10/24/07, effective 1/1/08)

WAC 230-17-155 **Brief adjudicative proceedings—Discovery limitations** ~~((in brief adjudicative proceedings))~~. (1) In all brief adjudicative proceedings, discovery must be limited to requests for written reports and supporting documents relevant to the charges.

- (2) Interrogatories and depositions are not allowed.

NEW SECTION

WAC 230-17-151 **Brief adjudicative proceedings—Procedure.** (1) The following procedures apply to the commission's brief adjudicative proceedings for matters identified in WAC 230-17-150, unless the matter is converted to a formal adjudicative proceeding as provided in subsection (2) of this section.

- (a) We will set the date and time of the hearing.
- (b) Written notice shall be served upon the licensee at least seven days before the date of the hearing. Service is to be made pursuant to WAC 230-17-035.
- (c) A brief adjudicative proceeding may be conducted telephonically with the concurrence of the presiding officer and all persons involved in the proceeding.
- (d) WAC 230-17-045 controls who can appear in a brief adjudicative proceeding.

(e) The presiding officer must be the director, deputy director, or administrative law judge.

(f) Parties or their representatives may present written documentation or oral testimony at a brief adjudicative proceeding. However, no nonparty witnesses may appear to testify.

(g) The presiding officer may, in her or his discretion, allow oral argument from parties or their representatives during a brief adjudicative proceeding.

(h) The presiding officer will enter an initial order within ten business days of the end of a brief adjudicative proceeding. The initial order shall briefly state the basis and legal authority for the decision.

(i) An initial order will become the final order if no request for review of the initial order is received by us within twenty-one days of service of the initial order.

(2) Any party, including the agency, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that it be converted to a formal adjudicative proceeding.

(a) The objection must be received by the presiding officer at least three days before the scheduled brief adjudicative proceeding.

(b) Upon receiving a timely written objection, the presiding officer shall determine whether the matter should be converted.

(c) A presiding officer may convert any brief adjudicative proceeding to a formal adjudicative proceeding whenever it appears to him or her that a brief adjudicative proceeding is insufficient to determine the issues pending before the commission.

(d) In determining whether to convert a proceeding, the presiding officer may consider the following factors:

- (i) Whether witness testimony will aid the presiding or reviewing officer in resolving contested issues of fact;
- (ii) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;
- (iii) Whether a brief adjudicative proceeding will establish an adequate record for further agency or judicial review;
- (iv) Whether the legal issues involved in the proceeding present questions of legal significance or are being raised for the first time before the commission;
- (v) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and
- (vi) Any other factors that the presiding or reviewing officer deems relevant in reaching a determination.

NEW SECTION

WAC 230-17-152 **Brief adjudicative proceedings—Appeal rights.** (1) Any party to a brief adjudicative proceeding may request review of the initial order by filing a written petition for review to us.

(2) We must receive your petition for review within twenty-one days after service of the initial order.

(3) Your petition for review must contain any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(4) Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed.

(5) The chair of the commission or the commissioners shall be the reviewing officer(s).

(6) The reviewing officer(s) consider your appeal and either uphold, modify or overturn the brief adjudicative proceeding order. The decision of the reviewing officer(s), also called an order, is the final agency decision. The order will be provided to you at the last address you furnished to the commission.

(7) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within ten business days after the petition for review is considered. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

WSR 18-05-032
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed February 10, 2018, 5:09 p.m., effective March 13, 2018]

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

Purpose: To align Title 357 WAC with Initiative 1433, which requires employers to provide paid sick leave to most employees effective January 1, 2018. This initiative modified chapter 49.46 RCW to include paid sick leave provisions.

Citation of Rules Affected by this Order: New WAC 357-31-121; and amending WAC 357-01-072, 357-01-172, 357-01-202, 357-01-227, 357-01-228, 357-31-100, 357-31-120, 357-31-125, and 357-31-130.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 18-02-108 on January 3, 2018.

Changes Other than Editing from Proposed to Adopted Version: Language added to WAC 357-31-121 to clarify that an employee could not accrue more than eight hours of sick leave in a month.

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 9, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, 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: February 10, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 07-17-124, filed 8/20/07, effective 9/20/07)

WAC 357-01-072 Child. A biological, adopted, ~~((or))~~ foster child, ~~((or a))~~ stepchild, ~~((a))~~ legal ward, or a child of a person standing *in loco parentis*, a child of a legal guardian, or a child of a de facto parent, regardless of age or dependency status.

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-01-172 Family members. Individuals considered to be members of the family are parent, ~~((step parent, sister, brother))~~ sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW 26.60.020 or a person with whom the employee has a dating relationship as defined in RCW 26.50.010.

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-202 Minor/dependent child. A biological, adopted, ~~((or))~~ foster child, ~~((a))~~ stepchild, ~~((a))~~ legal ward, a child of a de facto parent, regardless of age or dependency status, or a child of a person standing *in loco parentis*, who is:

- Under eighteen years of age, or
- Eighteen years of age or older and incapable of self-care because of a mental or physical disability.

Persons who are *in loco parentis* are those with day-to-day responsibilities to care for and financially support a child.

AMENDATORY SECTION (Amending WSR 06-19-063, filed 9/19/06, effective 10/20/06)

WAC 357-01-227 Parent. A biological ~~((or))~~, adoptive ~~((parent))~~, de facto, or foster parent, step-parent, or legal guardian of an employee or ~~((an individual))~~ the employee's spouse or registered domestic partner, or a person who stood in loco parentis to an employee when the employee was a child. A person who had day-to-day responsibilities to care for and financially support the employee when ~~((he or she was))~~ they were a child is considered to have stood *in loco parentis* to the employee.

AMENDATORY SECTION (Amending WSR 10-17-061, filed 8/13/10, effective 9/15/10)

WAC 357-01-228 Parent-in-law. A biological ~~((or))~~, adoptive ~~((parent))~~, de facto, or foster parent, step-parent, or

legal guardian of an employee's spouse or an employee's registered domestic partner or ~~((an individual))~~ a person who stood *in loco parentis* to an employee's spouse or to an employee's registered domestic partner when the employee's spouse or the employee's registered domestic partner was a child. A person who had day-to-day responsibilities to care for and financially support the employee's spouse or the employee's registered domestic partner when ~~((he or she was))~~ they were a child is considered to have stood *in loco parentis* to the employee's spouse or to the employee's registered domestic partner.

AMENDATORY SECTION (Amending WSR 14-11-035, filed 5/14/14, effective 6/16/14)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim, or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020;

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave; ~~((and))~~

(4) Allow an employee to use sick leave for qualifying absences under the Family and Medical Leave Act (FMLA) for parental leave for the purpose of baby bonding with his/her newborn, adoptive, or foster child in accordance with WAC 357-31-495. The policy must state the maximum amount of sick leave allowed to be used during the twelve-week FMLA period;

(5) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC; and

(6) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC.

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

WAC 357-31-120 Do overtime exempt employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time overtime exempt general government employees who are in pay status for less than

eighty nonovertime hours in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time overtime exempt higher education employees ~~((who have more than ten working days of))~~ with leave without pay exceeding eighty hours in a month (prorated for part-time) do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

NEW SECTION

WAC 357-31-121 Do overtime eligible employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time overtime eligible general government employees who are in pay status for less than eighty hours in a month, earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

(2) Full-time and part-time overtime eligible higher education employees with leave without pay exceeding eighty hours in a month (prorated for part-time) will accrue a minimum of one hour for every forty hours worked.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-31-125 For general government part-time employees, how is leave accrual prorated? Vacation and sick leave accruals for part-time general government employees will be proportionate to the number of hours in pay status, in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 14-11-035, filed 5/14/14, effective 6/16/14)

WAC 357-31-130 When can an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) ~~((Because of and during))~~ An employee's mental or physical illness, disability, ((or)) injury, or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

~~(c) ((To care for a minor/dependent child with a health condition requiring treatment or supervision.~~

~~(d) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency health condition.)) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.~~

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300, and 357-31-305.

~~(f) ((For personal health care appointments.~~

~~(g) For family members' health care appointments when the presence of the employee is required if arranged in advance with the employing official or designee.~~

~~(h))~~ When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

~~((+))~~ (g) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

~~((+))~~ (h) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

~~((+))~~ (i) For qualifying absences under the Family and Medical Leave Act for parental leave for the purpose of bonding with ~~((his/her))~~ their newborn, adoptive, or foster child in accordance with WAC 357-31-495. The amount of sick leave allowed to be used must be addressed in the employer's leave policy in accordance with WAC 357-31-100.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement.

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255.

WSR 18-05-037

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed February 13, 2018, 9:05 a.m., effective March 16, 2018]

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

Purpose: The department is amending WAC 388-145-1325 What is required to apply for a group care facility license?, 388-145-1805 Are there special requirements for serving milk? and 388-148-1320 When will the department grant me a foster family license?; and creating new WAC 388-148-1321 May I request a provisional expedited foster family license?, to provide licensing instructions regarding fingerprinting group care staff, background checks for household members under the age of sixteen, provisional expedited foster care licenses, and food requirements.

Citation of Rules Affected by this Order: New WAC 388-148-1321; and amending WAC 388-145-1325, 388-145-1805, and 388-148-1320.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, and section 4, chapter 20, Laws of 2017, which will create a new section in chapter 74.15 RCW.

Adopted under notice filed as WSR 18-01-116 on December 19, 2017.

A final cost-benefit analysis is available by contacting Kristina Wright, P.O. Box 45710, Olympia, WA 98504, phone 360-902-8349, fax 360-902-7903, email wrightks@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 1, Amended 3, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 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: February 12, 2018.

Cheryl Strange
Secretary

AMENDATORY SECTION (Amending WSR 16-06-041, filed 2/24/16, effective 3/26/16)

WAC 388-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the division of licensed resources, children's administration.

(2) You must submit ~~((the following))~~ a completed background authorization form for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC~~((:))~~.

~~((a) Completed background authorization form; and))~~ (3) You must ensure that an agency employee who may have unsupervised access to children complete a FBI fingerprint check.

~~((b))~~ (4) You must ensure that agency volunteers or interns that have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check ((if the individual over eighteen years of age has lived out of state during any portion of the previous three years)).

~~((3))~~ (5) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until ((a full and satisfactory)) you are notified by children's administration that a background check ((is)) was completed ((and returned to you, qualifying the individual for)) that qualifies the individual to have unsupervised access. If ((your employee requires FBI fingerprints, they are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540)) you have both a license issued by DLR and a contract with the department you must adhere to the most stringent background check requirement.

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

WAC 388-145-1805 Are there special requirements for serving milk? (1) The milk or milk products you serve must be pasteurized and follow these recommended guidelines:

(a) Children under the age of twelve months must receive formula or breast milk unless written authorization from the child's ~~((physician))~~ licensed health care provider requires a different liquid intake; and

(b) Children between the age of twelve and twenty-four months must receive whole milk unless you have written authorization from a ~~((physician))~~ licensed health care provider not to serve whole milk.

(2) Before serving a child breast milk you must have approval of the child's DSHS worker, ~~((physician))~~ licensed health care provider, parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(3) When you are using bottles to feed infants you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within twenty-four hours. If more than one child is bottle-fed, the child's name and date the bottle is prepared must be on each bottle.

(4) You must hold infants, under the age of six months, for all bottle feedings. Infants who are six months of age or over who are developmentally able may hold their own bottles as long as an adult remains in the room and within sight. You must take bottles from the child when the child finishes

feeding, when the bottle is empty, or when the child falls asleep. You must not prop bottles when feeding infants.

(5) To prevent burns, formula or breast milk must not be warmed in a microwave oven ~~((in the bottle that will be used for feeding the infant)).~~

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

WAC 388-148-1320 When will the department grant me a foster family license? (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

(a) Complete first aid training and age-appropriate adult and/or infant CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and

(b) Complete HIV/AIDS and bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members and anyone else having unsupervised contact with your foster child(ren) must pass the following background check requirements per chapter 388-06A WAC (This includes people living on any part of your property):

(a) Anyone ~~((over the age of))~~ sixteen years old or older must pass a ~~((criminal history))~~ background check((-));

(b) Anyone ~~((over the age of eighteen))~~ younger than sixteen years old must pass ~~((an FBI fingerprint))~~ a background check((-)) if the department determines one is warranted to ensure the safety of a child;

(c) Anyone eighteen years old or older must pass an FBI fingerprint-based background check; and

(d) Anyone ~~((over the age of))~~ eighteen years old or older must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or 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.

(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a state-

ment from a licensed health care provider (MD, DO, ND, PA and ARNP).

(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home. The department may license you to serve children under the age of two even though you or someone in your home is 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 persons in the home must still be vaccinated.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licensor will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

NEW SECTION

WAC 388-148-1321 May I request a provisional expedited foster family license? (1) You may request a provisional expedited foster family license if you meet all of the following requirements:

(a) You have been licensed to provide foster care within the previous five years;

(b) You have not had your foster care license closed due to a denial, revocation, or an agreement to relinquish;

(c) You reside in the same home in which you previously held a foster care license and no additional individuals have moved into your home;

(d) You are applying for an expedited license that will be supervised by the same agency that previously licensed or certified you and the agency agrees to supervise your home; and

(e) You and all household members age sixteen years old and older have passed the required background check for this provisional expedited foster family license.

(2) To initiate a provisional expedited license, you must submit a completed expedited license application and completed background check authorization forms for all household members who are sixteen years old and older to DLR or a licensed child-placing agency.

(3) In order for your full license to be processed you must submit your licensing application packet within fourteen days. Application packets are available from DLR and licensed child-placing agencies.

(4) You will be issued a provisional expedited foster family license if you have submitted the policy agreements and all of the required household members in your home have passed the required background check. The provisional expedited foster family license will be issued for ninety days and will close after ninety days.

(5) Your licensing or certifying agency will continue to work with you and make every effort to ensure that individuals qualified for and seeking a provisional expedited foster family license may become fully foster care licensed within forty days of the department's receipt of a complete application for a provisional expedited foster family license.

(6) You do not have the right to appeal the department's decision that you do not meet the criteria for a provisional expedited foster family license.

WSR 18-05-044

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed February 13, 2018, 4:51 p.m., effective March 16, 2018]

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

Purpose: The University of Washington updated WAC 478-276-100 to conform with amendments made by the 2017 legislature to RCW 42.56.120 regarding agency determination of copying costs for producing public records.

Citation of Rules Affected by this Order: Amending WAC 478-276-100.

Statutory Authority for Adoption: RCW 28B.20.130, 42.56.100, 42.56.040(1), and 42.56.120 (as amended by chapter 304, Laws of 2017).

Adopted under notice filed as WSR 17-24-091 on December 5, 2017.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: February 8, 2018.

Barbara Lechtanski
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 13-05-073, filed 2/19/13, effective 3/22/13)

WAC 478-276-100 Copying fees. (1) **Copying facilities available.** Facilities shall be made available to requestors for the copying of public records as set forth under WAC 478-276-095, except when and to the extent that this would unreasonably disrupt the operations of the public records office.

(2) **Copying costs.** ~~((The university may charge for providing copies of public records. Charges are posted on the office's web site.~~

~~(3) **Other costs.** Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the University of Washington declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions. Therefore, the University of Washington adopts the following fees consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017:~~

~~(a) Fifteen cents per page for photocopies of public records, and printed copies of electronic public records when requested by the person requesting records;~~

~~(b) The university may charge ~~((for nonpaper media))~~ the actual cost of any digital storage media or device (for example, without limitation, compact disks (CDs), digital versatile disks (DVDs), audiotape, or videotape) used to provide copies, ~~((packaging,))~~ the actual cost of any container and envelope used to mail or transmit the copies to the requestor, and the actual postage or delivery charge, or other charges as allowed by law. Such charges shall not exceed the amount necessary to reimburse the university for actual costs.~~

~~((4)) (3) **Deposits.** The university may require a ten percent deposit on copying or other charges. Any required deposit must be paid before the request is processed.~~

~~((5)) (4) **Prepayment.** The public records office shall not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth above. Fee waivers are an exception and are available at the discretion of the public records officer. If payment is not received by the public records office within fifteen business days of issuance of the university's notice of availability, the university may consider the request closed, and any records or copies responsive to such request shall be subject to disposition as provided under WAC 478-276-105.~~

WSR 18-05-056
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 15, 2018, 9:18 a.m., effective March 18, 2018]

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

Purpose: Amends WAC 181-79-250.

Citation of Rules Affected by this Order: Amending chapter 181-79A WAC.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 17-24-011 on November 27, 2017.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504,

phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

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

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

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

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

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

Date Adopted: February 13, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-11-104, filed 5/22/17, effective 6/22/17)

WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist, and school social worker. Candidates for school nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist and school social worker certification shall apply directly to the professional certification office. Such candidates shall complete the following requirements, in addition to those set forth in WAC 181-79A-150, except state approved college/university professional preparation program. Provided, that it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive examination required in such master's degree program: Provided, That if any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification, shall successfully complete the Praxis II exam in the appropriate role.

(1) School nurse.

(a) Initial.

(i) The candidate shall hold a valid license as a registered nurse (RN) in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher in nursing from a program accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards

board which will consist of the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education laws and policies (national, state, and local) and their application to decision-making processes in the educational setting;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Use professional standards to inform professional growth planning;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, that an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one year, unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement, which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school nurse and have completed forty-five quarter hours (thirty semester hours) of postbaccalaureate course work in education, nursing, or other health sciences.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) School occupational therapist.

(a) Initial.

(i) The candidate shall hold a valid license as an occupational therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Occupational Therapy Association approved program in occupational therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will consist of the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education laws and policies (national, state, and local) and their application to decision-making processes in the educational setting;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Use professional standards to inform professional growth planning;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, that an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one year, unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement, which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school occupational therapist and have completed at least fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in occupational therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) School physical therapist.

(a) Initial.

(i) The candidate shall hold a valid license as a physical therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Physical Therapy Association accredited program in physical therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will consist of the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education laws and policies (national, state, and local) and their application to decision-making processes in the educational setting;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Use professional standards to inform professional growth planning;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, that an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one year, unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement, which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school physical therapist and have completed fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in physical therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(4) School speech-language pathologist or audiologist.

(a) Initial.

(i) The candidate shall have completed all course work (except special project or thesis) for a master's degree from a college or university program accredited by the American Speech and Hearing Association (ASHA) with a major in speech pathology or audiology. Such program shall include satisfactory completion of a written comprehensive examination: Provided, That if any candidate has not completed a written comprehensive examination, the candidate may present verification from ASHA of a passing score on the National Teacher's Examination in speech pathology or audiology as a condition for certification.

(ii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will consist of the following outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education laws and policies (national, state, and local) and their application to decision-making processes in the educational setting;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Use professional standards to inform professional growth planning;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, that an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one year, unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement, which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall hold a master's degree with a major in speech pathology or audiology, or the candidate shall present a copy of a valid certificate of clinical competence (CCC) issued by the American Speech-Language-Hearing Association (ASHA).

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

~~((iii) Candidates that can demonstrate the successful completion of the national American Speech-Language-Hearing Association (ASHA) certificate in addition to the education and employment experience.))~~

(5) School social worker.

(a) Initial.

(i) The candidate shall hold an MSW from a regionally accredited institution of higher learning.

(ii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will consist of the following outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education laws and policies (national, state, and local) and their application to decision-making processes in the educational setting;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically

based practices, collaborative teaming, and ethical decision making;

(F) Use professional standards to inform professional growth planning;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, that an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one year, unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement, which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school social worker and have completed an annual professional growth plan or fifteen quarter hours or one hundred fifty clock hours specific to the role of the school social worker since earning the initial certificate.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(6) Beginning with continuing certificates first issued after July 1, 2015, continuing certificates for school nurses and school social workers include a requirement for suicide prevention training per RCW 28A.410.226 and again every five years after receiving the continuing certificate.

(7) The professional educator standards board will review courses for approval and reapproval/disapproval per the posted schedule. All providers of the initial ESA course must maintain current approval status to offer the course.

WSR 18-05-075

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 20, 2018, 9:57 a.m., effective March 23, 2018]

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

Purpose: The department is amending WAC 388-449-0010 and 388-447-0005 in order to ensure that the eligibility standards adopted by the department for the aged, blind, or disabled and the housing and essential needs referral programs are consistent with, and not more restrictive than, standards adopted by the Social Security Administration.

Citation of Rules Affected by this Order: Amending WAC 388-449-0010 and 388-447-0005.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, 74.09.530.

Adopted under notice filed as WSR 18-02-061 on December 29, 2017.

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

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

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

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

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

Date Adopted: February 20, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-447-0005 What evidence ~~((does the department))~~ do we consider to determine incapacity? (1) To determine whether a medically determinable impairment exists, we ~~((accept))~~ consider medical evidence from ~~((the following sources when considering incapacity))~~ "acceptable medical sources." "Acceptable medical sources" include the following:

~~((+))~~ (a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

~~((a))~~ A physician, which includes:

(i) Medical doctor ~~((M.D.))~~ (MD); ~~((and))~~

(ii) Doctor of osteopathy ~~((D.O.))~~ (DO);

~~((b))~~ An advanced registered nurse practitioner (ARNP) for physical impairments that are within their area of certification to treat;

~~((c))~~ A Physician's assistant (P.A.);

~~((d))~~ A) (iii) Doctor of optometry ~~((O.D.))~~ (OD) for visual ~~((acuity impairments))~~ disorders;

~~((e))~~ (iv) Doctor of podiatry ~~((D.P.))~~ (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice;

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments;

~~((f))~~ (ix) Doctor of dental surgery ~~((D.D.S.))~~ (DDS) or doctor of medical dentistry ~~((D.M.D.))~~ (DMD) for tooth abscesses or temporomandibular joint (TMJ) disorders; ~~((or))~~ and

~~((g))~~ (x) Chief of ~~((medical administration))~~ staff of ~~((the Veterans Administration))~~ a U.S. Department of Veterans Affairs medical center, or their designee, as authorized in federal law.

~~((2))~~ (b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

~~((a))~~ (i) Psychiatrist;

~~((b))~~ (ii) Psychologist;

~~((c))~~ An ARNP certified in psychiatric nursing; or

~~(d) At the department's discretion:~~

~~(i) A person identified as a mental health professional within the regional support network mental health treatment system provided the person's training and qualifications at a minimum include having a master's degree and two years of mental health treatment experience; or~~

~~(ii) A physician who is currently treating you for a mental impairment.~~

~~(3) We do not accept medical evidence from the medical professionals listed in (1) and (2) above, unless they are licensed in Washington state or the state where the examination was performed)~~ (iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice;

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning;

(vi) Clinical social worker;

(vii) Mental health professional (MHP); and

(viii) Physician treating you for a mental impairment.

~~((4))~~ (2) "Supplemental medical evidence" means information from a licensed health professional ~~((not listed in (1) or (2) above))~~ who can provide supporting documentation for impairments established by ~~((a medical professional))~~ an "acceptable medical source" listed in subsection (1) ~~((or (2) above))~~ of this section. "Supplemental medical evidence" sources include, but are not limited to:

~~((Health professionals who have conducted tests or provided ongoing treatment to you, such as a physical therapist, chiropractor, nurse, naturopath, audiologist, or licensed social worker;~~

~~Workers at state institutions and agencies who are not health professionals and are providing or have provided medical or health-related services to you; or~~

~~Chemical dependency professionals (CDPs) when requesting information on the effects of alcohol or drug abuse)~~ Naturopath;

(b) Chiropractor;

(c) Physical therapist; and

(d) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

~~((5))~~ (3) "Other evidence" means information from ~~((other))~~ sources not listed ~~((above))~~ in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable

medical ~~((sources))~~ source" in ~~((subsections))~~ subsection (1) ~~((or (2)))~~ of this section. Sources of "other evidence" may include public and private agencies, schools, ~~((parents))~~ family members, friends, caregivers, and employers~~((and practitioners such as social workers))~~.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0010 What evidence do we consider to determine disability? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

~~((H))~~ (a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

~~((a))~~ A physician, which includes:

(i) Medical doctor ~~((M.D.))~~ (MD);

(ii) Doctor of osteopathy ~~((D.O.))~~ (DO);

(iii) Doctor of optometry ~~((O.D.))~~ (OD) for visual disorders;

(iv) Doctor of podiatry ~~((D.P.))~~ (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice; and

~~((V))~~ (viii) Qualified speech-language pathologist~~((s))~~, for purposes of establishing speech or language impairments ~~((only)).~~

~~((2))~~ (b) For a mental impairment, ~~((professionals))~~ a health professional licensed in Washington state or where the examination was performed:

~~((a))~~ (i) Psychiatrist; ~~((or~~

~~(b))~~ (ii) Psychologist;

(iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice; and

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning.

~~((3))~~ (2) We accept medical evidence of how your impairment(s) affect your ability to function from "treating medical sources" once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in subsection (1) ~~((and (2) above, "treating))~~ of this section. "Treating medical sources" must be licensed to provide healthcare and include, but are not limited to:

~~((All medical professionals listed in (1) and (2) above;~~

~~(b))~~ (A) Physician treating you for a mental impairment;

~~((e) A physician's assistant for physical impairments; and~~

~~(d) An advanced nurse practitioner for conditions within their certification)) (b) Clinical social worker;~~

~~(c) Mental health professional (MHP);~~

~~(d) Naturopath;~~

~~(e) Chiropractor;~~

~~(f) Physical therapist; and~~

~~(g) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.~~

~~((4)) (3) "Other evidence" means information from ((other)) sources not listed in ((subsection)) subsections (1)((;)) and (2)((-or-(3))) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical ((sources)) source" in ((subsections)) subsection (1) ((or-(2))) of this section. Sources of "other evidence" may include public and private agencies, schools, ((parents)) family members, friends, caregivers, and employers((-and practitioners such as social workers, mental health professionals, naturopaths, chiropractors, physical therapists, and audiologists)).~~

WSR 18-05-080

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed February 20, 2018, 11:29 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

Purpose: The department is adopting changes to chapter 296-17A WAC, Classifications for Washington workers' compensation insurance, that will:

- Reclassify nonthrift stores assigned classification 6304 to the lower-rated retail store classification 6309.
- Reclassify thrift stores assigned classification 6304 to the charitable store classification 6504.
- Repeal classification 6304.
- Amend classification 6306 for clarity and to ensure it aligns with the prior store rule making.

WAC 296-17A-6304, department stores (general merchandise), and antique variety stores, reclassified the following store types from classification 6304 to classification 6309: 6304-00 general stores and 6304-01 antique variety. **Reason for change:** The cost per hour for these stores is significantly less than classification 6304 overall. These stores often include similar merchandise as currently sold in classification 6309.

WAC 296-17A-6304, department stores (thrift stores), reclassified thrift stores from classification 6304 to classification 6504. **Reason for change:** The cost per hour for these stores is significantly higher than other stores currently in classification 6304. Merchandise and operations for these stores are almost identical to that for 6504.

WAC 296-17A-6309, (includes a variety of stores, including hardware, garden supplies, wood stoves, and pawn shops), amended to include a subclassification for antique

variety stores. **Reason for change:** This allows continued tracking of antique variety stores moved from subclassification 6304-01, and permits future evaluations of this group of stores.

WAC 296-17A-6504, charitable stores, amended to include a subclassification for thrift stores. **Reason for change:** This allows continued tracking of thrift stores moved from subclassification 6304-00, and permits future evaluations of this group of stores.

WAC 296-17A-6306, (includes stores with larger merchandise including; furniture, appliances, and pianos), amended for clarity and to ensure alignment with new store rules for classification 6406 and 6309. **Reason for change:** To ensure clarity for applying store classification.

Citation of Rules Affected by this Order: Repealing WAC 296-17A-6304; and amending WAC 296-17A-6306, 296-17A-6309, and 296-17A-6504.

Statutory Authority for Adoption: RCW 51.16.035.

Adopted under notice filed as WSR 17-19-090 on September 19, 2017.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 1.

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

Date Adopted: February 20, 2018.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-6306 Classification 6306. ((6306-00 Stores: Furniture—Wholesale or retail Stores: Billiard or pool table—Wholesale or retail

~~Applies to establishments engaged in the wholesale or retail sale of new, used, or antique household furniture. This classification also includes the sale of related items such as, but not limited to, lamps, bedding, pillows, floor and window coverings, framed pictures, art pieces and sculptures when sold in connection with a furniture store operation. This classification includes the delivery and the incidental repair of merchandise sold. Incidental repair in this classification is limited to such activities as the repair or cleaning of upholstery or fixing a small scratch on a table. The installation of carpet and window coverings may be included in this classification if such merchandise is part of the store's inventory and is readily available for sale and delivery to the customer. The contract installation of any merchandise which must be~~

ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, a furniture store could bid on a job to carpet all units of an apartment complex. If the carpet is ordered from the factory as opposed to carpet carried at the store and in the store's inventory, then the installation is to be reported separately in classification 0502. This classification also applies to stores that sell billiard or pool tables.

Special note: Care should be exercised when considering this classification for antique or used furniture stores since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing, or upholstery work which are to be reported separately in the applicable service or repair classification.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-01 Stores: Furniture and durable medical equipment—Rental

Applies to establishments engaged in the rental of new, used, or antique household furniture. This classification also includes the sales of related items such as, but not limited to, lamps, bedding, pillows, framed pictures, art pieces and sculptures when sold in connection with a furniture rental store operation. This classification includes the delivery and the incidental repair of merchandise rented. Incidental repair in this classification is limited to such activities as the repair or cleaning of upholstery or fixing a small scratch on a table. This classification also applies to establishments that provide rent-to-own purchasing options, and to establishments engaged in the sale or rental of hospital beds, motorized wheelchairs and similar patient appliances.

Special note: Care should be exercised when considering this classification for an antique or used furniture store since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing, or upholstery work which are to be reported separately in the applicable service or repair classification.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-02 Stores: Appliance—Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of gas, electric, or propane household appliances. Household appliances include, but are not limited to, refrigerators, freezers, stoves, range tops, trash compactors, washing machines, clothes dryers, television consoles, big screen televisions, and television antennas or satellite dish receiving units. Appliance stores will routinely carry smaller appliances which are generally referred to as counter top units which include, but are not limited to, mixers, blenders, microwave ovens, toasters and espresso machines and are included in this classification when sold in connection with the appliance store operation. This classification covers the sale of primarily new appliances although establishments subject to this classification accept trade-ins and sell some used appliances. Also included is the incidental repair of appliances sold by the appliance store, parts departments employees, and the delivery of products sold. The contract installation of any merchandise which must be ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, an appliance store could bid on a job to supply appliances for all units of an apartment complex. If the appliances are ordered from the factory as opposed to items carried at the store and in the store's inventory then the installation is to be reported separately in classification 0607. Establishments engaged in the sale of commercial appliances may be assigned to this classification provided such establishments operate a bona fide store operation. Generally, however, commercial appliances such as those used to equip bakeries and restaurants are factory ordered items which are made to a customer's specifications from a manufacturer's representative.

Special note: Care should be taken when considering this classification for an antique or used appliance store since such establishments are primarily engaged in reconditioning appliances (service and repair) for resale and are to be reported separately in classification 0607.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-03 Stores: Piano or organ—Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of new pianos and organs. This classification includes all operations associated with the store including service, repair, and delivery. It is common for stores subject to this classification to carry other musical instruments such as, but not limited to, guitars, drums and wind instruments as well as provide instructions on the use of instruments.

This classification excludes establishments engaged exclusively in piano tuning which are to be reported separately in classification 4107; stores that sell musical instruments other than pianos or organs which are to be reported separately in classification 6406; and establishments engaged in the reconditioning of organs and pianos accompanied by the related sales of reconditioned pianos and organs which are to be reported separately in classification 2906.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-06 Stores: Office furniture—Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of new, used, or antique office furniture. This classification also includes the sales of related items such as, but not limited to, lamps, floor and window coverings, framed pictures, art pieces and sculptures when sold in connection with an office furniture store operation. This classification includes the delivery of furniture and related items, and the incidental repair of office furniture items sold by the office furniture store such as upholstery repair and cleaning. The installation of carpet and window coverings may be included in this classification if such merchandise is part of the store's inventory and readily available for sale and delivery to the customer. The contract installation of any merchandise that must be ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, an office furniture store could bid on a job to supply modular desk units for a large office complex. If the desk units are ordered from the factory as opposed to units carried at the store and in the store's inventory, then the installation is to be reported separately in classification 2002.

Special note: Care should be exercised when considering this classification for an antique or used office furniture store since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing or upholstery work.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6306-07 Audio/visual equipment rental and event services

Applies to businesses engaged in renting audio/visual equipment and providing temporary setup or "staging" services at hotels, theaters, events, or businesses. Services may include, but are not limited to, the design, cost estimate, rental, and setup of audio/visual equipment such as projectors, cameras, videos, screens, microphones, sound systems, mixers, lights, or grip equipment. These businesses usually store the equipment in their warehouse, stage it in a loading area, load and transport it in a van or truck, or the customer may pick it up. Employees may be stationed at a customer's site, such as a hotel, and equipment may be stored at the customer's site for daily setup. Services provided are usually scheduling and coordination, delivery, equipment setup, testing, cleaning, and repair. Employees may operate equipment during an event or help troubleshoot problems, or return at the end of the event to disassemble the equipment and return

it to the warehouse. Businesses in this classification may also offer sales of accessories or other new and used equipment. Repair is usually limited to the businesses' own equipment, but minimal repair services for customers are included in this classification.

This classification excludes:

- Contractors with a limited energy electrical license providing low voltage wiring with installation of audio/visual equipment, who are to be reported in classification 0608;
- Retail stereo component or camera stores which also rent, but provide no staging services, who are to be reported in classification 6406;
- Firms providing equipment setup or repair only, who are to be reported in classification 0607;
- Musicians and their own employees performing stage setup, who are to be reported in classification 6605;
- Sponsors of exhibitions or shows who are to be reported in classification 6208.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.) Classification 6306 applies to retail and wholesale sales, rental, and rent-to-own of new, used, or refurbished:

- Furniture for home and office;
 - Billiard or pool tables;
 - Household appliances such as refrigerators, freezers, stoves, range tops, trash compactors, washing machines, and clothes dryers;
 - Pianos and organs;
 - Audio visual equipment for indoor or outdoor events such as a seminar or concert including microphones, projectors, screens, sound systems, lights, and other incidental items;
 - Large home entertainment systems and big screen televisions;
 - Outside television antennas and/or satellite dish receiving units;
 - Medical durable goods such as, hospital beds, wheelchairs, lift chairs, and similar patient appliances;
 - Motorized exercise equipment; weight sets.
- Stores that primarily sell items listed above often also sell or rent other goods such as:
- Lamps;
 - Bedding and pillows;
 - Floor and window coverings;
 - Framed pictures;
 - Art pieces and sculptures;
 - Counter top appliances, such as mixers, blenders, microwave ovens, toasters and espresso machines.
- Employee duties include:**
- Cashiering;
 - Fitting and demonstration;
 - Delivery and setup of merchandise described by classification 6306;
 - Most simple setup and installation and assembly work, such as connecting stereo components together, installing software, assembling a furniture kit for in-store display, or plugging in appliances;

- Incidental repair of furniture and equipment sold or rented by the store;

- Incidental repair and/or tuning of instruments sold by the store;

- Inventorying;

- Merchandising and stocking of store;

- Piano tuning;

- Packaging, addressing, and mailing articles for shipment;

- Receiving and shipping merchandise at store's loading ramp;

- Sales work inside store;

- Store security and surveillance.

Excluded activities requiring additional classifications: See **WAC 296-17-31017** Multiple classifications, for reporting and recordkeeping requirements. Classification **6306** excludes the following activities or operations:

- Worker hours engaged in out-of-store appliance or equipment repair, which are reported separately in classification **0607**.

- Worker hours engaged in carpet installation, which are reported separately in classification **0502**.

- Worker hours engaged in installation requiring low voltage wiring, which are reported separately in classification **0608**.

- Worker hours engaged in installation requiring electrical wiring within buildings, which are reported separately in classification **0601**.

- Worker hours engaged in installation requiring plumbing licenses, which are reported separately in classification **0306**.

- Worker hours engaged in pharmacy activities, which are reported separately in classification **6406**.

- Worker hours engaged in installation and assembly of modular office furniture and cubicle dividers, which are reported separately in classification **2002**.

Excluded operations: Classification **6306** excludes:

- Stores selling any type of motorized boats or vehicles (other than durable medical goods), which are assigned to the applicable classification.

- Stores selling tires or parts for motorized vehicles, which are assigned to the applicable classification.

- Stores primarily selling merchandise included in classification **6406**, but also selling some merchandise belonging in classification **6306**, which are classified in **6309**.

- Stores primarily selling merchandise belonging in a higher rated classification, which are assigned the applicable classification.

- Firms whose principal operations are installing low voltage electrical wiring for audio visual equipment or home theaters, which are classified in **0608** (even if they also sell the equipment or maintain a minimal inventory).

- Firms engaged in furniture refurbishing and subsequent sales, which are classified in **3603** and **3808**.

- Firms engaged in medical oxygen tank rental and delivery, which are classified in **6406** and **1101**.

- Piano tuning businesses not also engaged in the sale of pianos, which are classified in **4107**.

- Stores renting a variety of equipment, party goods, inflatable tents, games, or other party supplies, which are classified in **1106**.

- Stores that sell wind, string, brass, and percussion musical instruments and no pianos or organs, which are classified in **6411**.

- Firms engaged in reconditioning of organs and pianos and subsequent sales, which are classified in **2906**.

For administrative purposes, classification **6306** is divided into the following subclassification(s):

6306-00 Furniture stores

6306-01 Rental and rent-to-own furniture stores, and durable medical stores

6306-02 Household appliance stores

6306-03 Piano and organ stores

6306-04 Office furniture stores

6306-05 Entertainment and home theater systems, big screen television stores

6306-07 Audio/visual equipment rental and services

AMENDATORY SECTION (Amending WSR 17-05-095, filed 2/14/17, effective 1/1/18)

WAC 296-17A-6309 Classification 6309. Wholesale or retail store operations primarily providing any combination of the following merchandise, supplies, or services:

- Antiques (variety);
- Art galleries;
- Bicycles;
- Door to door sales;
- Floor and countertop covering materials;
- Furniture kits, boxed;
- Guns;
- Hardware stores;
- Hot tubs and spas;
- Lawn and garden supplies, such as:
 - Bags of potting soil, bark, compost;
 - Hand tools;
 - Powered and nonpowered mowers, edgers, aerators, weeders, and tillers;
 - Seeds, bulbs, bedding plants, and small shrubs and trees;
- Specialized clothing;
- Hoses and sprinkler attachments;
- Wheelbarrows.
- Locksmiths dealing in products and services such as:
 - Alarm systems;
 - Duplicating keys;
 - Field work such as unlocking cars, removing broken keys, and replacing lock sets;
 - Locksets;
 - Safes.
- Paint and wallpaper supplies;
- Parts for automobiles, trucks, motorcycles, and aircraft;
- Pawnshops (loan money in exchange for collateral; if loans are defaulted on, the collateral is stores' merchandise);
- Picture framing and u-frame shops;
- Sewing machines;
- Vacuum cleaners;
- Woodstoves;

- Stores primarily selling merchandise described by a store classification rated lower than **6309**, but also sell merchandise described by a store classification higher rated than **6309**;

- Stores otherwise entitled to classifications **6411** or **6406** that cannot, or do not, track and report worker hours for delivery, assembling merchandise, or in-store repair work separately.

Store operations include:

- Assembly of store merchandise at store location;
- Cashiering;
- Delivery;
- In store repair and adjustment of items sold in classification **6309**, except for power tools and machinery specific to lawn and shop work, or motorized vehicles;
- Instructional classes;
- Inventory work by store employees;
- Merchandising and stocking of store;
- Parts and batteries for products included in class **6309**;
- Receiving and returning merchandise at store's loading ramp;
- Renting items normally sold in classification **6309**;
- All sales work inside store;
- Store security and surveillance.

Classification 6309 excludes:

- Manufacturing, fabrication, welding, and machining operations;
- Repair of powered tools, machinery, or equipment;
- Stores primarily selling merchandise described by a classification higher rated than **6309**, which are assigned the classification that best represents their inventory;
- Outside repair work, other than by locksmiths;
- Outside installation work, other than replacement lock kits;
- Target or shooting ranges which are to be reported separately in classification **6208**;
- Stores that also sell lumber and other building structure materials such as sheet rock, sheet metal, roofing material, insulation, or concrete, which are to be reported in classification **2009**;
- Stores primarily selling:
 - Electrical supplies;
 - Farm supplies;
 - Plumbing, irrigation, HVAC, or piping supplies which are classified in **2009**.
- Stores primarily selling plants, shrubs, and trees - See classifications **4805-00**, *Nurseries*, N.O.C., and **4809**, *Greenhouses*;
- Stores primarily selling glass or window products, which are classified in **1108**.

For administrative purposes, classification **6309** is divided into the following subclassification(s):

6309-03 Bicycle or gun stores

6309-06 Yard and garden supply stores

6309-07 Locksmiths

6309-08 Parts stores for automobiles, trucks, motorcycles, or aircraft

6309-13 Hardware stores

6309-14 Hot tubs, spas, and woodstove stores

6309-15 Floor covering materials and supplies stores

6309-16 Pawn shops

6309-18 Paint and wallpaper and supplies stores

6309-19 Sewing machine and vacuum cleaner stores

6309-20 Art galleries, custom picture framing, and u-frame shops

6309-22 Door to door sales

6309-23 Stores included in 6309, but not described by another subclassification (N.O.C.)

6309-24 Antique variety stores

Antique variety stores sell a wide range of antiques. Antique stores that sell a specialized type of antique merchandise, are classified according to the type of merchandise that is sold.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6504 Classification 6504. ((6504-00 Stores: Charitable or welfare

~~Applies to those employees of a charitable or welfare organization who are engaged in operating a store. Stores of this type usually deal in used merchandise such as, but not limited to, clothing, household appliances, toys, housewares, furniture, and garden tools that has been donated to the organization. Work contemplated by this classification includes, but is not limited to, the collection of donated items from locations away from the store, conditioning donated items, stocking and cleaning the store, and cashiering. Conditioning is limited to cleaning, reupholstery work, and minor repairs; it does not include major mechanical repairs or refinishing furniture.~~

~~This classification excludes establishments engaged in repairing and selling used appliances which are to be reported separately in classification 0607; and all other employees of the charitable or welfare organization not employed in the store who are to be reported separately in the classification applicable to the work performed.~~

~~**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.)) Classification 6504 applies to stores primarily selling used merchandise that has been donated. Items for sale include:~~

- Clothing;
- Household appliances;
- Toys;
- Housewares;
- Furniture;
- Tools.

~~Work contemplated by this classification includes, but is not limited to:~~

- Collection of items from locations away from the store;
- Conditioning used merchandise (conditioning is limited to cleaning, reupholstery work, and minor repairs; it does not include major mechanical repairs or refinishing furniture);

- Stocking and cleaning the store;
- Cashiering.

~~Excluded activities requiring additional classifications. See WAC 296-17-31017 Multiple classifications, for~~

reporting and recordkeeping requirements. Classification **6504** excludes the following activities or operations:

- Nonstore employees of a charitable organization, are classified according to the overall nature and operations of the organization.

Excluded operations: Classification **6504** excludes:

- Firms engaged in repairing and selling used appliances, which are classified in **0607**:

- Stores selling antiques, which are classified in **6309**.

For administrative purposes, this classification is divided into the following subclassifications:

6504-00 Thrift stores operated by charitable or other not-for-profit organizations

6504-01 For-profit thrift stores

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17A-6304 Classification 6304.

WSR 18-05-081

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed February 20, 2018, 11:32 a.m., effective April 1, 2018]

Effective Date of Rule: April 1, 2018.

Purpose: The pension discount rate is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. Currently, WAC 296-14-8810 sets the pension discount rate at 6.2 percent. This is the fourth gradual reduction in the pension discount rate. This better aligns with return rates of long term bonds and more accurately states pension liabilities. The department has worked with the workers' compensation advisory committee to develop a plan for reducing the pension discount rate annually, through 2022, until it reaches 4.5 percent. The purpose of this rule making is to reduce the current pension discount rate to 6.1 percent in 2018.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Adopted under notice filed as WSR 18-01-114 on December 19, 2017.

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

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

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

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

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

Date Adopted: February 20, 2018.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 17-05-096, filed 2/14/17, effective 4/1/17)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

(i) Mortality tables from nationally recognized sources;

(ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients; and

(iii) A pension discount rate of ~~((6-2))~~ **6.1** percent.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 18-05-089

PERMANENT RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed February 20, 2018, 5:16 p.m., effective March 23, 2018]

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

Purpose: WAC 246-933-295 Temporary practice permit—Military spouse, eligibility and issuance, the veterinary board of governors (board) adopts this rule for temporary practice permits to be issued to military spouses or state-registered domestic partners who hold out-of-state credentials as veterinarians. The rule adopts by reference rules in chapter 246-12 WAC and implements chapter 18.340 RCW. The applicant must be credentialed in another state with substantially equivalent standards and they must also meet specific requirements under RCW 18.340.020.

The adopted rule is necessary to establish a process and criteria in order to expedite the credentialing process for an out-of-state applicant to receive a temporary practice permit whose spouse or domestic partner is the subject of a military transfer to Washington. The temporary practice permit will allow applicants to practice in the full scope of their profession for up to one hundred eighty days pending issuance of a permanent credential.

Citation of Rules Affected by this Order: New WAC 246-933-295.

Statutory Authority for Adoption: RCW 18.92.030.

Other Authority: RCW 18.340.020.

Adopted under notice filed as WSR 17-18-015 on August 25, 2017.

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

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

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

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

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

Date Adopted: February 20, 2018.

Lina M. Wachsmuth, DVM, Chair
Veterinary Board of Governors

NEW SECTION

WAC 246-933-295 Temporary practice permit—Military spouse. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for the profession. The board adopts the procedural rules as adopted by the department of health in WAC 246-12-051.

WSR 18-05-090

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 21, 2018, 7:55 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: WAC 246-360-990, transient accommodations fees, the fees for transient accommodations are increased by 21.07 percent to offset the cost to administer the transient accommodations program.

Citation of Rules Affected by this Order: Amending WAC 246-360-990.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, 70.62.220.

Adopted under notice filed as WSR 17-20-049 on September 29, 2017.

Changes Other than Editing from Proposed to Adopted Version: Based on comments received from interested parties, the department reduced the amount of the proposed increase from 29.3 percent to 21.07 percent. The department also eliminated a refund of less than ten dollars because the calculation of a refund based on two-thirds or one-third of the

application fee under WAC 246-360-990 (2)(a) or (b) would not result in ten dollars or less.

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

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

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

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

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

Date Adopted: February 20, 2018.

Clark Halvorson
Assistant Secretary

AMENDATORY SECTION (Amending WSR 06-21-108, filed 10/17/06, effective 11/17/06)

WAC 246-360-990 Fees. (1) ~~((The))~~ To apply for a transient accommodation initial license or to renew an annual license, an applicant or licensee ~~((or applicant))~~ must submit ~~((~~

~~((~~ an initial or annual license renewal ~~))~~ fee according to the following schedule:

NUMBER OF LODGING UNITS	FEE
3 - 10	\$((164.10)) <u>198.00</u>
11 - 49	\$((326.30)) <u>395.00</u>
50 - over	\$((657.00)) <u>795.00</u>

~~((b) A))~~ (2) If the department does not receive the license renewal application and fee on or before the expiration date, a licensee must submit an additional late fee of ~~((fifty-four dollars and sixty cents, in addition to the full license renewal fee, if the full license renewal fee is not received by the department on the expiration date (see RCW 70.62.260);~~

~~((e) An additional))~~ sixty-six dollars.

(3) If the licensee notifies the department of a change in the number of lodging units or the name of the transient accommodation in accordance with WAC 246-360-020(9), the licensee must submit an amended license fee of ~~((fifty-four dollars and sixty cents for an amended license due to changing the number of lodging units or the name of the transient accommodation.~~

~~((2))~~ sixty-six dollars.

(4) The department shall refund fees paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the department, two-thirds of the fees paid, less a fifty dollar processing fee.

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

~~((e) No)~~ (5) The department will not refund fees paid by the applicant ~~((will be refunded))~~ if any of the following applies:

~~((i))~~ (a) More than one on-site visit for any purpose has been performed by the department; or

~~((ii))~~ (b) One year has elapsed since an initial licensure application is received by the department, but no license is issued because the applicant failed to complete the requirements for licensure~~((or~~

~~((iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less)).~~

WSR 18-05-091

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 16-12—Filed February 21, 2018, 8:26 a.m., effective March 24, 2018]

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

Purpose: Ecology is adopting amendments to chapter 173-407 WAC, Greenhouse gas mitigation requirements and emissions performance standard for power plants (ecology revised the rule title in this rule making).

This rule requires power plants and units to:

- Reduce carbon dioxide emissions (CO₂ mitigation; Part I).
- Meet the greenhouse gas emissions performance standard (Part II).
- Develop and implement plans or programs to reduce greenhouse gases as approved by ecology (Part II).

This rule also describes ecology's consultation with utilities and transportation commission and consumer-owned utilities (Part III).

Most of the changes in this rule making only apply to new power plants and units, and existing power plants and units that change ownership, upgrade with an increase in heat input or fuel usage, or sign a new long-term financial commitment (such as power purchase agreements and plant purchases).

Citation of Rules Affected by this Order: Amending chapter 173-407 WAC.

Statutory Authority for Adoption: Chapter 80.70 RCW for WAC 173-407-006 through 173-407-090; chapter 80.80 RCW for WAC 173-407-005, 173-407-006, and 173-407-100 through 173-407-320.

Adopted under notice filed as WSR 17-20-099 on October 4, 2017.

Changes Other than Editing from Proposed to Adopted Version:

WAC 173-407-005:

- In subsection (a), change "WAC 173-407-010 through 173-407-090" to "WAC 173-407-010 through 173-407-080" to match with the sections included in Part I.

- In subsection (c), change "WAC 173-407-300 through 173-407-400" to "WAC 173-407-300 through 173-407-320" to match with the sections included in Part III.

WAC 173-407-006:

- Replace the "adoption date of this rule in February 2018" with "February 21, 2018," the actual rule adoption date, to make the rule easier to understand.

WAC 173-407-050(1):

- Add "... " in the equation because it was mistakenly removed.
- In subsection (e), move "in effect on the date in WAC 173-407-006" to directly after "Table C-1" to connect the date reference to what it applies to.

WAC 173-407-060 (1)(a):

- Add "The facility does not need to submit any mitigation plan if the calculated mitigation quantity is less than or equal to zero." to provide clarification.

WAC 173-407-120 (1)(a):

- Add "commercial" in front of operation to match with the defined term in WAC 173-407-110.

WAC 173-407-130(2):

- Replace the "rule effective date, March 2018" with "March 24, 2018," the actual rule effective date, to make the rule easier to understand.
- Replace "the day before the rule effective date, March 2018" with "March 23, 2018" to make the rule easier to understand.

WAC 173-407-130 (3)(b):

- Change "sequestration method" to "sequestration methods" because we mistakenly changed the term to singular in the proposed language.

WAC 173-407-160 (formerly WAC 173-407-230):

- Replace the "effective date of this rule in March 2018" with "March 24, 2018," the actual rule effective date, throughout this section to make the rule easier to understand.
- In subsection (1)(c)(iv)(B), add "and produces" in front of "less than 25 MW of electricity" because it was mistakenly omitted.

WAC 173-407-200(1):

- Add "to ecology" to clarify who the facility should submit the sequestration plan to.
- Add "propose to" before "begin sequestration" to clarify when the facility should submit the sequestration plan.

WAC 173-407-200(2):

- Add "propose to" before "begin sequestration" to clarify when the facility should submit the sequestration plan.

WAC 173-407-220:

- Add "to" before "ecology" in the first paragraph of this section because it was mistakenly omitted.
- In subsection (1)(b)(ii)(D), change "volume" to "quantity" to correct the wording used in the rule.

WAC 173-407-240:

- Add "Note: Ecology is the agency responsible for enforcing this section." to provide clarification that ecology is the authorizing agency for enforcing Part II of this rule.
- Revise subsection (4) to read "Enforcement of a violation of notice of an order of approval must follow the requirements of chapter 70.94 RCW, as implemented by the permitting authority" to provide clarification.

WAC 173-407-320(1):

- Add "in effect at the time the long-term financial commitment is signed" to provide clarification.

Please see the concise explanatory statement for rule language changes from passive voice to active voice.

A final cost-benefit analysis is available by contacting Caroline (Ying) Sun, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-7528, TTY 877-833-6341, email caroline.sun@ecy.wa.gov, web site <https://www.ecology.wa.gov/Regulations-Permits/Laws-rules/Rulemaking/WAC-173-407-Feb17>.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 22, Repealed 1.

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

Date Adopted: February 21, 2018.

Maia D. Bellon
Director

Chapter 173-407 WAC

~~(((CARBON DIOXIDE MITIGATION PROGRAM, GREENHOUSE GASES EMISSIONS PERFORMANCE STANDARD AND SEQUESTRATION PLANS AND PROGRAMS FOR THERMAL ELECTRIC GENERATING FACILITIES))) GREENHOUSE GAS MITIGATION REQUIREMENTS AND EMISSIONS PERFORMANCE STANDARD FOR POWER PLANTS~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-005 ((~~Work in unison~~)) Overview. ~~((The requirements of this chapter, WAC 173-407-010 through 173-407-070, are based upon chapter 80.70 RCW and are separate and distinct from the requirements found in this chapter, WAC 173-407-100 through 173-407-320 that are based upon chapter 80.80 RCW. These two requirements~~

~~are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard. Once that standard is met, the requirements of chapter 80.70 RCW (WAC 173-407-010 through 173-407-070) are applied.)) (1) This rule has three separate parts:~~

~~(a) Part I covers CO₂ mitigation in WAC 173-407-010 through 173-407-080.~~

~~(b) Part II covers GHG EPS in WAC 173-407-100 through 173-407-240.~~

~~(c) Part III covers long-term financial commitments and ecology's consultation in WAC 173-407-300 through 173-407-320.~~

~~(2) Part I and Part II work together. Apply the requirements in this sequence:~~

~~(a) GHG EPS (Part II); and then~~

~~(b) CO₂ mitigation (Part I).~~

~~(3) The owner of a coal-fired electric generation facility subject to RCW 80.80.040 (3)(c) must comply with RCW 80.70.080.~~

NEW SECTION

WAC 173-407-006 Adoption of federal rules. Federal rules mentioned in this rule are adopted as they exist on February 21, 2018.

PART I

CARBON DIOXIDE MITIGATION ((~~FOR FOSSIL-FUELED THERMAL ELECTRIC GENERATING FACILITIES, IMPLEMENTING CHAPTER 80.70 RCW~~)) REQUIREMENTS

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-010 Policy and purpose of Part I. ~~((It is the policy of the state to require mitigation of the emissions of carbon dioxide (CO₂))) Chapter 80.70 RCW requires mitigation of CO₂ emissions from all new and certain modified fossil-fueled thermal electric generating facilities with station-generating capability of more than 25 megawatts of electricity (MWe).~~

(2) A fossil-fueled thermal electric generating facility is not subject to the requirements of chapter 173-401 WAC solely due to its emissions of CO₂.

(a) Emissions of other regulated air pollutants must ~~((be a large enough quantity to))~~ trigger ~~((those))~~ the requirements of chapter 173-401 WAC.

(b) For ~~a~~ fossil-fueled thermal electric generating ~~((facilities that are))~~ facility subject to chapter 173-401 WAC, the CO₂ mitigation requirements are an applicable requirement under that regulation.

(3) A fossil-fueled thermal electric generating facility not subject to the requirements of chapter 173-401 WAC is subject to the requirements of the registration program in chapter 173-400 WAC.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-020 Definitions to Part I. The definitions in this section are ~~((found in RCW 80.70.010 and apply throughout this chapter unless clearly stated otherwise. The definitions are reprinted below))~~ only applicable to Part I.

"Annual CO₂ emission rate" means the maximum potential annual CO₂ emission rate.

"Applicant" has the meaning provided in RCW 80.50-020 and includes an applicant for a permit for a fossil-fueled thermal electric generation facility subject to RCW 70.94.152 and 80.70.020 (1)(b) or (d).

~~("Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.)~~

"Carbon credit" means a verified reduction in carbon dioxide or carbon dioxide equivalents that is registered with a state, national, or international trading authority or exchange that has been recognized by ~~((the council))~~ EFSEC.

"Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

"CO₂" means carbon dioxide.

"Cogeneration credit" means the carbon dioxide emissions that ~~((the council, department, or authority))~~ EFSEC or the permitting authority, as appropriate, estimates a stand-alone industrial and commercial facility would ((be produced)) produce on an annual basis ((by a stand-alone industrial and commercial facility)) that is equivalent in operating characteristics and output to the industrial or commercial heating or cooling process component of the cogeneration plant.

"Cogeneration plant" means a fossil-fueled thermal power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

"Commercial operation" means the date that the first electricity produced by a facility is delivered for commercial sale to the power grid.

~~("Council" means the energy facility site evaluation council created by RCW 80.50.030.~~

~~Department))~~ "Ecology" means the department of ecology.

"EFSEC" means the energy facility site evaluation council.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Independent qualified organization" is an organization identified by ~~((the energy facility site evaluation council))~~ EFSEC as meeting the requirements of RCW 80.70.050.

"Mitigation plan" means a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits.

"Mitigation project" means one or more of the following:

(a) Projects or actions ~~((that are))~~ implemented by the certificate holder or order of approval holder, directly or

through its agent, or by an independent qualified organization to mitigate the emission of carbon dioxide produced by the fossil-fueled thermal electric generation facility. This term includes, but is not limited to ~~((;))~~:

(i) The use of energy efficiency measures~~((;))~~;

(ii) Clean and efficient transportation measures~~((;))~~;

(iii) Qualified alternative energy resources~~((;))~~;

(iv) Demand side management of electricity consumption~~((;))~~; and

(v) Carbon sequestration programs~~((;))~~.

(b) Direct application of combined heat and power (cogeneration);

(c) Verified carbon credits traded on a recognized trading authority or exchange; or

(d) Enforceable and permanent reductions in carbon dioxide or carbon dioxide equivalents through process change, equipment shutdown, or other activities under the control of the ~~((applicant))~~ facility and approved as part of a carbon dioxide mitigation plan.

"Modification" means the definition in WAC 173-400-030.

"MWe" means megawatts of electricity.

"Order of approval" means an order issued under RCW 70.94.152 with respect to a fossil-fueled thermal electric generation facility subject to ~~((RCW 80.70.020 (1)(b) or (d)))~~ WAC 173-407-030.

"Permanent" means that emission reductions used to offset emission increases are assured for the life of the corresponding increase, whether unlimited or limited in duration.

"Permitting authority" means ecology or the local air pollution control authority with jurisdiction over the source.

"Qualified alternative energy resource" has the same meaning as in RCW 19.29A.090.

"Station generating capability" means the maximum load a generator can sustain over a given period of time without exceeding design limits, and measured using maximum continuous electric generation capacity, less net auxiliary load, at average ambient temperature and barometric pressure.

"Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described ~~((under RCW 80.70.020 (1)(a) and (b)))~~ in WAC 173-407-030(1), the amount of carbon dioxide emitted over a thirty-year period based on:

(i) The manufacturer's or designer's guaranteed total net station generating capability~~((;))~~;

(ii) New equipment heat rate~~((;))~~; and

(iii) An assumed sixty percent capacity factor for facilities under ~~((the council's))~~ EFSEC's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, ~~((and))~~ taking into account any enforceable limitations on operational hours or fuel types and use~~((; and))~~.

(b) For a fossil-fueled thermal electric generation facility described ~~((under RCW 80.70.020 (1)(c) and (d)))~~ in WAC 173-407-030(2), the amount of carbon dioxide emitted over a thirty-year period based on:

(i) The proposed increase in the amount of electrical output of the facility that exceeds the station generation capability of the facility prior to the ~~((applicant))~~ facility applying

for certification or an order of approval (~~(pursuant to RCW 80.70.020 (1)(e) and (d));~~);

(ii) New equipment heat rate(=); and

(iii) An assumed sixty percent capacity factor for facilities under ((the council's)) EFSEC's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, ((and)) taking into account any enforceable limitations on operational hours or fuel types and use.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-030 Carbon dioxide mitigation program applicability for Part I. ~~((1) Statutory authority for a carbon dioxide mitigation program. RCW 70.94.892(1) states that "For fossil fueled electric generation facilities having more than twenty-five thousand kilowatts station generating capability but less than three hundred fifty thousand kilowatts station generation capability, except for fossil-fueled floating thermal electric generation facilities under the jurisdiction of the energy facility site evaluation council pursuant to RCW 80.50.010, the department or authority shall implement a carbon dioxide mitigation program consistent with the requirements of chapter 80.70 RCW."~~

~~(2) Statutory carbon dioxide mitigation program applicability requirements. RCW 80.70.020 describes the applicability requirements and is reprinted below:~~

~~(1) The provisions of this chapter apply to:~~

~~(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under RCW 80.50.020 (14)(a), for which an application for site certification is made to the council after July 1, 2004;~~

~~(b) New fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, for which an application for an order of approval has been submitted after July 1, 2004;~~

~~(c) Fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to the council to increase the output of carbon dioxide emissions by fifteen percent or more through permanent changes in facility operations or modification or equipment; and~~

~~(d) Fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, that have an existing order of approval and, after July 1, 2004, apply to the department or authority, as appropriate, to permanently modify the facility so as to increase its station-generating capability by at least twenty-five thousand kilowatts or to increase the output of carbon dioxide emissions by fifteen percent or more, whichever measure is greater.~~

~~(3)) (1) New ((facilities)) facility. ((Any)) A fossil-fueled thermal electric generating facility ((is required to)) must mitigate CO₂ emissions ((as described in chapter 80.70 RCW, if) when the facility meets the following criteria:~~

(a) ~~((An))~~ A facility submits a notice of construction application ((was received)) after July 1, 2004;

(b) The station-generating capability is ~~((below 350 MWe and above 25))~~ between 25 MWe and 350 MWe; and

(c) The facility is not a fossil-fueled floating thermal electric generation facility ~~((subject to regulation by the energy facility site evaluation council))~~ regulated by EFSEC (100 MWe or more).

~~((4)) (2) Modifying an existing fossil-fueled thermal electric generating ((facilities)) facility. A fossil-fueled thermal electric generating facility seeking to modify the facility or ((any)) an electrical generating unit((s is required to)) must mitigate the ((increase of the emission of CO₂, as described in RCW 80.70.020, when the following occur)) increased CO₂ emissions when the facility meets the following criteria:~~

(a) ~~((The))~~ A facility submits a notice of construction application ((was received)) after July 1, 2004;

(b) The unmodified station generating capability is ~~((more than))~~ between 25 MWe and ((less than)) 350 MWe;

(c) The increase to the facility or units is the greater of the following measures:

(i) An increase in station-generating capability of ~~((more than))~~ at least 25 MWe; or

(ii) An increase in CO₂ emissions output by 15~~((%))~~ percent or more;

(d) The facility ~~((or the modification is not under the jurisdiction of the energy facility site evaluation council.~~

~~(5))~~ is not a fossil-fueled floating thermal electric generation facility regulated by EFSEC (100 MWe or more).

(3) Examples of fossil-fueled thermal electric generation units. The following are some examples of fossil-fueled thermal electric generating units:

(a) Coal, oil, natural gas, or coke fueled steam generating units (boilers) supplying steam to a steam turbine - electric generator;

(b) Simple cycle combustion turbine attached to an electric generator;

(c) Combined cycle combustion turbine~~((s))~~ (with and without duct burners) attached to an electric generator and supplying steam to a steam turbine - electric generator;

(d) Coal gasification unit~~((s))~~, or similar device~~((s))~~, where the synthesis gas produced is used to fuel a combustion turbine, boiler or similar device used to power an electric generator or provide hydrogen for use in fuel cells; or

(e) Hydrocarbon reformer emissions where the hydrogen produced is used in fuel cells or other combustion units to produce electricity. Hydrogen used to fuel motor vehicles is not subject to the requirements of this part.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-040 Carbon dioxide mitigation program fees under Part I. Fees can be found in ~~((chapter 173-455))~~ WAC 173-455-050.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-050 Calculating total carbon dioxide emissions to be mitigated under Part I. (1) Step 1 ~~((is to calculate the total quantity of CO₂. The total quantity of CO₂~~

$$CO_{2rate} = \frac{F_s \times K_s}{2204.6} \times T_s + \frac{F_1 \times K_1}{2204.6} \times T_1 + \frac{F_2 \times K_2}{2204.6} \times T_2 + \frac{F_3 \times K_3}{2204.6} \times T_3 \dots + \frac{F_n \times K_n}{2204.6} \times T_n$$

where:

CO_{2rate} = ~~((Maximum potential emissions))~~ Annual CO₂ emission rate in metric tons per year

F₁ ~~((-n))~~ to F_n = Maximum design fuel firing rate in MMBtu/hour calculated as manufacturer or designer's guaranteed total net station generating capability in MWe/hour times the new equipment heat rate in ~~((Btu/MWe))~~ MMBtu/MWe. Determined based on higher heating values of fuel

K₁ ~~((-n))~~ to K_n = Fuel to CO₂ conversion factor for the fuel(s) being evaluated in lb CO₂/MMBtu for fuel F₁ to F_n

T₁ ~~((-n))~~ to T_n = Hours per year fuel F₁ to F_n is allowed to be used. The default is 8760 hours unless there is a limitation on hours in an order of approval

F_s = Maximum design supplemental fuel firing rate in MMBtu/hour, at higher heating value of the fuel

K_s = Fuel to CO₂ conversion factor for the supplemental fuel being evaluated in lb CO₂/MMBtu for fuel ~~((F_n))~~ F_s given fuel

T_s = Hours per year supplemental fuel ~~((F_n))~~ F_s is allowed. The default is 8760 hours unless there is a limitation on hours in an order of approval

(a) When there are multiple new fossil-fueled electric generating units, the above calculation ~~((will))~~ must be performed for each unit and the ~~((total))~~ annual CO₂ emission~~((s))~~ rate of all units ~~((will))~~ must be summed.

(b) ~~((When))~~ A unit or facility ~~((is))~~ allowed to use multiple fuels~~((s))~~ must use the maximum allowed hours on the highest CO₂ producing fuels ~~((will be utilized))~~ for each fuel until the total of all hours per fuel add up to the allowable annual hours.

(c) ~~((When))~~ A new unit or facility ~~((is))~~ allowed to use multiple fuels without restriction in its ~~((approval order(s))~~ order of approval must perform this calculation ~~((will be performed))~~ assuming that the fuel with the highest CO₂ emission rate is used 100~~((%))~~ percent of the time.

~~is referred to as the maximum potential emissions of CO₂. The maximum potential emissions of CO₂ is defined as))~~ Calculate the annual CO₂ emission rate. ~~Calculate~~ the annual CO₂ emission rate ~~((is derived by))~~ using the following formula unless a differing analysis is necessary or appropriate for the electric generating process and type of equipment:

(d) When the order of approval restricts the annual operating hours ~~((are restricted))~~ for any reason, the total of ~~((all T_{1-n} hours))~~ T₁ to T_n equals the annual allowable hours of operation in the order of approval.

(e) Fuel to CO₂ conversion factors ~~((derived from the EPA's AP-42, Compilation of Air Pollutant Emission Factors))~~

Fuel	K _n lb/MMBtu
#2 oil	158.16
#4 oil	160.96
#6 oil	166.67
Lignite	287.50
Sub-bituminous coal	267.22
Bituminous coal, low volatility	232.21
Bituminous coal, medium volatility	241.60
Bituminous coal, high volatility	262.38
Natural gas	117.6
Propane	136.61
Butane	139.38
Petroleum coke	242.91
Coal coke	243.1
Other fossil fuels	Calculate based on carbon content of the fossil fuel and application of the gross heat content (higher heating value) of the fuel
Nonfossil fuels	00.00))

For K₁ to K_n and K_s in the formula in subsection (1) of this section, use the CO₂ emission factors for fossil fuels in 40 C.F.R. Part 98, Table C-1 (in effect on the date in WAC 173-407-006), except that the values for nonfossil fuels must be 0.00 lb/MMBtu.

(2) Step 2 - ~~((Insert the annual CO₂ rate to))~~ Determine the total carbon dioxide emissions ~~((to be mitigated. The formula below includes specifications that are part of the total carbon dioxide definition))~~. You must use the following formula to determine total carbon dioxide emissions:

$$\text{Total CO}_2 \text{ Emissions} = \text{CO}_{2\text{rate}} \times 30 \times 0.6$$

where:

$$\text{CO}_{2\text{rate}} \equiv \frac{\text{Annual CO}_2 \text{ emission rate in metric tons}}{\text{per year}}$$

$$30 \equiv \text{Thirty-year period}$$

$$0.6 \equiv \text{Assumed capacity factor}$$

(3) Step 3 - Determine ~~((and apply))~~ the cogeneration credit (if any).

(a) Where the cogeneration unit or facility qualifies for cogeneration credit, the cogeneration credit is the annual CO₂ emission rate (in metric tons per year) ~~((and is calculated as shown below or similar method))~~. You must use the following formula or a similar method to determine the annual CO₂ cogeneration credit:

$$\text{CO}_{2\text{credit}} = \frac{H_s}{2204.6} \times (K_a) \div n$$

where:

CO_{2credit} = The annual CO₂ cogeneration credit ~~((for cogeneration))~~ in metric tons/year(-)

H_s = Annual heat energy supplied by the cogeneration plant to the "steam host" per the contract or other binding obligation/agreement between the parties in MMBtu/yr as substantiated by an engineering analysis(-)

K_a = The time weighted ~~((average CO₂ emission rate constant))~~ fuel to CO₂ conversion factor for the cogeneration plant in lb CO₂/MMBtu supplied. The time weighted average is calculated similarly to the above method described in subsection (1) of this section(-)

n = Efficiency of new boiler that would provide the same quantity of thermal energy. Assume n = 0.85 unless ~~((applicant))~~ facility provides information supporting a different value(-)

(b) Calculate the metric tons of the cogeneration credit over the thirty-year period.

$$\text{Cogeneration Credit} = \text{CO}_{2\text{credit}} \times 30$$

(4) Step 4 - ~~((Apply the mitigation factor.~~

(a) *RCW 80.70.020(4) states that "Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for twenty percent of the total carbon dioxide emissions produced by the facility."*

~~(b))~~ Determine the mitigation quantity. Determine the CO₂ emissions mitigation quantity ~~((is determined by))~~ using the following formula:

$$\text{Mitigation Quantity} = \text{Total CO}_2 \text{ Emissions} \times 0.2 - \text{Cogeneration Credit}$$

where:

Mitigation quantity = The total CO₂ emissions to be mitigated in metric tons

~~((CO_{2rate} = The annual maximum CO₂ emissions from the generating facility in tons/year))~~

0.2 = The mitigation factor in RCW 80.70.020(4)

(5) Additional restrictions for a modification~~((s))~~ to an existing facility not involving ~~((installation of))~~ installing new generating units. Calculate the CO₂ mitigation quantity ~~((of CO₂ to be mitigated is calculated by the same methods used for the new generating units))~~ using the method in subsections (1) through (4) of this section with the following restrictions:

(a) The quantity of CO₂ subject to mitigation is ~~((only that))~~ limited to the emissions resulting from the modification and does not include the ~~((CO₂))~~ emissions occurring prior to the modification;

(b) An increase in operating hours or other operational limitations established in an order of approval is not an exempt modification under this regulation. However, only emissions related to the increase in operating hours are subject to the CO₂ mitigation program requirements;

(c) The annual CO₂ emission~~((s))~~ rate (CO_{2rate}) in subsection (1) of this section is the difference between the pre-modification condition and the postmodification condition, but using the like new heat rate for the combustion equipment; and

(d) ~~((The))~~ A facility may use a cogeneration credit ~~((may be used, but))~~ only if it is a new cogeneration credit~~((; not a cogeneration agreement or arrangement))~~ established ~~((prior to))~~ after July 1, 2004~~((, or used in a prior CO₂ mitigation evaluation))~~.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-060 Carbon dioxide mitigation plan requirements and options under Part I. (1) ~~((Once the total carbon dioxide emissions mitigation quantity is calculated, what is next?))~~ Mitigation plan requirements.

(a) The facility must mitigate ~~((that level of carbon dioxide))~~ the quantity of CO₂ emissions~~((-A))~~ determined by WAC 173-407-050 (4) or (5) as applicable. The facility must have an approved CO₂ mitigation plan ~~((is required and must be approved))~~ as part of the order of approval. ~~((RCW 80.70.020 (2)(b) states that "For fossil-fueled thermal electric generation facilities not under jurisdiction of the council,~~

the order of approval shall require an approved carbon dioxide mitigation plan." A mitigation plan is a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits (RCW 80.70.010).

~~(2) **What are the mitigation plan options?** The options are identified in RCW 80.70.020(3), which states that ")~~ The facility does not need to submit any mitigation plan if the calculated mitigation quantity is less than or equal to zero.

(b) The facility must implement the mitigation plan based on the schedule in the order of approval. A facility may request an extension of the schedule by submitting a written request to the permitting authority before applicable deadline(s). The request must propose a revised schedule and document why the facility needs more time to implement the mitigation plan.

(2) Mitigation plan options. An applicant for a fossil-fueled thermal electric generation facility ~~((shall))~~ must include one or a combination of the following ~~((carbon dioxide))~~ CO₂ mitigation options as part of its mitigation plan:

- (a) Payment to a third party to provide mitigation;
- (b) Direct purchase of permanent carbon credits; or
- (c) Investment in applicant-controlled ~~((carbon dioxide))~~ CO₂ mitigation projects, including combined heat and power (cogeneration).~~(("))~~

~~(3) **What are the requirements of the payment to a third party option?** The payment to a third party option requirements are found in RCW 80.70.020 (5) and (6). Subsection (5) identifies the mitigation rate for this option and describes the process for changing the mitigation rate. Subsection (6) describes the payment options.)~~ Requirements of the payment to a third-party option.

(a) The initial mitigation rate is \$1.60 per metric ton of ((carbon dioxide)) CO₂ to be mitigated. ((If there is)) For a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the cogeneration credit. This rate will change when ((the energy facility site evaluation council)) EFSEC adjusts it through the process described in RCW 80.70.020 (5)(a) and (b)((-The total payment amount = mitigation rate x mitigation quantity)).

$$\text{Total payment amount} = \text{Mitigation rate} \times \text{Mitigation quantity}$$

(b) An applicant may choose between a lump sum payment ((or)) and partial payments over a period of five years. ((The lump sum payment is described in RCW 80.70.020 (6)(a) and (b).))

(i) The applicant must pay the lump sum payment amount ((is the mitigation quantity multiplied by the per ton mitigation rate. The entire payment amount is due)) to the independent qualified organization no later than one hundred twenty days after the start of commercial operation.

((The alternative to a one-time payment is a partial payment described in RCW 80.70.020 (6)(c). Under this alternative,)) (ii) The applicant must make partial payments to the independent qualified organization in five equal payments over five years. The applicant must pay the first twenty percent of the total payment ((is due)) to the independent quali-

fied organization no later than one hundred twenty days after the start of commercial operation. An applicant must make a payment of the same amount (or an adjusted amount if the rate is changed under RCW 80.70.020 (5)(a)) ((is due on)) by the anniversary date of the initial payment for the next four consecutive years. ((In addition, the applicant is required to)) The facility must provide a letter of credit or comparable security for the remaining 80((%)) percent at the time of the first payment. The letter of credit ((or)) or comparable security~~((t))~~ must ~~((also))~~ include possible rate changes.

~~(4) **What are the requirements of the permanent carbon credits option?** RCW 80.70.030 identifies the criteria and specifies that these credits cannot be resold without approval from the local air authority having jurisdiction or ecology where there is no local air authority. The))~~ Requirements of the permanent carbon credits option. The applicant must acquire permanent carbon credits equaling the mitigation quantity as calculated in WAC 173-407-050(4), unless the power plant permanently ceases operation. The permanent carbon credits must meet the following criteria ((of RCW 80.70.030(1) are as follows)):

(a) Credits must derive from real, verified, permanent, and enforceable ~~((carbon dioxide or carbon dioxide))~~ CO₂ or CO₂ equivalents emission mitigation not otherwise required by statute, regulation, or other legal requirements;

(b) The credits must be acquired after July 1, 2004; ~~((and))~~

(c) The credits may not have been used for other ~~((carbon dioxide))~~ CO₂ mitigation projects; and

(d) The credits purchased for CO₂ mitigation must not be resold unless approved by the permitting authority. The permitting authority must determine the permanent carbon credits proposed for resale are offset by other CO₂ mitigation method(s). Facilities that cease operation may sell their carbon credits without replacement.

~~(5) **What are the requirements for the applicant controlled mitigation projects option?** RCW 80.70.040 identifies the requirements for applicant controlled mitigation projects. Subsections (1) through (5) specify the criteria.)~~ Applicant controlled mitigation projects option. The facility may invest directly in mitigation projects. The permitting authority cannot require the direct investment cost of the applicant controlled mitigation project, including funds used for selection, monitoring, and evaluation of mitigation projects ((cannot be required by ecology or the local authority)), to exceed the cost of ((making a lump sum)) the total payment to a third party per WAC 173-407-060(3).

The applicant controlled mitigation project must be:

(a) ~~((Implemented through mitigation projects))~~ Conducted directly by((s)) or under the control of((s)) the order of approval holder.

(b) Approved by the permitting authority ((having jurisdiction or the department where there is no local air authority and incorporated)) and included as a condition of the ~~((proposed))~~ order of approval.

(c) ~~((Fully in place within a reasonable time))~~ Operational within one year after the start of commercial operation. Failure to implement an approved mitigation plan is subject

to enforcement under ~~((chapter 70.94 RCW))~~ WAC 173-407-080.

(d) The order of approval holder may not use more than twenty percent of the total funds for the selection, monitoring, and evaluation of mitigation projects, and the management and enforcement of contracts.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-070 Carbon dioxide mitigation option statement and mitigation plan approval under Part I. ~~((Applicants must provide the department or authority with a statement selecting the mitigation option(s) at the time the application is submitted.))~~ The notice of construction application to the permitting authority must indicate the selected mitigation option(s).

(2) Applicants ~~((choosing to use the))~~ using payment to an independent qualified organization (a third party) or the permanent carbon credit option must provide ~~((the department or the authority, as appropriate, with))~~ the documentation to the permitting authority to show how the applicant will satisfy the requirements ~~((will be satisfied))~~ before the permitting authority can issue an order ~~((of))~~ of approval ~~((will be issued)).~~

(3) Applicants ~~((seeking to use))~~ using the ~~((applicant))~~ facility controlled mitigation project~~((s))~~ option must submit the entire mitigation plan to the ~~((department or the))~~ permitting authority. The ~~((department or authority having jurisdiction))~~ permitting authority will review the plan ~~((Under RCW 70.94.892 (2)(b), the review criteria is based on whether the mitigation plan is consistent))~~ for consistency with the requirements of Part I of this chapter ((80.70 RCW)).

(4) Upon completing the review ~~((phase)),~~ the ~~((department or the authority having jurisdiction))~~ permitting authority must approve or deny the mitigation plan.

(5) An approved mitigation plan((s)) must become part of the order of approval.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-080 Enforcement under Part I. ~~((Applicants or facilities))~~ A facility violating the ~~((carbon dioxide))~~ CO₂ mitigation program requirements ~~((are))~~ is subject to the enforcement provisions of chapter 70.94 RCW.

PART II

GREENHOUSE ~~((GASES))~~ GAS EMISSIONS PERFORMANCE STANDARD AND SEQUESTRATION PLANS AND PROGRAMS ~~((FOR BASELOAD ELECTRIC GENERATION FACILITIES IMPLEMENTING CHAPTER 80.80 RCW))~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-100 Policy and purpose of Part II. ~~((It is the intent of))~~ The legislature ~~((, under chapter 80.80 RCW,~~

~~to establish))~~ established statutory goals for the statewide reduction of greenhouse ~~((gases))~~ gas emissions. The legislature further intends by chapter 80.80 RCW to authorize immediate actions in the electric power generation sector for the reduction of greenhouse ~~((gases))~~ gas emissions.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-110 Definitions to Part II and Part III. The following definitions apply when these terms are used in the provisions of Part II and Part III of this chapter.

"Average available greenhouse ~~((gases))~~ gas emissions output" means the level of greenhouse ~~((gases))~~ gas emissions as surveyed and determined by the energy policy division of the department of ~~((community, trade, and economic development))~~ commerce under RCW 80.80.050.

"Baseload electric cogeneration facility" means a cogeneration facility that provides baseload electric generation. For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale.

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent. ~~((For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale.))~~ For purposes of Part II and Part III of this rule, "designed" means originally specified by the design engineers for the power plant or generating units (such as simple cycle combustion turbines) installed at a power plant; and "intended" means allowed for by the current permits for the power plant, recognizing the capability of the installed equipment or intent of the owner or operator of the power plant at the time of original permitting.

~~(("Baseload electric cogeneration facility" means a cogeneration facility that provides baseload electric generation.))~~

"Baseload electric generation facility" means a power plant that provides baseload electric generation.

"Benchmark" means a planned quantity of the greenhouse gases to be sequestered each calendar year at a sequestration facility as identified in the sequestration plan or sequestration program.

"Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for electrical power production.

"Change in ownership" as related to cogeneration plants means a new ownership interest in the electric generation portion of the cogeneration facility or unit.

"Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the standards in RCW 80.80.040 (3)(c).

"Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets Federal Energy Regulatory Commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16

U.S.C. Sec. 824a-3), as amended. In general, a cogeneration facility is comprised of equipment and processes which through the sequential use of energy are used to produce electric energy and useful thermal energy (such as heat or steam) that is used for industrial, commercial, heating, or cooling purposes.

"Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

"Commence commercial operation" means, in regard to a unit serving an electric generator, to have begun to produce steam or other heated medium, or a combustible gas used to generate electricity for sale or use, including test generation.

~~("Commission" means the Washington utilities and transportation commission.)~~

"Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

~~("Department" or)~~ "Ecology" means the department of ecology.

"Electric generating unit" (EGU) is the equipment required to convert the thermal energy in a fuel into electricity. In the case of a steam electric generation unit, the EGU consists of all equipment involved in fuel delivery to the plant site, as well as individual boilers, any installed emission control equipment, and any steam turbine/generators dedicated to generating electricity. Where a steam turbine generator is supplied by two or more boiler units, all boilers contributing to that steam turbine/generator comprise a single electric generating unit. All combustion units/boilers/combined cycle turbines that produce steam for use in a single steam turbine/generator unit are part of the same electric generating unit.

Examples:

(a) For an integrated gasification combined cycle combustion turbine plant, the EGU consists of all equipment involved in fuel delivery to the unit, as well as all equipment used in the fuel conversion and combustion processes, any installed emission control equipment, and all equipment used for the generation of electricity.

(b) For a combined cycle natural gas fired combustion turbine, the EGU begins at the point where natural gas is delivered to the plant site and ends with the generation of electricity from the combustion turbine and from steam produced and used on a steam turbine.

(c) An EGU also includes fuel cells fueled by hydrogen produced:

(i) In a reformer utilizing nonrenewable fuels; or

(ii) By a gasifier producing hydrogen from nonrenewable fuels.

"Electricity from unspecified sources" means electricity that is to be delivered in Washington pursuant to a long-term

financial commitment entered into by an electric utility and whose sources or origins of generation and expected average annual deliveries cannot be ascertained with reasonable certainty.

"EFSEC" means the energy facility site evaluation council.

"Electric utility" means an electrical company or a consumer-owned utility.

"Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

"EPA" means Environmental Protection Agency.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Fuel feed stock" means any renewable, biological material that can be used directly as a fuel, or converted to another form of fuel or energy product.

"GHG EPS" means greenhouse gas emissions performance standard.

"Governing board" means the board of directors or legislative authority of a consumer-owned utility.

"Greenhouse (~~gases~~) gas" or "GHG" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

"Modification" means the definition in WAC 173-400-030.

"MWh" means megawatt-hour electricity.

"MWh_{eq}" means megawatt-hour equivalent electrical energy of useful thermal energy output. 1 MWh_{eq} = 3.413 million Btu of thermal energy.

"New ownership interest" means a change in the ownership structure of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility affecting at least:

(a) Five percent of the market value of the power plant or cogeneration facility; or

(b) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multi-unit generation facility.

"Permanent sequestration" means the retention of greenhouse gases in a containment system using a method that is in accordance with standards approved by ~~(the department)~~ ecology and that creates a high degree of confidence that substantially ninety-nine percent of the greenhouse gases will remain contained for at least one thousand years.

"Permitting authority" means ecology or the local air pollution control authority with jurisdiction over the source.

"Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had

been operated at its rated capacity during that period, expressed in kilowatt-hours.

"Power plant" means a facility for the generation of electricity that is permitted as a single plant by ~~((the energy facility site evaluation council or a local jurisdiction))~~ a jurisdiction inside or outside the state. A power plant may be comprised of one or more individual electrical generating units, each unit of which can be operated or owned separately from the other units.

"Regulated greenhouse ~~((gases))~~ gas emissions" is the mass of carbon dioxide emitted plus the mass of nitrous oxide emitted plus the mass of methane emitted. Regulated greenhouse ~~((gases))~~ gas emissions include carbon dioxide produced by a sulfur dioxide control system such as a wet limestone scrubber system.

"Renewable fuel" means:

- (a) Landfill gas;
- (b) Biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;
- (c) By-products of pulping or wood manufacturing processes ~~((;))~~ including, but not limited to, bark, wood chips, sawdust, and lignin in spent pulping liquors; ~~((;))~~
- (d) Gas from sewage treatment facilities; or
- (e) Biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006.

"Renewable resources" means electricity generation facilities fueled by renewable fuels plus electricity generation facilities fueled by:

- (a) Water;
- (b) Wind;
- (c) Solar energy;
- (d) Geothermal energy; or
- (e) Ocean thermal, wave, or tidal power.

"Sequential use of energy" means:

- (a) For a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts ~~((;))~~ to support a thermal application or process to conform to the requirements of the operating standard; or
- (b) For a bottoming-cycle cogeneration facility, the use of reject heat from a thermal application or process, at least some of which is then used for power production.

"Sequestration plan" means a comprehensive plan describing how a plant owner or operator will comply with the emissions performance standard by means of sequestering greenhouse gases, where the sequestration will start after electricity is first produced, but within five years of the start of commercial operation.

"Sequestration program" means a comprehensive plan describing how a baseload electric generation plant's owner or operator will demonstrate compliance with the emissions performance standard at start of commercial operation and continuing unchanged into the future. The program is a description of how the facility meets the emissions performance standard based on the characteristics of the baseload electric generation facility or unit or by sequestering green-

house ~~((gases))~~ gas emissions to meet the emissions performance standard with the sequestration starting on or before the start of commercial operation.

"Supplementary firing" means an energy input to:

- (a) A cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility;
- (b) The electric generating process of a bottoming-cycle cogeneration facility; or
- (c) Any baseload electric generation unit to temporarily increase the thermal energy that can be converted to electrical energy.

"Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful electrical power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy.

"Total energy input" means the total energy supplied by all fuels used to produce electricity in a baseload electric generation facility or unit.

"Total energy output" of a ~~((topping cycle))~~ cogeneration facility or unit is the sum of the useful electrical power output and useful thermal energy output.

"Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade does not include:

- (a) Routine or necessary maintenance;
- (b) Installation of emission control equipment;
- (c) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or
- (d) Installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

"Useful energy output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.

"Useful thermal energy output" of a cogeneration facility means the thermal energy:

- (a) That is made available to and used in an industrial or commercial process (minus any heat ~~((contained))~~ in condensate return and/or makeup water);
- (b) That is used in a heating application (e.g., space heating, domestic hot water heating); ~~((;))~~
- (c) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller); or
- (d) That is used to drive a chemical conversion process (i.e., thermal energy to convert limestone to lime or to produce cement clinker from limestone and other materials).

"UTC" means the utilities and transportation commission.

"Waste gas" is refinery gas and other fossil fuel derived gases with a heat content of more than 300 Btu/standard cubic foot. Waste gas does not include gaseous renewable energy sources.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-120 (~~(Facilities subject to the)~~) **Greenhouse ((gases)) gas emissions performance standard applicability for Part II.** ~~((1) This rule is applicable to all baseload electric generation facilities and units and baseload electric cogeneration facilities and units that:~~

~~(a) Are new and are permitted for construction and operation after June 30, 2008, and that utilize fossil fuel or nonrenewable fuels for all or part of their fuel requirements.~~

~~(b) Are existing and that commence operation on or before June 30, 2008, when the facility or unit's owner or operator engages in an action listed in subsection (3) or (4) of this section.~~

~~(2) This rule is not applicable to any baseload electric generation facility or unit or baseload electric cogeneration facility or unit that is designed and intended to utilize a renewable fuel to provide at least ninety percent of its total annual heat input.~~

~~(3) A baseload electric generation facility or an individual electric generating unit at a baseload electric generation facility is required to meet the emissions performance standard in effect when:~~

~~(a) The new baseload electric generation facility or new electric generating unit at an existing baseload electric generation facility is issued a notice of construction approval or a site certification agreement;~~

~~(b) The existing facility or a unit is upgraded; or~~

~~(c) The existing facility or a unit is subject to a new long-term financial commitment.~~

~~(4) A baseload electric cogeneration facility or unit is required to meet the emissions performance standard in effect when:~~

~~(a) The new baseload electric cogeneration facility or new baseload electric cogeneration unit is issued a notice of construction approval or a site certification agreement;~~

~~(b) The existing facility or unit is upgraded; or~~

~~(c) The existing facility or unit is subject to a change in ownership.~~

~~(5) A new baseload electric generation facility or unit or new baseload electric cogeneration facility or unit becomes an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit the day it commences commercial operation.)~~ (1) Starting July 1, 2008, a baseload electric generation facility or unit or baseload electric cogeneration facility or unit located in Washington is subject to the GHG EPS each time it meets one of the following conditions:

(a) Commence commercial operation;

(b) New ownership interest;

(c) New or renewed long-term financial commitment; or

(d) Upgraded.

(2) Starting July 1, 2008, a baseload electric generation facility or unit or baseload electric cogeneration facility or unit is subject to the GHG EPS when it enters into a long-term financial commitment to serve power to Washington customers.

(3) Exceptions to the conditions in subsections (1) and (2) of this section are as follows:

(a) A baseload electric cogeneration facility or unit fueled by natural gas or waste gas or a combination of the two fuels that was in operation before July 1, 2008, is exempt from meeting the GHG EPS until:

(i) Change in ownership; or

(ii) Upgraded.

(b) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit fueled by at least 90 percent renewable fuels, on an annual heat input basis, is deemed to be in compliance with the GHG EPS;

(c) A baseload electric generation facility or unit powered exclusively by renewable resources is deemed to be in compliance with the GHG EPS;

(d) A new or renewed long-term financial commitment with the Bonneville power administration is exempt from meeting the GHG EPS;

(e) Long-term purchase of coal transition power and the coal-fired power plant providing the power are exempt from meeting the GHG EPS as provided by RCW 80.80.040 (3)(c).

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-130 Emissions performance standard under Part II. ~~((1) Beginning July 1, 2008, all baseload electric generation facilities and units and baseload electric cogeneration facilities and units subject to WAC 173-407-120 are not allowed to emit to the atmosphere regulated greenhouse gases at a rate greater than one thousand one hundred pounds per megawatt-hour, annual average.~~

~~(2) All baseload electric generation facilities and units in operation on or before June 30, 2008, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new long-term financial commitment.~~

~~(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded. For purposes of this section, exclusive use of renewable fuel shall mean at least ninety percent of total annual heat input by a renewable fuel.~~

~~(4) Compliance))~~ (1) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit must comply with the GHG EPS in subsection (2) of this section in effect at the time when the facility or unit triggers the applicability in WAC 173-407-120.

(2) GHG EPS.

Table 1
GHG EPS by Time Period

GHG EPS lb GHG/MWh	First Applicable Date	Last Applicable Date
1,100	July 1, 2008	March 23, 2018
970	March 24, 2018	Determined by chapter 194-26 WAC

<u>GHG EPS lb GHG/MWh</u>	<u>First Applicable Date</u>	<u>Last Applicable Date</u>
<u>Chapter 194-26 WAC (Starting March 24, 2018)*</u>		

* Commerce reviews and, if appropriate, updates the GHG EPS every five years as directed by RCW 80.80.050.

~~(3) A facility may comply with the ((emissions performance standard may be)) GHG EPS through the use of:~~

~~(a) ((Use of)) Fuel((s)) and power plant design((s that comply with the emissions performance standard without need for greenhouse gases emission controls)); or~~

~~(b) ((Use of greenhouse gases)) GHG emission control((s)) and ((greenhouse gases)) sequestration methods meeting the requirements of WAC 173-407-220 or 173-218-115, as appropriate.~~

~~((5) The greenhouse gases emissions performance standard in subsection (1) of this section applies to all baseload electric generation for which electric utilities enter into long-term financial commitments on or after July 1, 2008.))~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-140 Calculating greenhouse ((gases)) gas emissions and determining compliance for a baseload electric generation ((facilities)) facility or unit under Part II. (1) The owner or operator of a baseload electric generation facility or unit ~~((that))~~ must collect the following data to demonstrate compliance with the ~~((emissions performance standard))~~ GHG EPS in WAC 173-407-130~~((1))~~ shall collect the following data):

~~(a) ((Fuels and fuel feed stocks.~~

~~(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric generation facility or unit.~~

~~(ii) Fuel usage and heat content, which are to be monitored, and reported as directed by WAC 173-407-230.)) The usage and heat content of fuels and fuel feed stocks that provide energy input to the baseload electric generation facility or unit. The facility must monitor and report these data as directed by WAC 173-407-160.~~

~~(b) Electrical output in MWh as measured and recorded per WAC ((173-407-230)) 173-407-160.~~

~~(c) Regulated ((greenhouse gases)) GHG emissions in pounds/MMBtu from the baseload electric generation facility or unit as monitored, reported and calculated in WAC ((173-407-230)) 173-407-160.~~

~~(d) Adjustment((s)) for use of renewable resources. If the owner or operator of a baseload electric generation facility or unit adjusts its ((greenhouse gases)) GHG emissions to account for the use of renewable resources, ((greenhouse gases)) GHG emissions are reduced based on the ratio of the annual heat input from ((all fuels and fuel feed stocks)) renewable resources and the annual heat input from ((use of nonrenewable)) all fuels and fuel feed stocks. ((Such)) The facility owner or operator must base this adjustment ((will be based)) on records of fuel usage and representative heat contents approved by ecology.~~

~~(e) Adjustment for sequestered GHG emissions. A facility owner or operator can subtract the quantity of GHG emissions that are permanently sequestered through an approved sequestration method(s) during the calendar year from the total pounds of GHG emitted during that year.~~

~~(2) By January 31st of each year, the owner or operator of ((each)) a baseload electric generation facility or unit subject to the ((monitoring and)) compliance demonstration requirements of Part II and Part III of this rule ((will)) must:~~

~~(a) Use the data collected under subsection (1) of this section to calculate the pounds of regulated ((greenhouse gases)) GHG emissions emitted per MWh of electricity produced during the prior calendar year by dividing the total regulated ((greenhouse gases)) GHG emissions in pounds by the total ((MWh)) electricity produced in MWh in that year; and~~

~~(b) Submit that calculation and all supporting information to ecology.~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-150 Calculating greenhouse ((gases)) gas emissions and determining compliance for a baseload electric cogeneration ((facilities)) facility or unit under Part II. (1) ~~((To use this section for determining compliance with the greenhouse gases emissions performance standard.))~~ This section applies to a facility ~~((must have))~~ or unit certified to the Federal Energy Regulatory Commission ~~((FERC))~~ under the provisions of 18 C.F.R. Part 292, Subpart B as a qualifying cogeneration facility ~~(in effect on the date in WAC 173-407-006).~~

~~(2) The owner or operator of a baseload electric cogeneration facility or unit that must demonstrate compliance with the ((emissions performance standard)) GHG EPS in WAC 173-407-130((1)) shall collect the following data:~~

~~(a) ((Fuels and fuel feed stocks.~~

~~(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric cogeneration facility or unit.~~

~~(ii) Fuel and fuel feed stocks usage and heat content, which are to be monitored, and reported as directed by WAC 173-407-230.)) The usage and heat content of fuels and fuel feed stocks that provide energy input to the baseload electric cogeneration facility or unit. The facility or unit owner or operator must monitor and report these data as directed by WAC 173-407-160.~~

~~(b) Electrical output in MWh as measured and recorded per WAC ((173-407-230)) 173-407-160.~~

~~(c) All useful thermal energy and useful energy used for nonelectrical generation uses in MMBtu must be converted to units of ((megawatts energy equivalent (MWeq))) MWh_{eq} by using the conversion factor of 3.413 million British thermal units per megawatt hour (MMBtu/MWh).~~

~~(d) Regulated ((greenhouse gases)) GHG emissions in pounds/MMBtu from ((the)) a baseload electric cogeneration facility or unit as monitored, reported and calculated in WAC ((173-407-230)) 173-407-160.~~

~~(e) Adjustments for use of renewable resources. If the owner or operator of a baseload electric cogeneration facility or unit adjusts its ((greenhouse gases)) GHG emissions to account for the use of renewable resources, the ((greenhouse~~

gases)) GHG emissions are reduced based on the ratio of the annual heat input from ((all fuels and fuel feed stocks)) renewable resources and the annual heat input from use of ((nonrenewable)) all fuels and fuel feed stocks. ((Such)) The owner or operator must base this adjustment ((will be based)) on records of fuel usage and representative heat contents approved by ecology.

(f) Adjustment for sequestered GHG emissions. An owner or operator can subtract the quantity of GHG emissions that are permanently sequestered through an approved sequestration method(s) during the calendar year from the total pounds of GHG emitted during that year.

(3) Bottoming-cycle cogeneration facilities. Ecology and the facility must jointly develop the formula to determine compliance of a bottoming-cycle cogeneration facility or unit with the ((emissions performance standard will be jointly developed by ecology and the facility)) GHG EPS. To the extent possible, ecology and the facility must base the facility-specific formula ((must be based)) on the one for topping-cycle facilities identifying the amount of energy converted to electricity, thermal losses, and energy from the original fuel(s) used to provide useful thermal energy in the industrial process. Ecology and the facility must ensure that the formula ((should be)) is specific to the ((installed)) equipment installed, ((other)) thermal energy uses ((in the facility)), and specific operating conditions of the facility.

(4) Topping-cycle cogeneration facilities. To demonstrate compliance with the ((emissions performance standard)) GHG EPS, a topping-cycle facility or unit must:

(a) Determine annual electricity produced in MWh.

(b) Determine the annual electrical energy equivalent of the useful thermal energy output in MWh_{eq} .

(c) Determine the annual regulated ((greenhouse gases)) GHG emissions produced in pounds.

(5) By January 31st of each year, the owner or operator of ((each)) a baseload electric cogeneration facility or unit subject to the ((monitoring and)) compliance demonstration requirements of Part II and Part III of this rule ((will)) must:

(a) Calculate the pounds of regulated ((greenhouse gases)) GHG emissions emitted per MWh of electricity produced during the prior calendar year by dividing the ((regulated greenhouse gases)) total regulated GHG emissions in pounds by the sum of the electricity produced in MWh and thermal energy output in MWh_{eq} ((produced)) in that year; and

(b) Submit that calculation and all supporting information to ecology.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-200 Requirements for and timing of sequestration plan or sequestration program submittals under Part II. (1) The owner or operator of a facility or unit that does not meet the applicable EPS in WAC 173-407-130 must submit a sequestration plan ((for a source that)) to ecology when they propose to begin((s)) sequestration after the start of commercial operation ((shall be submitted when)) and engage in an action listed in (a) through (d) of this subsection:

(a) ((A site certification application is submitted to EFSEC for a new baseload electric generation facility or baseload electric cogeneration facility or new unit at an existing baseload electric generation facility or baseload electric cogeneration facility;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(e)) The owner or operator of a new facility or unit submits a notice of construction application ((is submitted to ecology or a local authority for a new baseload electric generation facility or baseload electric cogeneration facility or unit at a baseload electric generation facility or baseload electric cogeneration facility)) to the permitting authority;

((#)) (b) The owner or operator of an existing facility or unit submits a notice of construction application ((is submitted to ecology or a local)) to the permitting authority for an upgrade ((to an existing baseload electric generation facility or unit or an existing baseload electric cogeneration facility or unit)) and the upgrade is not ((an)) exempt ((upgrade));

((e) A baseload electric generation)) (c) The owner or operator of a facility or unit ((or baseload electric cogeneration facility or unit enters)) signs a new long-term financial commitment with an electric utility to provide baseload power and the facility or unit does not comply with the ((emissions performance standard)) GHG EPS in effect at the time the new long-term financial commitment occurs; or

((#)) (d) A qualifying new ownership interest ((change)) occurs and the facility or unit does not comply with the ((emissions performance standard)) GHG EPS in effect at ((the)) that time ((the change in ownership occurs)).

(2) The owner or operator of a facility or unit that does not meet the applicable GHG EPS in WAC 173-407-130 must submit a sequestration program ((for a source that)) to ecology when they propose to begin((s)) sequestration on or before the start of commercial operation ((is required to be submitted when)) and engage in an action listed in the following subsections:

(a) ((A site certification application is submitted to EFSEC for new baseload electric generation facility or unit or baseload electric cogeneration facility or unit;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(e)) The owner or operator of a new facility or unit submits a notice of construction application ((is submitted to ecology or a local authority for a new baseload electric generation facility or unit or baseload electric cogeneration facility or unit)) to the permitting authority;

((#)) (b) The owner or operator of an existing facility or unit submits a notice of construction application ((is submitted to ecology or a local)) to the permitting authority for an upgrade ((to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit)) and the upgrade is not an exempt upgrade;

~~((e) A baseload electric generation)) (c) The owner or operator of a facility or unit ((or baseload electric cogeneration facility or unit enters)) signs a new long-term financial commitment with an electric utility to provide baseload power if the facility or unit does not comply with the ~~((emissions performance standard))~~ GHG EPS in effect at the time the new long-term financial commitment occurs; or~~

~~((f)) (d) A qualifying new ownership interest ((change)) occurs and the facility or unit does not comply with the ~~((emissions performance standard))~~ GHG EPS in effect at ~~((the time the change in ownership occurs))~~ that time.~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-210 Types of permanent sequestration under Part II. ~~((Specific)) (1) Requirements for permanent geologic sequestration of ~~((greenhouse gases can be found))~~ GHG are in WAC 173-218-115.~~

~~(2) Requirements for ~~((approval of sequestration plans or sequestration programs for other (c))~~ permanent nongeologic ~~((types of permanent))~~ sequestration ~~((containment systems))~~ of GHG are ~~((found))~~ in WAC 173-407-220.~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-220 Requirements for nongeologic permanent sequestration plans and sequestration programs under Part II. ~~((In order to meet the emissions performance standard, all)) A baseload electric generation ~~((facilities or individual units))~~ facility or unit or baseload electric cogeneration facility or unit that ~~((are))~~ is subject to ~~((this rule, and must))~~ Part II and Part III of this chapter and proposes to use nongeologic sequestration of ~~((greenhouse gases))~~ GHG to meet the ~~((emissions performance standard, with))~~ GHG EPS must submit a sequestration plan ~~((s))~~ or sequestration program ~~((s))~~ for approval to ~~((EFSEC or))~~ ecology ~~((, as appropriate)).~~~~

(1) A sequestration plan ~~((s))~~ and sequestration program ~~((s))~~ for nongeologic sequestration of GHG must include:

(a) Financial requirements. As a condition of plant operation, each owner or operator of a ~~((baseload electric generation facility or unit or baseload electric cogeneration))~~ facility or unit ~~((utilizing nongeologic sequestration as a method to comply with the emissions performance standard in WAC 173-407-130 is required to))~~ must provide ~~((a))~~ letters of credit sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan or sequestration program ~~((, including construction and operation of necessary equipment, and any other significant costs)).~~

(i) The owner or operator of a proposed sequestration project ~~((shall))~~ must establish a letter of credit to cover all expenses for construction and operation of necessary equipment, and any other significant costs. The owner or operator must revise the cost estimate for the sequestration project ~~((shall be revised))~~ annually to include any changes in the project and ~~((to include))~~ cost changes due to inflation.

(ii) Closure and post-closure financial assurances. The owner or operator ~~((shall))~~ must establish a closure and a post-closure letter of credit to cover all closure and post-closure expenses, respectively. The owner or operator must designate ecology or EFSEC, as appropriate, as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure accounts ~~((shall))~~ must cover all costs of closure and post-closure care identified in the closure and post-closure plan. The owner or operator must revise the closure and post-closure cost estimates ~~((shall be revised))~~ annually to include any changes in the sequestration project and ~~((to include))~~ cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure accounts is enforceable regardless of whether the requirement is a specific condition of the permit.

(b) The application for approval of a sequestration plan or sequestration program ~~((shall))~~ must include ~~((f))~~, but is not limited to ~~((g))~~, the following:

(i) A current site map showing the boundaries of the permanent sequestration project containment system(s) and all areas where ~~((greenhouse gases will be stored))~~ the system(s) will store GHG.

(ii) A technical evaluation of the proposed project, including but not limited to, the following:

(A) The name of the area in which the sequestration will take place;

(B) A description of the ~~((facilities))~~ facility or unit and place of ~~((greenhouse gases))~~ GHG containment ~~((system))~~ system(s);

(C) A complete site description ~~((of the site,))~~ including, but not limited to, the terrain, the geology, the climate (including rain and snowfall expected), and any land use restrictions that exist at the time of the application or ~~((will be placed upon))~~ the applicant will place on the site in the future;

(D) The proposed calculated maximum ~~((volume of greenhouse gases to be sequestered))~~ quantity of sequestered GHG and areal extent of the location where the ~~((greenhouse gases will be stored))~~ facility will store GHG using a method acceptable to and filed with ecology; and

(E) Evaluation of the quantity of sequestered ~~((greenhouse gases))~~ GHG and their physical or chemical forms that may escape from the containment ~~((system))~~ system(s) at the proposed project.

(iii) A public safety and emergency response plan for the proposed project. The plan ~~((shall))~~ must detail the safety procedures concerning the sequestration project containment system and residential, commercial, and public land use within one mile, or as necessary to identify potential impacts, of the outside boundary of the project area.

(iv) A ~~((greenhouse gases))~~ GHG loss detection and monitoring plan for all parts of the sequestration project. The approved ~~((greenhouse gases))~~ GHG loss detection and monitoring plan ~~((shall))~~ must address identification of potential release to the atmosphere.

(v) A detailed schedule of annual benchmarks for sequestration of ~~((greenhouse gases))~~ GHG.

(vi) A closure and post-closure plan.

(vii) Any other information that ~~((the department))~~ ecology deems necessary to make its determination.

~~((vii) A closure and post-closure plan.))~~

(c) Monitoring plan. In order to monitor the effectiveness of the implementation of the sequestration plan or sequestration program, the owner or operator ~~((shall))~~ must submit a detailed monitoring plan that will ensure detection of failure of the GHG sequestration method to place the ~~((greenhouse gases))~~ GHG into a sequestered state. The monitoring plan ~~((will))~~ must be sufficient to provide reasonable assurance that the sequestration provided by the project meets the definition of permanent sequestration. The monitoring ~~((shall))~~ must continue for the longer of twenty years beyond the end of GHG placement of the greenhouse gases into a sequestration containment system, or twenty years beyond the date ~~((upon which it is))~~ determined by ecology that all of the ~~((greenhouse gases))~~ GHG have achieved a state ~~((at which))~~ that they are now stably sequestered in that environment.

(d) If the sequestration plan or sequestration program fails to sequester ~~((greenhouse gases))~~ GHG as provided in the plan or program, the owner or operator of the baseload electric generation facility or unit or baseload electric cogeneration facility or unit is no longer in compliance with the ~~((emissions performance standard))~~ GHG EPS.

(2) Public notice and comment. Ecology must provide public notice and a public comment period before approving or denying any sequestration plan or sequestration program.

(a) Public notice. Ecology will make a public notice ~~((shall be made))~~ only after the owner or operator of the facility submits all information required by ~~((the permitting authority has been submitted and after))~~ ecology and ecology makes all applicable preliminary determinations ~~((, if any, have been made))~~. The ~~((applicant or other initiator of the action))~~ owner or operator of the facility or unit must pay the cost of providing public notice. Public notice ~~((shall))~~ must include analyses of the effects on the local, state and global environment in the case of failure of the sequestration plan or sequestration program. The owner or operator of the facility must make the sequestration plan or sequestration program ~~((must be))~~ available for public inspection in at least one location near the proposed project.

(b) Public comment period.

(i) The public comment period must be ~~((at least))~~ thirty days ~~((long))~~ or ~~((may be))~~ longer as specified in the public notice.

(ii) The public comment period must extend through the hearing date.

(iii) Ecology ~~((shall))~~ must make no final decision on any sequestration plan or sequestration program until the public comment period has ended and ~~((any))~~ ecology has considered all comments received during the public comment period ~~((have been considered))~~.

(c) Public ~~((hearings))~~ hearing(s).

(i) Ecology ~~((will))~~ must hold a public hearing within the ~~((thirty day))~~ public comment period. Ecology will determine the location, date, and time of the public hearing.

(ii) Ecology must provide at least thirty days prior notice of ~~((a))~~ the hearing on a sequestration plan or sequestration program.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-230 Emissions and electrical production monitoring, recordkeeping and reporting requirements under Part II. (1) Monitoring and recordkeeping requirements. ~~((For all))~~ A baseload electric generation ~~((facilities))~~ facility or unit~~(s)~~ and baseload electric cogeneration ~~((facilities or units subject to WAC 173-407-120,))~~ facility or unit required to meet GHG EPS in WAC 173-407-130 must monitor and report the following parameters ~~((shall be monitored and reported))~~ as explained below:

(a) Electrical output in MWh: Electrical output as measured at the point of connection with the local electrical distribution network or transmission line, as appropriate. ~~((Measurement will be))~~ The facility will measure on an hourly or daily basis and ~~((recorded))~~ the measurements in a form suitable for ~~((use in calculating))~~ calculations to determine compliance with ~~((the greenhouse gases emissions performance standard))~~ GHG EPS;

(b) Useful thermal energy output in MWh_{eq}: Quantity of energy supplied to nonelectrical production ~~((uses))~~ determined by monitoring both the energy supplied and the unused energy returned by the thermal energy user or users. The facility can accomplish required monitoring ~~((can be accomplished))~~ through:

(i) Measurement of the mass, pressure, and temperature of the supply and return streams of the steam or thermal fluid; or

(ii) Use of thermodynamic calculations as approved by ecology.

(iii) ~~((Measurements will be))~~ Each facility will measure on an hourly or daily basis and ~~((recorded))~~ record the measurements in a form suitable for ~~((use in calculating))~~ calculations to determine compliance with the ~~((greenhouse gases emissions performance standard))~~ GHG EPS.

(c) Regulated ~~((greenhouse gases))~~ GHG emissions.

(i) The regulated ~~((greenhouse gases))~~ GHG emissions are the emissions of regulated ~~((greenhouse gases))~~ GHG from the main plant exhaust stack and any bypass stacks or flares. ~~((For baseload electric generation facilities or units and baseload electric cogeneration facilities or units utilizing))~~ A facility or unit using CO₂ controls and sequestration to comply with the ~~((greenhouse gases emissions performance standard,))~~ GHG EPS must include direct and fugitive CO₂ emissions from the CO₂ separation and compression process ~~((are included)).~~

(ii) Carbon dioxide ~~((CO₂))~~.

(A) ~~((For baseload electric generation facilities or units and baseload electric cogeneration facilities or units))~~ A facility or unit subject to WAC ~~((173-407-120, producing))~~ 173-407-130, with a net output rating of 25 MW or more of electricity, must monitor CO₂ emissions ~~((will be monitored))~~ by a continuous emission monitoring system meeting the requirements of 40 C.F.R. ~~((Sections))~~ 75.10 and 75.13 and 40 C.F.R. Part 75, Appendix F~~(-)~~, except under ~~((c)(i)(A)(I) and (II) of this subsection (federal rules in effect on the date in WAC 173-407-006):~~

(I) If allowed by the requirements of 40 C.F.R. Part 72, a facility may estimate CO₂ emissions through fuel carbon

content monitoring and methods meeting the requirements of 40 C.F.R. ((Sections)) 75.10 and 75.13 and 40 C.F.R. Part 75, Appendix G (federal rules in effect on the date in WAC 173-407-006).

(II) If the annual heat input to the electric generation facility is less than 90 percent fossil fuel, ecology may approve the use of emission factors in 40 C.F.R. Part 98, Table C-1 (in effect on the date in WAC 173-407-006).

(B) ((~~For baseload electric generation facilities or units and baseload electric cogeneration facilities or units~~)) A facility or unit subject to WAC ((~~173-407-120 producing~~) 173-407-130, with a net output of less than 25 MW of electricity, ((the owner or operator may either utilize a)) must use one of the following three methods:

(I) Continuous emission monitoring system meeting the requirements of 40 C.F.R. ((Sections)) 75.10 and 75.13 and 40 C.F.R. Part 75, Appendix F((, or use)) (federal rules in effect on the date in WAC 173-407-006);

(II) Fuel carbon content monitoring and methods meeting the requirements of 40 C.F.R. ((Sections)) 75.10 and 75.13 and 40 C.F.R. Part 75, Appendix G (federal rules in effect on the date in WAC 173-407-006); or

(III) Emission factors in 40 C.F.R. Part 98, Table C-1 (in effect on the date in WAC 173-407-006).

(C) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 C.F.R. Part 75, Subpart D, the ((~~baseload electric generation~~)) facility ((operator)) owner or operator ((with)) must substitute data according to the process in 40 C.F.R. Part 75, Appendix C (in effect on the date in WAC 173-407-006).

(D) A facility or unit must install continuous emission monitors for CO₂ ((will be installed)) under (c)(ii) of this subsection at a location meeting the requirements of 40 C.F.R. Part 75, Appendix A. The CO₂ and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 C.F.R. Part 75, Appendix B (in effect on the date in WAC 173-407-006).

(iii) Nitrous oxide (N₂O).

(A) ((~~For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to~~)) A facility or unit that triggers the applicability in WAC 173-407-120 ((producing)) prior to March 24, 2018, and produces 25 MW or more of electricity((;)) must determine the N₂O emissions ((shall be determined)) as follows:

(I) For the first year of operation, facility owner or operator will estimate N₂O emissions ((are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency,)) using the emission factors from 40 C.F.R. Part 98, Table C-2 or other authoritative source as approved by ecology ((for use by the facility)).

(II) For succeeding years, facility operator or owner will estimate N₂O emissions ((will be estimated through use of)) using generating unit specific emission factors derived ((through use of)) from emissions testing using ecology or ((Environmental Protection Agency)) EPA approved methods. Facility owner or operator must derive the emission factor ((shall be derived)) through testing N₂O emissions from

the stack at varying loads and through at least four separate test periods spaced evenly throughout the first year of commercial operation.

(B) ((~~For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to~~)) A facility or unit that triggers the applicability in WAC 173-407-120 ((producing)) prior to March 24, 2018, and produces less than 25 MW of electricity((;)) will estimate the annual N₂O emissions ((will be estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency,)) by the emission factors from 40 C.F.R. Part 98, Table C-2 or other authoritative source as approved by ecology ((for use by the facility)).

(C) A facility or unit required to develop a generating unit specific N₂O emission factor prior to March 24, 2018, must estimate N₂O emissions using the generating unit specific emission factor.

(D) Any facility or unit that triggers the applicability in WAC 173-407-120 on or after March 24, 2018, must estimate N₂O emissions using one of the following emission factors:

(I) Generating unit specific emission factor derived through emissions testing following the schedule in (c)(iii)(A) of this subsection;

(II) Emission factor from 40 C.F.R. Part 98, Table C-2;

or

(III) Other emission factor from authoritative sources as approved by ecology.

(iv) Methane (CH₄).

(A) ((~~For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to~~)) A facility or unit that triggers the applicability in WAC 173-407-120 ((producing)) prior to March 24, 2018, and produces 25 MW or more of electricity((;)) must determine the CH₄ emissions ((shall be determined)) as follows:

(I) For the first year of operation, the facility owner or operator will estimate CH₄ emissions ((are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency,)) using the emission factors from 40 C.F.R. Part 98, Table C-2 or other authoritative source as approved by ecology ((for use by the facility)).

(II) For succeeding years, the facility owner or operator will estimate CH₄ emissions ((will be estimated through use of plant)) using generating unit specific emission factors derived ((through use of)) from emissions testing using ecology or ((Environmental Protection Agency)) EPA approved methods. The facility owner or operator must derive the emission factor ((shall be derived)) through testing CH₄ emissions from the stack at varying loads and through at least four separate test periods spaced evenly through the first year of commercial operation.

(B) ((~~For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to~~)) A facility or unit that triggers the applicability in WAC 173-407-120 ((producing)) prior to March 24, 2018, and produces less than 25 MW of electricity((;)) will estimate the

annual CH₄ emissions (~~(will be estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency,))~~ by the emission factors from 40 C.F.R. Part 98, Table C-2 or other authoritative source as approved by ecology (~~(for use by the facility)~~).

(C) A facility or unit required to develop a generating unit specific CH₄ emission factor prior to March 24, 2018, must estimate CH₄ emissions using the generating unit specific emission factor.

(D) Any facility or unit that triggers the applicability in WAC 173-407-120 on or after March 24, 2018, must estimate CH₄ emissions using one of the following emission factors:

(I) Generating unit specific emission factor derived through emissions testing following the schedule in (c)(iv) (A) of this subsection;

(II) Emission factor from 40 C.F.R. Part 98, Table C-2;
or

(III) Other emission factor from authoritative sources as approved by ecology.

(d) Fuel usage and heat content information.

(i) Facility owner and operator must monitor fossil fuel usage (~~(will be monitored)~~) by measuring continuous fuel volume or weight as appropriate for the fuel used. (~~(Measurement will be)~~) Facility owner and operator must measure on an hourly or daily basis and (~~(recorded)~~) record the measurements in a form suitable for use in calculating (~~(greenhouse gases)~~) GHG emissions.

(ii) Facility owner or operator must monitor renewable (~~(energy)~~) fuel usage (~~(will be monitored)~~) by measuring continuous fuel volume or weight as appropriate for the fuel used. (~~(Measurement will be)~~) Facility owner or operator must measure on an hourly or daily basis and (~~(recorded)~~) record the measurements in a form suitable for use in calculating (~~(greenhouse gases)~~) GHG emissions.

(iii) Facility owner or operator must monitor renewable fuel feedstocks by measuring the fuel volume or weight, as appropriate, as the feedstocks are used in the combustion process. Facility owner or operator must measure on an hourly or daily basis and record the measurements in a form suitable for use in calculating GHG emissions.

(iv) Facility owner or operator must monitor renewable resources used in the production of electricity continuously by a method approved by ecology to determine heat input to the electric generation process.

(v) Facility owner or operator must test heat content of fossil fuels (~~(shall be tested)~~) at least once per calendar year. The owner or operator of the (~~(baseload electric generation)~~) facility or unit (~~(shall)~~) must submit a proposed fuel content monitoring program to ecology for (~~(ecology)~~) approval. Upon request and submission of appropriate documentation of fuel heat content variability, ecology may allow a source to:

(A) Test the heat content of the fossil fuel less often than once per year; or

(B) (~~(Utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.~~)

(iv)) Use the representative heat content for the fuel instead of the periodic monitoring of heat content.

(vi) Facility owner or operator must test renewable (~~(energy)~~) fuel heat content (~~(will be tested)~~) monthly or with a different frequency approved by ecology. (~~(A)~~) The facility owner or operator must base the different frequency (~~(will be based)~~) on the variability of the heat content of the renewable (~~(energy)~~) fuel.

(A) If (~~(the baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120))~~ a facility or unit using a mixture of renewable and fossil fuels (~~(do)~~) does not adjust their (~~(greenhouse gases)~~) GHG emissions by accounting for the heat input from renewable (~~(energy)~~) fuels, ecology does not require monitoring of the heat content of the renewable (~~(energy)~~) fuels (~~(is not required)~~).

(B) Upon request and with appropriate documentation, ecology may allow a source to (~~(utilize)~~) use representative heat content for the renewable (~~(energy source)~~) fuel instead of the periodic monitoring of heat content required above.

(vii) Facility owner or operator must test the heat content of renewable fuel feedstocks monthly or on a different schedule approved by ecology. Ecology will approve the different schedule based on the variability of the heat content of the renewable fuel feedstocks. The facility owner or operator must measure the heat content of the fuel feedstocks in the form they are used in the combustion process.

(A) If a facility or a unit using a mixture of renewable and fossil fuels and does not adjust their GHG emissions by accounting for the heat input from renewable fuels, ecology does not require monitoring of the heat content of the renewable fuel feedstocks.

(B) Upon request and with supporting documentation, ecology may allow a source to use representative heat content for the renewable fuel feedstock instead of the periodic monitoring of heat content required above.

(2) Reporting requirements. Facility owner or operator must report the results of the monitoring required by this section (~~(shall be reported)~~) to ecology and the permitting authority annually.

(a) (~~(Facilities)~~) Facility or unit(s) subject to the reporting requirements of 40 C.F.R. Part 75. Facility owner or operator must report annual emissions of CO₂, N₂O and CH₄ (~~(will be reported)~~) that occurred in the previous calendar year and supporting information to ecology and the (~~(air quality permitting authority with jurisdiction over the facility)~~) permitting authority by January 31st of each calendar year (~~(for emissions that occurred in the previous calendar year)~~). The (~~(report may be)~~) facility owner or operator may submit the report as an Excel™ or CSV format copy of the report submitted to EPA per 40 C.F.R. Part 75 with (~~(the)~~) N₂O and CH₄ emissions (~~(for N₂O and CH₄)~~) appended to the report.

(b) (~~(For facilities)~~) Facility or unit(s) not subject to the reporting requirements of 40 C.F.R. Part 75(~~(?)~~). Facility owners or operators must report annual emissions of CO₂, N₂O and CH₄ that occurred in the previous calendar year and supporting information (~~(will be reported)~~) to ecology and the (~~(air quality permitting authority with jurisdiction over~~

the facility)) permitting authority by January 31st of each calendar year ((for emissions that occurred in the previous calendar year)).

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-240 Enforcement of the emissions performance standard under Part II.

Note: Ecology is the agency responsible for enforcing this section.

(1) ~~((Any power plant))~~ A baseload electric generation facility or unit or baseload electric cogeneration facility or unit subject to WAC ~~((173-407-120 that does not))~~ 173-407-130 that fails to meet the ~~((emissions performance standard on schedule shall))~~ applicable GHG EPS or any implementation schedules and requirements in a sequestration plan or program may be subject to enforcement ((under)) using the enforcement criteria and procedures specified in chapter 70.94 RCW.

Penalties can include:

(a) Financial penalties, which ~~((shall))~~ may be assessed after ~~((any year of))~~ a failure to meet a sequestration benchmark ~~((established))~~ in the sequestration plan or sequestration program. Each pound of ~~((greenhouse gases))~~ GHG above the ~~((emissions performance standard))~~ GHG EPS will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of the approval to construct the source or to operate the source.

(2) If a new, modified or upgraded ~~((baseload electric generation facility or unit or baseload electric cogeneration))~~ facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program ~~((will be required to))~~ must be submitted no later than one hundred fifty calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program ~~((is to))~~ must be submitted to ecology ~~((or EFSEC, as appropriate,))~~

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility or unit operated under an approved sequestration plan or sequestration program shall have the burden of proving to ecology ~~((, EFSEC, or the decision-making authority))~~ in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration ~~((shall))~~ must be a condition to ~~((obtaining))~~ obtain relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section ~~((shall))~~ must be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark ~~((shall))~~ must be reported as part of the routine sequestration monitoring reports or by January 31st of the year following the calendar year during which the event occurred ~~((or as part of the routine sequestration monitoring reports))~~. Upon request by ecology, the ~~((owner(s) or operator(s)))~~ owner or operator of the sequestration project ~~((source(s) shall))~~ must submit a full written report including the known causes, the corrective

actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions ~~((shall))~~ must be considered unavoidable provided the source reports as required under (c) of this subsection ~~((, and))~~. The owner or operator of the sequestration project must adequately demonstrate((s)) that the failure to meet a sequestration benchmark could not ~~((have been))~~ be prevented through careful planning and design and if a bypass of equipment occurs, ~~((that such))~~ and the bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) ~~((Maintenance.))~~ Failure to meet a sequestration benchmark due to scheduled maintenance ~~((shall))~~ must be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not ~~((have been))~~ be avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets ~~((shall))~~ must be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern ~~((indicative of))~~ that indicated inadequate design, operation, or maintenance; and

(iii) The owner or operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations. ~~((a))~~ Enforcement of ~~((an ecology or local air agency permitting authority notice of construction will take place under the authority))~~ a violation of an order of approval must follow the requirements of chapter 70.94 RCW, as implemented by the permitting authority. Enforcement of an ecology approved sequestration plan or sequestration program ~~((will))~~ must be in accordance with this section.

~~((b) Enforcement of any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.150.))~~

PART III

**LONG-TERM FINANCIAL COMMITMENTS;
~~((RELATIONSHIP OF ECOLOGY AND THE WUTC;
AND RELATIONSHIP OF ECOLOGY AND THE
GOVERNING BOARDS OF))~~ ECOLOGY'S CONSULTATION WITH UTC AND CONSUMER-OWNED UTILITIES ((UNDER CHAPTER 80.80 RCW))**

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-300 Procedures for determining compliance with the emissions performance standard of a long-term financial commitment ((and addressing electricity from unspecified sources and specified sources))

under Part II. ((1))The following procedures are adopted by the department to be utilized by the department under RCW 80.80.060 and to be available to and utilized by the governing boards of consumer-owned utilities pursuant to RCW 80.80.070 when evaluating a potential long-term financial commitment when the long-term financial commitment includes electricity from unspecified sources, electricity from one or more specified sources, and/or provisions to meet load growth with electricity from unspecified and/or specified sources.

(2) For each year of a long-term financial commitment for electric power, the regulated greenhouse gases emissions from specified and unspecified sources of power are not to exceed the emissions performance standard in WAC 173-407-130(1), in effect on the date the long-term contract is executed. The emissions performance standard for a long-term financial commitment for electricity that includes electricity from specified and unspecified sources is calculated using a time-weighted average of all sources of generation and emissions in the years in which they are contributing electricity and emissions in the commitment. Each source's proportional contribution to emissions per each MWh delivered under the contract is added together and summed for each year and divided by the number of years in the term of the commitment.

(3) An extension of an existing long-term financial commitment is treated as a new commitment, not an extension of an existing commitment.

(4) Annual and lifetime calculations of greenhouse gases emissions:

(a) The annual average emissions shall be calculated, for every year of the contract, using the formula in subsection (5) of this section. The calculation of the pounds of greenhouse gases per megawatt-hour is based upon the delivered electricity, including the portion from specified and unspecified sources, of the total portfolio for the year for which the calculation is being made.

(b) The average greenhouse gases emissions per MWh of the power supply portfolio over the life of the long-term financial commitment is compared to the emissions perfor-

mance standard. The calculation of the pounds of greenhouse gases per MWh is based on the expected annual delivery contracted or expected to be supplied by each specified and unspecified source's portion of the total portfolio of electricity to be provided under the contract for the year for which the calculation is being made.

(c) Default values adopted in this procedure shall be used for each source unless actual emissions are known or specified by the manufacturer. A default greenhouse gases emissions value of an average pulverized coal plant per WAC 173-407-300 (5)(b) shall be used for unspecified sources in the procedure.

(5) The annual average calculation shall be performed using the regulated greenhouse gases emissions factors as follows:

(a) For a specified source, utilize the manufacturer's emissions specification or the measured emission rate for a specified generator. When there is no available information on greenhouse gases emissions from a specified source, utilize the following:

(i) Combined cycle combustion turbines that begin operation after July 1, 2008 = 1,100 lbs/MWh or as updated by rule in 2012 and every five years thereafter.

(ii) Steam turbines using pulverized coal = 2,600 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(iii) Integrated gasification combined cycle turbines = 1,800 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(iv) Simple cycle combustion turbines = 1,800 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(v) Combined cycle combustion turbines that begin operation before July 1, 2008 = 1,100 lbs/MWh.

(b) Electricity from unspecified sources = 2,600 lbs/MWh.

(c) Renewable resources = 0 lbs/MWh.

Example Calculation

$$AE = \frac{(F_1 \times MWh_1) + (F_2 \times MWh_2) + (F_3 \times MWh_3) + \dots + (F_n \times MWh_n)}{Total\ MWh}$$

where:

- AE = Average emissions in lb/MWh
- F = Regulated greenhouse gases emissions factor in lb/MWh
- MWh = Total MWh purchased or generated by the utility's own generation capacity during the year
- Total MWh = Total MWh from all source types for that year))

(1) A baseload generation facility or unit or baseload cogeneration facility or unit in a long-term financial commitment must meet the GHG EPS in WAC 173-407-130 in effect at the time the parties sign the commitment.

(2) A long-term financial commitment must meet the following conditions to comply with the GHG EPS in WAC 173-407-130:

(a) Electricity from unspecified sources is limited to 12 percent of the total electricity in a long-term financial commitment.

(b) Long-term financial commitments with the Bonneville power administration are exempt from meeting the GHG EPS.

(c) For a long-term financial commitment with multiple power plants, each specified power plant named in the long-term financial commitment must individually meet the GHG EPS in WAC 173-407-130 in effect on the date the parties sign the commitment. Ecology deems a power plant named in

a long-term financial commitment with multiple power plants meeting the following criteria to be in compliance with the GHG EPS:

(i) A facility or unit powered exclusively by renewable resources:

(ii) A facility or unit that is designed and intended to use a renewable fuel to provide at least 90 percent of its total annual heat input;

(iii) A baseload electric cogeneration facility or unit, fueled by natural gas or waste gas or a combination of the two fuels, that was in operation before June 30, 2008, unless it has:

(A) Changed ownership; or

(B) Upgraded.

(3) If ecology cannot determine compliance with the GHG EPS for a long-term financial commitment based on the conditions in subsection (2) of this section, ecology must use procedures in WAC 173-407-140 or 173-407-150 to determine compliance with the GHG EPS. All reports required by WAC 173-407-140(2) or 173-407-150(5) must be sent to ecology. An investor-owned electric utility must send another copy of the reports to UTC. A consumer owned electric utility must send another copy of the reports to their governing board.

(4) This rule exempts long-term purchase of coal transition power from meeting the GHG EPS as long as the term of the long-term purchase meets the schedule in RCW 80.80-040 (3)(c).

(5) In determining if a long-term financial commitment complies with the EPS, all unspecified power will have an emission rate of 2,300 lb/MWh.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-310 ((Relationship of ecology and Washington utilities and transportation commission)) Ecology's consultation with UTC under Part II. (1) ((The Washington utilities and transportation commission (commission) shall consult with ecology to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80-040-)) On request for assistance from the UTC, ecology ((shall)) must report to ((the commission)) UTC whether baseload electric generation will comply with the ((greenhouse gases emissions performance standard)) GHG EPS for ((the duration of)) the period that the investor-owned utility contracts for the baseload electric generation ((is supplied to the electrical company. (RCW 80.80-060(7;-))).

(2) Ecology's consultation with ((the commission)) UTC includes:

(a) ((In assisting the commission to apply the emissions verification procedures adopted, ecology will compare the commission's procedures to the ecology procedures found in WAC 173-407-130, 173-407-140, and 173-407-230-)) Assist UTC to apply the conditions in WAC 173-407-300, 480-100-405, and 480-100-415.

(b) ((In consulting with the commission to)) Determine if a long-term financial commitment for baseload electric generation meets the ((greenhouse gases emissions performance

standard, ecology shall consider whether the commitment meets WAC 173-407-300)) GHG EPS based on the conditions in WAC 173-407-300, 173-407-140, 173-407-150, and 173-407-160.

(3) ((When conducting the consultation and reporting processes, ecology will conclude this process of consultation and assistance)) Ecology will provide a report within thirty days of receiving all necessary information ((from the commission to determine compliance)), unless UTC grants additional time.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-320 ((Relationship of ecology and the governing boards of)) Ecology's consultation with consumer-owned utilities under Part II. (1) ((RCW 80.80-070 (2) requires)) The governing boards of consumer-owned utilities ((to "review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department,)) may consult with ecology to determine whether the baseload electric generation ((to be)) supplied under ((that)) a long-term financial commitment complies with the ((greenhouse gases emissions performance standard established under RCW 80.80-040." During this consultation process, ecology shall assist the governing boards with the utilization of the method in WAC 173-407-300 to determine whether the long-term financial commitment for baseload electric generation meets the emissions performance standard)) GHG EPS in WAC 173-407-130 in effect at the time the long-term financial commitment is signed.

(2) Ecology's assistance will be limited to ((that assistance necessary)) providing technical support for the board to interpret, clarify or otherwise determine that the proposed long-term financial commitment for baseload electric generation will comply with the ((emissions performance standard)) GHG EPS.

((2) RCW 80.80-070(5) also requires)) (3) The governing board((s)) of consumer-owned utilities ((to ")) must apply the ((procedures adopted by the department)) conditions in WAC 173-407-300, 173-407-140, 173-407-150, and 173-407-160 to verify the emissions of ((greenhouse gases)) GHG from baseload electric generation ((under RCW 80.80-040," and allow them to-)).

(4) The governing board may request assistance from ((the department in doing so." The procedures adopted by the department to be utilized by the governing boards are found in WAC 173-407-300. Ecology shall provide consultation or further assistance to the governing boards of a consumer-owned utility to apply such procedures if the governing board makes such a request.

(3)) ecology in performing the analyses in subsection (3) of this section.

(5) Ecology will ((conclude this process of consultation and assistance)) provide technical support within thirty days of receiving all necessary information unless the governing board ((requesting the assistance)) grants additional time.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
173-407-230	173-407-160